

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Bail Application No.31/2008**

% **Date of decision : 23.07.2008**

Swaran Singh

..... Petitioner

Through: Mr.K.K. Sud, Sr. Advocate with
Mr.Anupam Mishra, Advocate.

Versus

DRI

..... Respondent

Through : Mr. Satish Aggarwala with
Ms.Pooja Bhaskar, Advocates.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

*

Cr1.M.A.No.8510/2008

This is an application by the petitioner/applicant for extension of interim bail for eight weeks granted by order dated 23rd May, 2008.

The applicant contended that he was granted interim bail on 25th January, 2008 on the ground of illness of his wife. The petitioner was

released on interim bail and remained on interim bail till 22nd April, 2008. The petitioner surrendered on 23rd April, 2008. Before surrendering on 23rd April, 2008, the applicant had filed another application being CrI.M.(Bail) No.537/2008. Though the interim bail of the petitioner/applicant was not extended after the expiry of interim bail on 22nd April, 2008, however, pursuant to the said application, the petitioner/applicant was again released on interim bail on 23rd May, 2008 for eight weeks from the date of his release.

The application, CrI.M.B. No.537/2008, was opposed by the respondent on the ground that the petitioner was granted interim bail on 24th March, 2008 on the ground of hospitalization of his wife but the petitioner's wife was discharged on the next day on 25th March, 2008. This Court considered that the wife of the petitioner required rest as had been advised by the doctor and also relied on the prescriptions issued by the Government Medical College, Amritsar, advising physiotherapy as well as neurological treatment to the petitioner's wife. This Court also considered the fact that it could not be disputed that the wife of the petitioner had undergone a serious surgery on her back on 2nd February, 2008. While granting interim bail by order dated 23rd May, 2008 for eight weeks from the date of release, this Court also relied on the certificate of the Village Panchayat confirming that the family of the petitioner is not a joint family despite the report of the

investigating agency that the wife of the petitioner was not living separately and interim bail for eight weeks was granted.

The petitioner now seeks extension of his interim bail on the ground that he has to take his wife, Ranjit Kaur, to Amritsar Hospital on every alternate day for treatment and physiotherapy as a consequence of operation of vertebrae resulting in prolapse of the disc and consequent complications which are causing her repeated admissions as indoor patient in the hospital. It is contended that on account of it she has been again admitted on 10th July, 2008 as indoor patient and she needs an attendant and a certificate of hospital dated 16th July, 2008 has been produced in support of the contentions raised by the petitioner.

The petitioner has also produced the physiotherapy record of every alternate day at the Amritsar Hospital which is mainly in the shape of money receipts. The petitioner/applicant contends that he has not exploited the liberty granted to him while releasing him on the interim bail and he has been appearing in the trial Court even during the period of interim bail and has always been represented by a duly authorized counsel. The petitioner is stated not to be a previous convict and has clean antecedents and roots in the society. The petitioner, in the circumstances, has sought extension of interim bail for a further

period of three months from the date of expiry of interim bail for eight weeks which was granted by order dated 23rd May, 2008.

The application is strongly opposed by the respondent contending inter alia that the copy of the petition for extension of interim bail was served at 3.00 PM on 18th July, 2008 in the office of the counsel for DRI. Department, therefore, could be informed only on 21st July, 2008 as 19th July and 20th July, 2008 were holidays. It is contended that despite the short time given to the respondent, the certificate dated 16th July, 2008 issued by the Government Hospital, Amritsar, has been verified and it is admitted that the certificate is issued by the hospital authorities.

The extension of interim bail for a further period of three months as has been claimed by the petitioner is, however, opposed on the ground that interim bail does not mean perpetual bail and on the ground of disk related problem which is a recurring condition and which is not of an exceptional nature, the interim bail should not be repeatedly granted as it would set a bad precedent.

The respondent, however, admitted that the petitioner was granted interim bail by Special Judge on 25th July, 2007 for 10 days which interim bail was extended from time to time till 22nd August, 2007 and thereafter the petitioner was directed to surrender on 23rd

August, 2007. The petitioner, therefore, surrendered on 23rd August, 2007 and he was produced for the trial in judicial custody on 13th September, 2007; 29th October, 2007 and 13th November, 2007. An application of the petitioner for interim bail was, however, dismissed by Additional Sessions Judge on 16th November, 2007 and another application for interim bail was again dismissed on 17th December, 2007.

The respondent, however, admitted that the petitioner was again granted bail by the High Court on 23rd January, 2008 which was extended and he remained on interim bail till 22nd April, 2008 and thereafter he surrendered. It is also admitted that he was again granted interim bail on 23rd May, 2008 pursuant to which he was released on bail on 28th May, 2008. During the pendency of the period of interim bail, petitioner has now sought further extension for a period of three months.

Though the respondent has not denied the certificate issued by the Government Hospital, Amritsar, stipulating that as a consequence of operation of vertebrae resulting in prolapse of the disc and consequent complications, she has again been admitted on 10th July, 2008 and even as an indoor patient she needs an attendant, the respondent has contended that the matter be referred to a panel of specialists.

Since the petitioner had been released on interim bail by this Court by order dated 23rd May, 2008 considering almost same pleas and contentions as has been raised now by the respondent in the present application for extension of interim bail, it may not be appropriate to decline the extension of the bail on the same pleas which had been considered and ignored while granting interim bail. The fact that the wife of the petitioner was discharged from the hospital on 25th March, 2008 one day after the interim bail was granted on 24th March, 2008 was considered while disposing of the application being CrI.M.(B) No.537/2008. Similarly the opposition to grant of interim bail on the ground that the petitioner's wife was living in a joint family and there are people to look after her was considered and despite that interim bail was not declined to the petitioner.

Whether the interim bail should be extended or not, therefore, is to be considered mainly on the basis of the certificate issued by the Government Hospital. The said certificate is admitted by the respondent, however, a prayer has been made to refer the case of the petitioner's wife to a panel of specialists. Unless the condition of the wife of the petitioner and the advice rendered by the Government Hospital doctors is challenged or refuted, I do not find any reason or ground to refer the matter to a panel of specialists. On account of operation of vertebrae of the wife of the petitioner, he was released on

interim bail and thereafter in the post operation period also the petitioner was released on interim bail. Prolapse of the disc and consequent complications entailing re-admission on 10th July, 2008 as an indoor patient, will also be one such circumstance which will entitle petitioner for interim bail in the present facts and circumstances. These are such circumstances which are sufficient to allow the interim bail of the petitioner.

The application of the petitioner is also opposed on the ground that the petitioner had sought exemption from appearance on 22nd April, 2008. Perusal of record reveals that petitioner had to surrender on 23rd April, 2008, as his bail was not extended and therefore this cannot be construed against him in any manner so as to deny him the interim bail if the petitioner is entitled for the same otherwise. In any case, though the petitioner had sought exemption from appearance on 22nd April, 2008, later on, he had been granted interim bail for eight weeks by order dated 23rd May, 2008.

The respondent has also relied on Union of India v. Ram Samujh & Another, 1999 (3) C.C. Cases (SC) 22; Vimal Behl v. DRI, CrI. M.(M) No.3569/2003 decided on 9th September, 2003; 1999(3) C.C. Case (HC) 152, Islamuddin @ Chottey v. State of Delhi to contend that the petitioner is a person dealing with narcotic drugs which are hazardous to the society and if such persons are released on bail, they may

continue with their nefarious activities of trafficking and/or dealing in intoxicants clandestinely and, therefore, the bail should not be granted.

In *Union of India v. Ram Samujh* (supra), the Supreme Court had rather held that to check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided under Section 37 are met. Petitioner has already been released on interim bail a number of times as the mandatory conditions under Section 37 had been met. Learned counsel for the respondent is unable to show the change in the circumstances or non-compliance with the mandatory conditions under Section 37 so as to decline release of the petitioner on interim bail for further period in the present facts and circumstances. The other judgment relied on by the petitioner in the case of *Vimal Behl* (supra) is also distinguishable as in that case the accused was given liberty to attend the funeral of his father in custody which he, however, declined and in the circumstances the petitioner was not granted interim bail. The other judgments relied on by the respondent, *Islamuddin @ Chotte v. State of Delhi*, 82 (1999) DLT 449; *Ram Prakash Pandey v. State of U.P. & Another*, 2002 (1) C.C. Cases (SC) 18; *Pawan @ Tamatar v. Ram Prakash Pandey*, 2002 (2) JCC 1069 (SC); *State v. Jaspal Singh Gill*, 1984 CrL.L.J. 1211-1215 and *Manoj Kumar @ Goldy v. State (DRI)* titled CrL. M.M. No.3079/2002 decided on 2nd December, 2002 are clearly

distinguishable and on the basis of the ratio of the same it cannot be held that the petitioner is not entitled for extension of the interim bail as the petitioner has already been granted interim bail a number of times and during the time the petitioner had been on bail he has not exploited the liberty granted to him and rather surrendered after the expiry of period of interim bail and has even appeared before the courts on the dates fixed in the trial during the period he was on interim bail.

Considering the present facts and circumstances, I do not feel the necessity to deal with other judgments in detail relied on by the respondent as the fact situation of the present case is apparently distinguishable from the fact situation of the decisions relied on by the respondent. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.*, AIR 2004 SC 778 had observed:-

"Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes".

A case is only an authority for what it decides. As observed by the Supreme Court in *State of Orissa v. Sudhansu Sekhar Misra* AIR 1968 SC 647:-

*"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in *Quinn v. Leathem*, 1901 AC 495:*

*"Now before discussing the case of *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow*

logically Page 2009 from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

In *Ambica Quarry Works v. State of Gujarat and Ors.* AIR 1987 SC 1073a, the Supreme Court observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

Similarly in *Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2 SC 111 (vide para 59), the Supreme observed:-

"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. Consequently by placing reliance on these judgment relied on by the respondent, the petitioner cannot be declined extension of bail in the present facts and circumstances.

Consequently, for the foregoing reasons, the application for grant of interim bail is allowed and interim bail of the petitioner is extended on the same terms and conditions as has been directed by this Court in

order dated 23rd January, 2008 and 23rd May, 2008 for a further period of eight weeks. The petitioner shall surrender after the expiry of the said period of eight weeks and shall keep on appearing before the trial Court on all the dates unless specifically exempted by the trial Court. In view of the extension of interim bail for a further period of eight weeks, petitioner need not surrender tomorrow, i.e., 24th July, 2008. With these directions, the application is disposed of.

A copy of this order be given dasti under the signatures of Court Master of this Court.

CrI.M.B. 4980/2008

This is an application by the respondent for initiating appropriate action against the petitioner on the ground that a fraud has been played by the petitioner as he got the interim bail on 24th March, 2008 on the ground of hospitalization of his wife, however, his wife was discharged on 25th March, 2008.

The application is contested by the petitioner inter alia on the ground that the medical certificate of the petitioner was verified and after hearing the parties the bail was granted to the petitioner and the respondent had not sought cancellation of the interim bail which was granted to him. The application is also contested on the ground that the grant of interim bail to the petitioner by order dated 23rd May, 2008

was opposed on the same ground which was considered by this Court, however, the plea of the respondent was ignored and interim bail was granted to the petitioner. It is also contended that merely because the wife of the petitioner was discharged from the hospital on 25th March, 2008 it did not mean that the wife of the petitioner did not require attendant with her after a debilitating operation for vertebrae.

By a separate order, in another application filed by the petitioner for extension of interim bail, the interim bail has been extended for a further period of eight weeks. The pleas raised by the respondent/applicant were considered while disposing of the CrI.M.(B) No.531/2008 and on the basis of the same the interim bail was not rejected.

Therefore, there are no grounds to take any action against the petitioner for the fraud alleged to have been committed by the petitioner in getting interim bail on 24th March, 2008 and his wife being discharged from the hospital on 25th March. The petitioner had surrendered on 23rd April, 2008 and thereafter he was again granted interim bail by order dated 23rd May, 2008. The application is without any merit and it is, therefore, dismissed.

July 23, 2008
'Dev'

ANIL KUMAR, J.