

IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. No. 623 of 2009

SATPAL JUNEJA

..... Petitioner

Through: Mr. S.N. Gupta, Advocate.

versus

DIRECTORATE OF REVENUE INTELLIGENCE Respondent

Through: Mr. Satish Aggarwala, Advocate
for DRI.

Mr. Pawan Behl, APP for the State with
Mr. V.D. Pushkarna, Dy. Superintendent,
Tihar Jail.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER
18.05.2009

1. On 15th April 2009, the following order was passed by this Court:

“1. The present petition by Satpal Juneja seeks regular bail in the complaint case titled “*S.K. Srivastava, Intelligence Officer, Directorate of Revenue Intelligence v. Satpal Juneja and Anr.*” under Sections 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1885 (‘NDPS Act’) pending in the court of the learned Special Judge for NDPS cases, New Delhi. According to the Directorate of Revenue Intelligence (‘DRI’) a quantity of 4.740 kgs of heroin concealed in ladies sandals was seized from the Petitioner at the IGI Airport on 9th October 2001 while he was waiting to board a British Airways Flight No.142.

2. The Petitioner filed Bail Application No. 692 of 2008 in this Court seeking interim bail on medical reasons. He submitted to this Court that he has been in jail since 10th October 2001 and that he is a patient of severe diabetes. On account of the malfunctioning of one of his kidneys he was on dialysis for about one and a half year even while in jail. The diabetes had affected the bone of the Petitioner and he was stated to be confined to a wheelchair. This Court also took note of the fact that as per the report of the Senior Medical Officer dated 14th February 2006 the Petitioner was suffering from chronic renal failure for which he was undergoing haemo dialysis at hospital. In the background of the above facts by an order dated 8th May 2008 in Bail Application No. 692 of 2008 the Petitioner was granted interim bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the concerned trial court. The interim bail was granted for a period of four months from the date of the release. It was specifically stated that “the applicant shall not leave the territorial jurisdiction of this Court without permission of the court and shall surrender to Superintendent Jail on expiry of the period of bail.” Thereafter by an order dated 1st October 2008 in Bail Application No. 1807 of 2008 the interim bail was extended by three months on the same terms and conditions.

3. In terms of the aforementioned orders passed by this Court, the interim bail granted to the Petitioner was to expire on 1st January 2009. On 22nd December 2008 he filed Bail Application No.2637 of 2008 in this Court seeking extension of the interim bail for a further period of six months “to get proper treatment and transplantation of both his kidneys in order to save his life in the interests of justice.” On the said application an order was

passed on 31st December 2008 by the Vacation Judge extending the interim bail till the next date of hearing i.e. 28th February 2009.

4. On the adjourned date while extending the bail granted to the Petitioner up to 28th February 2009 (on the same terms and conditions) a report was called from the Jail Superintendent about the medical history of the Petitioner till such time he was in jail including the details of the treatment provided to him. In the meantime the Petitioner was also directed to get himself examined by a medical board who were to report to this Court about the treatment required by the Petitioner. The matter was directed to be listed on 25th February 2009.

5. On 25th February 2009 the following order was passed by this Court dismissing Bail Application No.2637 of 2008:

“In this case the report of the AIIMS which constituted a Board in terms of the directions given by this Court, the report of the Board is as under:

‘A medical board has been constituted by Medical Superintendent, for medical examination in respect of accused Satpal Juneja, subject noted above.

The board held its meeting under the chairmanship of Dr. Navneet Wig, Assoc. Professor of Medicine on 11th February, 2009 at 3.30 PM in Room No. 13, VIP Consultation Room, M.S. Office Wing, AIIMS. All the members of the board were present and the accused patient Satpal Juneja also appeared before the medical board on 11th February, 2009.

After preliminary examination of the accused patient Satpal Juneja, it was decided to admit him under the Department of Nephrology for evaluation. Accordingly patient Satpal

Junega was admitted to AIIMS on 12.02.2009 vide CR No. H-057093-09.

Mr. Satpal Juneja is a known case of Type-2 diabetes mellitus with diabetic nephropathy, diabetic retinopathy and diabetic neuropathy. He was administered medications for urinary tract infection and control of blood sugar. A thorough evaluation of renal functions was carried out. He has chronic kidney disease stage 4 (GFR – 18 ml./min.) i.e. predialysis stage. He will require renal replacement therapy in near future. He would also require regular follow-ups for diabetic management and cardiac evaluation which may be done at any hospital as an outpatient in the outpatient department (OPD).'

Perusal of this report goes to show that even though the petitioner is suffering from illness but he can be treated as an OPD patient at any hospital.

Shri Satish Aggarwala appearing for the DRI submits that State will provide all medical help to the petitioner as may be required and would take him to any Government hospital of his choice including AIIMS if required but for that purpose he is not required to be released on the bail taking into consideration seriousness of the charges leveled against him.

The report of the Jail Superintendent has also been perused. The jail Superintendent is also directed to provide for all necessary medical help including transportation of the petitioner in custody wherever is required to be taken for treatment for the illness for which he is suffering.

As far as the grievance made by the petitioner that in this case the trial is not proceeding as is required to be proceeded with.

The petitioner also submits that the petitioner is also aggrieved of the pace with which the trial is going on inasmuch as for the last many hearings no witness is produced by the Department which is disputed by Mr. Aggarwala. However, in this regard it is fundamental right of the petitioner to have expeditious trial and this fact has been noted by the Apex Court in number of judgments. The Trial Court will take into consideration those judgments and will try to expedite the trial as much as it is possible as per its Board. However, for that purpose the prosecution will ensure production of their witness and will not seek an adjournment for producing the witnesses in case they have not taken appropriate steps.

The petitioner submits that the trial be also made time-bound but for that purpose the petitioner can always move an appropriate application along with the order sheet of this Court, when appropriate directions can be passed.

With these observations, the application for extension of interim bail is dismissed.”

6. Admittedly with the dismissal of the above application by the learned Single Judge of this Court the Petitioner was required to surrender to the Superintendent, Central Jail, Tihar on 28th February 2009. It appears that the Petitioner was admitted to the Sanjeevan Speciality Hospital (‘SSH’), Pahar Ganj, New Delhi on 26th February 2009 under the care of Dr. R.K. Mahajan. On 28th February 2009 a handwritten application was

made in the court of the learned Additional Sessions Judge ('ASJ') also the Special Court under the NDPS Act, stating that the condition of the Petitioner was serious and that he was admitted in the SSH and that "the Superintendent Jail may be directed to take him into custody in the hospital itself." This unnumbered application when placed before the learned ASJ was apparently forwarded by the learned ASJ to the Superintendent of the Jail with the remark "Superintendent Jail to consider request." This Court has been shown the original of this application together with the endorsement of the learned ASJ thereon dated 28th February 2009 which is in the records of the Superintendent of Central Jail, Tihar. The said handwritten application with the endorsement of the learned ASJ was received by the Jail Superintendent on the same day but sent back to the learned ASJ stating that "the accused record not traced with the given particulars." On 3rd March 2009 the said particulars were furnished and the said application was received back by the Superintendent Tihar Jail. However, no order was passed by the Superintendent Jail concerning the Petitioner being taken into custody in the hospital itself.

7. The position that emerges from the above facts is that the Petitioner's interim bail had expired on 28th February 2009 and there was no order by any Court or any authority permitting his remaining outside the jail beyond that date. His application that he should be taken into custody in the hospital itself was apparently not granted by the learned ASJ who in turn left the decision to be taken by the Superintendent Jail. No order was passed by the Superintendent Jail accepting the request of the Petitioner.

8. At this stage it may be noticed that it was submitted by Mr. Pawan Behl, learned APP appearing on behalf of the Superintendent, Tihar Jail, (who had been directed by this Court by its order dated 13th April 2009 to furnish an explanation as to why the Petitioner was not arrested when he did not report to Jail) that there is no power in the Superintendent, Tihar Jail to direct the taking into custody of an undertrial who has not reported to the jail on the expiry of his bail unless there is specific order by the competent court.

9. In the view of this Court clearly the Petitioner was in violation of the orders passed by this Court on 8th May 2008, 1st August 2008, 28th January 2009 read with the order dated 25th February 2009 whereby he was required to surrender to the jail authorities on 28th February 2009 on the expiry of his period of interim bail. There is no satisfactory or justifiable explanation offered by the Petitioner for his failure to do so except by stating that he had filed a handwritten application before the learned ASJ. When the Petitioner knew fully well that his prayer in the said application was not granted, there was no question of his unilaterally deciding not to surrender before the Jail Superintendent.

10. It now transpires that the Petitioner in fact was discharged from SSH on 9th March 2009 “on satisfactory condition” and was thereafter continuing the same treatment at home. This is evident from a communication dated 14th April 2009 addressed to the DRI by Dr. Prem Agarwal, Director of SSH. In the said letter Dr. Agarwal states that the Petitioner was again admitted to the said hospital on 9th April 2009 with “UTI and pain abdomen” and was receiving treatment from Dr. R.K. Mahajan

at the hospital even at the time of issuance of the said letter.

11. There is absolutely no justification for the Petitioner to have continued to remain outside jail even after discharge from the SSH on 9th March 2009.

12. The present application was filed by the Petitioner on 26th March 2009 seeking regular bail. The Petitioner willfully suppressed the fact that he was discharged from SSH on 9th March 2009 in a satisfactory condition. He failed to disclose that he did not surrender to the jail at the end of the period of interim bail.

13. The above facts would not have come to light but for an order passed by this Court on 13th April 2009 when counsel for the Petitioner submitted that despite the Petitioner offering himself to be taken into custody, the Respondents were not taking steps to do so.

14. A conspectus of the above facts reveals to this Court that the Petitioner has willfully violated the orders passed by this Court granting him interim bail up to 28th February 2009. Till date he has chosen to remain outside the jail of his own will without any order from any authority or court permitting him to do so.

15. In the circumstances, the trial court will initiate the necessary consequential steps for forfeiture of the bail bond and surety bonds furnished by the Petitioner pursuant to the order dated 8th May 2008 passed by this Court which was extended by

the subsequent orders of this Court till 28th February 2009.

16. This Court also initiates suo moto contempt proceedings against the Petitioner for willfully disobeying the orders of this Court. A separate contempt petition titled “***In Re: Satpal Juneja***” will be registered by the Registry of this Court. Notice is hereby issued to the Petitioner to show cause as to why he should not be proceeded against for willfully disobeying the aforementioned orders dated 8th May 2008, 1st October 2008, 31st December 2008, 28th January 2009 and 25th February 2009 passed by this Court. The notice is made, returnable on 18th May 2009. It will be open to the Petitioner to file a reply in response to this notice before the next date of hearing. The Petitioner is also directed to be produced in custody in this Court on the next date of hearing. The separately registered contempt petition be listed on 18th May 2009 along with the present petition.

17. The Court has considered the submissions made by Mr. Satish Aggarwala learned Senior Standing counsel for the DRI, as well as the reply dated 15th April 2009 filed by the DRI which is taken on record. This Court is not satisfied with the explanation offered by the DRI for not immediately taking steps to have the Petitioner taken into custody and lodged in jail when it was plain that his interim bail had expired on 28th February 2009 and he did not report to the jail authorities on that day. This Court is also not satisfied with the explanation that the DRI cannot itself take steps to ensure that undertrials involved in serious offence under the NDPS Act, upon their jumping the bail granted to them, are apprehended and put back to the jail. If this explanation were to be accepted by this Court it would

mean that the system of prosecuting offenders for grave offences under the NDPS Act will stand severely challenged since the presence of the accused at the trial cannot be ensured. It is plain that the officers of the DRI have not been able to coordinate with the jail authorities in ascertaining which of the undertrials facing prosecution under the NDPS Act are required to surrender on a daily basis and which have not. The order dated 25th February 2009 passed by this Court was in the presence of the learned counsel for the DRI. Therefore there could not have been any doubt that the interim bail granted to the Petitioner was expiring on 28th February 2009. This Court is particularly perturbed by the fact that till this Court by its order dated 13th April 2009 asked it to verify the particulars, the DRI did not take any steps. Therefore, for more than one month the Petitioner was at liberty in violation of the order granting him interim bail.

18. This Court therefore directs the DRI to initiate an enquiry into the whole matter to ascertain why steps were not taken by the DRI to inform either the jail authorities, or the court that the Petitioner did not surrender on the expiry of the period of interim bail. Responsibility will also be placed on the concerned persons for this dereliction of duty.

19. This Court also finds that the Superintendent, Tihar Jail did not inform the DRI through any formal communication that the Petitioner had not surrendered to the Jail on the expiry of the interim bail period. Mr. Behl pointed out that a written communication is usually sent to the authorities concerned when a convict fails to surrender to the jail authorities on the expiry of the interim bail. This Court fails to understand why a

similar procedure is not followed when an undertrial is at large. As far as the present case is concerned, it appears that despite not entertaining the Petitioner's handwritten application dated 28th February 2009, no communication was sent by the jail authorities to the DRI that the Petitioner Satpal Juneja had failed to surrender on 28th February 2009. Here again there appears to be a complete lack of coordination between the DRI and the jail authorities. Considering that there are a substantial number of undertrials in the Tihar Jail facing prosecution under the NDPS Act, this Court is concerned about the above state of affairs. The Superintendent, Tihar Jail will file a detailed affidavit in this Court explaining the general procedure followed by them in a case where under trial granted bail does not report to the jail authorities on the day when the interim bail expires. He will also offer his suggestions as to how the system can be improved without laying the entire responsibility on some other authority.

20. The affidavit be filed within a period of four weeks from today.

21. List on 18th May 2009.

22. A certified copy of this order be sent forthwith to Shri D.D. Rishi, Additional Director, DRI as well as to the Director General of Prisons.

23. A copy of this order be sent to the trial court for immediate compliance.

24. In the circumstances noted above, the Petitioner will be treated as being in judicial custody in the SSH where he is presently stated to be undergoing treatment. The Superintendent of Jail will immediately take steps to place guards in sufficient

number to ensure that the Petitioner remains in judicial custody even while undergoing treatment at the SSH. The Superintendent Jail will take the assistance of the concerned SHO on the strength of this order if the necessity so arises.

25. As far as the DRI is concerned they will have his medical status evaluated immediately either at the SSH or any other government hospital of their choice. It is made clear that as and when it is certified by either hospital that the Petitioner is fit for discharge, the Petitioner will be brought back to the Tihar Jail.”

2. Mr. Satish Aggarwala, the learned counsel appearing for the DRI submits that as regards the medical evaluation of the petitioner, that was gone done at the SSH and the said hospital had in fact discharged the petitioner. The petitioner has since been undergoing treatment at the Jail Hospital itself.

3. The petitioner has been produced in the court from judicial custody. Separate orders have been passed today in the Contempt Case (C) No. 457 of 2009 which has been directed to be listed before the appropriate court.

4. The DRI has placed on record the copy of the Circular No. 1/TECHNICAL/DZU/2009 dated 5th May 2009 which reads as under:

“In a recent case, a person accused of having committed the offences punishable under the Narcotic Drugs and Psychotropic Substances Act, 1985 had been granted interim bail by the Hon’ble High Court, which was extended from time to time till 28th February, 2009.

2. Instead of surrendering before the Jail Authorities on expiry

of the period of the said interim bail on 28th February 2009, the accused moved an application on that day before the Additional Session Judge stating that he had been admitted to hospital due to his medical condition and that “the Superintendent Jail may be directed to take him into custody in the hospital itself”. This application was forwarded by the Additional Session Judge to the Superintendent of the Jail with the remark “Superintendent Jail to consider the request”. DRI was not aware of this application. The Jail Authorities neither took any action on these directions nor informed the DRI about it. Resultantly, the accused remained unauthorisedly away from jail till 15.4.2009 when the Hon’ble High Court, while deciding an application for regular bail, ordered him to be restored to jail custody.

3. It is observed that if there had been proper coordination between the Jail Authorities and DRI, such unauthorized absence of accused from the judicial custody would not have gone unnoticed for such a long time. In order to ensure that such instances do not occur in future, it is hereby ordered that:

- (i) Whenever an undertrial in a DRI case, whether being charged under the provisions of the Customs Act, 1962 or the Narcotics Drugs and Psychotropic Substances Act, 1985 or any other penal law, has been granted bail for a specified duration, it shall be the duty of Investigating Officer concerned to ascertain whether such an undertrial has surrendered to the Jail Authorities after expiry of the period, or the extended period, of such bail.
- (ii) In case it is found by the Investigating Officer concerned that the undertrial has not surrendered before the Jail Authorities on the day that he was supposed to surrender, the Investigating Officer shall

take immediate steps in association with the Public Prosecution to bring the matter before the court concerned so that warrants may be got issued for arrest and restoration of such an undertrial to jail custody. Assistance of the Police Authorities may be taken wherever required.

- (iii) Whenever an arrested person is lodged in jail, the Investigating Officer concerned should intimate his Phone/Mobile No. to the Jail Authorities so that there can be immediate coordination in case of an emergency.

These instructions must be strictly observed and any failure to do so will be viewed seriously.”

5. On his part, the Superintendent, Tihar Jail has filed an affidavit dated 13th

May 2009 stating inter alia as under:

“I submit that the petitioner should have surrendered himself to the concerned court on 28.02.09 or to the Jail. Instead of doing so an application was preferred to the concerned court for a direction to the jail authorities to take him in custody. I humbly submit that though a copy of the said application with the remarks of the Ld ASJ to the Jail Superintendent to consider the same, was received, there was no option available to consider the same as it was not within the domain of the Jail Authorities to take into custody anyone of the accused persons without a custody warrant as per Rule 3 of the Delhi Prison (Admission, Classification, Separation, Remission, Reward and Release) Rules, 1988. The said application could have been at best returned back to the concerned court with such remarks. The said Rule 3(1) is reproduced as under:

“3 (1) No person shall be admitted into any jail as a prisoner, otherwise than under a lawful warrant or order of commitment addressed to the Superintendent or Officer In charge of the Jail by a Competent Court or other proper authority.”

On the strength of the extended period up to 28.02.09, there was no impediment for the petitioner to himself surrender to Jail but jail authority could act only where the concerned court so directed as has now been directed by this Hon'ble Court. A photocopy of the said application is annexed here to and marked Annexur2 R-2.

I submit that the procedure adopted till recently by the Jail Authorities on failure of a convict to surrender within time of interim bail or parole, is to send a letter of intimation to the concerned court. There was however no procedure adopted for any under trial prisoner going on interim bail as there is no further interaction by the concerned court or the Investigating Agencies; and the Jail unaware about any further development. The guard that escorts the prisoner outside the Jail precincts is a different body known as III Battalion of the Delhi Armed Police (DAP). For escorting a prisoner to Hospital or custody parole, it is the same DAP Personnel that escorted a prisoner and hand him over back to the Jail as and when the mission is accomplished. As such, barring intimation to the concerned court there was no other option available to the Jail Authorities in such matters of non surrender by the accused person on expiry of interim bail periods.

I however submit that a conscious decision has now been taken after the passing of the said order dated 15.04.09 of this Hon'ble Court to the effect that there has to be an active interaction and coordination also between the Investigating Agencies and the Jail

Authorities in such cases where the prisoner enjoy liberty even after the expiry of the interim bail period. Appropriate administrative orders have been issued in this regard.

I submit that while the suggestion of this Hon'ble Court to the Jail Authorities to coordinate with the Investigating Agencies has been accepted in totality, it would also be of utmost importance that :

- i.) The Jail Authorities are apprised of the actual orders of the interim bail or extended periods if any, of such interim bails, by appropriate directions for forwarding a copy of each of such orders to the Jails, so that further coordination could be maintained.
- ii.) The order of interim bail/extended bail may specify the place of surrender of such accused upon the expiry of bail periods.
- iii.) In the event of failure of the under trial prisoner to surrender within the stipulated period, the Jail Authorities shall inform in writing to the courts concerned and the concerned police stations/investigating agencies.
- iv.) Release order as issued by the concerned court must specify the period of interim bail or regular bail.
- v.) In an eventuality like the one in the given case of Satpal Juneja, the concerned courts be directed to issue fresh custody warrants for easy access of the accused person in the jail terms of the above Rule 3.”

6. It is added that the jail authorities have already begun the process of

coordinating with other agencies after the orders passed by this Court in relation to the surrender of accused on the expiry of their bail period.

7. This Court appreciates the prompt action taken both by the DRI as well as the jail authorities in putting in place a set of instructions to facilitate coordination between these agencies. This Court wishes to emphasize that such coordination is of utmost importance for ensuring that the orders passed by this Court in bail applications are scrupulously followed and that no undertrial or convict is permitted to disobey the conditional orders of bail or interim bail or parole as the case may be.

8. The authorities are also urged that to utilize to the full potential of the digital technology available. They should, if not already done, upgrade their respective systems to enable receipt of orders passed either by this Court or the trial courts which are proposed to be transmitted hereafter after being signed digitally. Once such a system comes into place, the delay in the authorities responding to the orders of the court can get further reduced.

9. As far as the present application for bail is concerned, in view of the detailed reasons already set out in the order dated 15th April 2009, this Court considers it not appropriate to direct the release of the petitioner on interim bail. That prayer of the petitioner is accordingly rejected. However, the rejection of the prayer for the interim bail of the petitioner will not preclude

him from continuing to be treated in a manner appropriate to his medical status in the jail hospital. His medical status should be periodically reviewed at least once every week by the medical authorities in the jail. He should be afforded the most appropriate treatment. If the petitioner requires to be treated in any other government hospital, it should be done so without awaiting further orders of the court.

10. With the above directions and observations, this application is disposed of.

11. Order dasti to the counsel for the parties.

S. MURALIDHAR, J

MAY 18, 2009
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