

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

+ **Bail Application No. 1120/2009**

Reserved on : 01.07.2009
Date of Decision : 16.7.2009

Thounaojam Shyamkumar Singh Petitioner
Through : Mr.K.K. Sud, Sr. Adv.
Mr.Ghanshyam Sharma, Adv.

Versus

State (Govt. of NCT of Delhi) Respondent
Through : Mr. Pawan Behl, APP
for the State.

CORAM :
HON'BLE MR. JUSTICE V.K. SHALI

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| 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 the Digest ? | YES |

V.K. SHALI, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. read with section 482 Cr.P.C. for grant of interim bail for a period of three months in FIR No. 70/2006 under Section 18/19/20 of Unlawful Activities (Prevention) Act, 2004 read with section 120B of the IPC and section 3/9 Official Secret Act, 1923.
2. Briefly stated the facts as stated in the bail application are that the petitioner claims himself to be Deputy Secretary of Manipur Legislative Assembly and Chairman of three Statutory House Committees. He was elected as MLA while in judicial custody in the aforesaid case on 2nd October, 2006. He along with two other co-accused persons was arrested from I.G.I.

Airport. It is stated by him that nothing incriminating was found against the petitioner by the investigating agency. It is further stated by him that the petitioner was granted interim bail on 14th March, 2007 which he continued to enjoy for a period of two years. It is further stated that on 17th February, 2009 the petitioner's regular bail application bearing no. 2165/2008 was dismissed by the High Court and a Special Leave Petition was filed by the petitioner against the said order which was also dismissed on 23rd March, 2009. The petitioner is stated to have surrendered on 18th April, 2009 in a Court at Imphal (Manipur) in another case since his surety who was his mother had lost faith in him. The petitioner is presently in judicial custody in Imphal and stands admitted to Regional Institute of Medical Sciences, Imphal on the ground on which the petitioner has sought interim bail. It is alleged by the petitioner that he is suffering from multiple ailments like Hypertension, Angina, Diabetes, Mallitus, Hyperuricemia and Dyslipidaemia, and therefore, seeks interim bail.

3. This Court had issued notice on this application on 29th May, 2009. On 24th June, 2009, the learned Vacation Judge directed the respondent to obtain verification report regarding his medical report. The verification report from the Office of Assistant Commissioner of Police, Special Cell, New Delhi has been received along with the documents from the Regional Institute of Medical Sciences, Imphal which shows that the petitioner is suffering from Angina Pectoris, Hypertension,

Diabetes Mellitus, Cardiac Arrhythmia and Depression on account of acute stress reaction. He has been advised hospitalization by the doctor on 20th April, 2009, according to one of the report.

4. I have heard the learned senior counsel Mr. K. K. Sud on behalf of the petitioner as well as the learned counsel for the State. I have also gone through the record.

5. It has been vehemently contended by the learned senior counsel that the petitioner's condition is very precarious and unless and until he is released on bail on medical ground to enable him to undergo treatment in some good hospital either at Guwahati or Kolkata his very existence is in danger. The learned senior counsel has further stated that despite the direction by the High Court to expedite the trial of the petitioner in the instant case he has already suffered incarceration for more than seven months and there is no possibility of the matter getting decided at an early date because the two other co-accused persons who are jointly being tried along with the petitioner are facing trial in 5 and 8 cases respectively at Imphal itself, as a consequence of which their appearance in the present case becomes difficult. The learned senior counsel has placed reliance on case titled **Babu Singh & Ors Vs. State of U.P.** (1978) 1 SCC 579 in order to drive his point home to contend that personal liberty of person should not be curtailed only because he is accused of an offence and the trial is pending.

6. As against this, the learned counsel for the State has vehemently opposed even the grant of interim bail on the ground

that the regular bail application of the petitioner stands rejected right up to the Supreme Court. It is urged that keeping in view the seriousness of allegations against the petitioner in helping the two known terrorists of Manipur State in arranging their meetings, providing them shelter and giving logistical support, the aforesaid offences have been registered against him. My attention has been specifically drawn to the earlier bail application bearing no. 2165/2008 filed by the petitioner which was dismissed. It was contended that the multiple ailments on the basis of which he is claiming interim bail now, were the ailments from which the petitioner was suffering earlier also when his regular bail was rejected by the High Court and Supreme Court and therefore, this cannot be a ground for grant of interim bail as this is not a new ground. Moreover, there are already non-bailable warrants issued against the petitioner for his non-appearance before the learned Special Judge. Now that the petitioner have chosen to surrender in Imphal, the learned ADJ has also issued production warrants for procuring his attendance here in the present case.

7. I have carefully considered the respective submissions of the parties as well as gone through the record.

8. I fully agree with the learned counsel for the State that the grounds on which the petitioner is seeking interim bail now were already in existence even at the time when the earlier bail application was filed and disposed of, and therefore, it could not be said that these are ailments which have afflicted the petitioner

after rejection of his bail application by the Supreme Court which may warrant the grant of bail to him. I do not disagree with the proposition of law which is relied upon by the learned senior counsel in case titled **Babu Singh & Ors Vs. State of U.P.** (1978) 1 SCC 579 that bail and not jail should be normally the rule. However, the said proposition of law cannot be applied in vacuum and the interest of the society has also to be borne in mind while considering the bail application even though it may be interim bail application. In the instant case, the nature of allegations which are levelled against the petitioner in the charge sheet are very serious in nature in the sense that he has been acting against the natural interest. Further, I have serious doubts about the fact that the petitioner after obtaining the bail may not appear at all before the learned Special Judge in the trial. This view gets credence from the fact that the petitioner instead of surrendering in Delhi has chosen to surrender in Imphal, Manipur.

9. For the foregoing reasons, I am not inclined to exercise the discretion in favour of the petitioner by giving him the benefit of interim bail on medical grounds. Accordingly, the bail application is dismissed. Expression of any opinion hereinbefore may not be treated as an expression on the merits of the case.

V.K. SHALI, J.

JULY 16, 2009
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