

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 973/2020

JEEVEK NAGPAL

.....Petitioner

Through: Mr. Bharat Dubey, Advocate.

versus

STATE

..... Respondent

Through: Mr. M.S. Oberoi, APP for State.
Mr. Prashant Diwan, Ms. Mishika
Vig and Ms. Shailja Jha, Advocates
for complainant.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

09.06.2020

1. The hearing was conducted through video conferencing.
2. The applicant/petitioner seeks bail in FIR No. 161/09 registered under sections 302/364A/206/506 IPC at Police Station Prashant Vihar, Delhi to take care of his father who has a medical condition. According to the applicant his father was admitted at Jaipur Golden Hospital on 18.01.2019 and discharged on 04.02.2019. He is suffering from AKI (Acute Kidney Injury), AKN (Acute Tubular Neurosis), Left DVT (Deep Vein Thrombosis), LV of his heart mal-functioning to the extent of 20%, NIDDM and also facing acute breathlessness. The applicant is stated to be the only person who could take care of his ailing father. His brother is stated to be living separately in Gurugram. His married sister lives in her marital home. The applicant's Nominal Roll dated 21.05.2020 shows that he has been

behind bars since 11 years 1 month and 27 days. As per the Nominal Roll his conduct in jail is satisfactory. The applicant seeks interim bail in exceptional circumstances. The learned counsel for the applicant refers to the administrative directions issued by the High Powered Committee on 18.05.2020 that grant of bail may be considered even in cases of Under Trial Prisoners (UTPs) facing trial for a case under section 302 IPC, it held *inter alia* as under:-

" The Members of the Committee discussed the report submitted by DG (Prisons) vide his letter dated 16.05.2020 and resolved that prisoners falling in following criteria may now be considered for grant of interim bail for 45 days in view of the circumstances in which we are in, preferably on 'Personal Bond':

(i) Under Trial Prisoners (UTPs) facing trial for a case under section 302 IPC and are in jail for more than two years with no involvement in any other case;

...."

3. The ailment of the applicant's father has been confirmed by the police, although the degree of his discomfort is an issue which the learned APP for the State submits is not so acute. Be that as it may, so far as the applicant's father's ailment is not in doubt coupled with the fact that the High Powered Committee itself has recommended that UTPs who are facing trial for a case under section 302 IPC and are in jail for more than two years with no involvement in any other case, may be considered for grant of interim bail for 45 days. It is argued that the case is at the stage of final arguments and the applicant cannot possibly influence the proceedings so as to prejudice the case of the prosecution.

4. The learned counsel for the complainant submits that ordinarily the application should have been preferred before the Trial Court. However, in terms of the inherent powers of this Court under section 439 Cr.PC, the Court can look into such matters. Reference is made to the order dated 01.06.2020 of the High Court of Judicature at Allahabad in Criminal Misc. Bail Application No. - 12994 of 2020, which has held, *inter alia*, as under:-

“... ”

This bail application has been directly filed before this court under Section 439 Cr.P.C without approaching the court below. Therefore the counsel for the applicant submits that the powers under Section 439 Cr.P.C should be exercised in this case by the High Court since the Courts at Mathura are not functioning on account of lockdown. His submission is that the powers under Section 439 Cr.P.C can be exercised by this court directly as held in paragraph 20 of the judgment of Sandeep Kumar Bafna vs. State of Maharashtra and Another, 2014(16) SCC 623, wherein Apex Court has held that the High Court has power and jurisdiction to entertain the plea of surrender and also bail thereafter directly without compelling the accused to first approach the court of Sessions. In the aforesaid judgment the Apex Court has considered the mandate of Article 21 also.

After going through the judgment of the Apex Court in the case of Sandeep Kumar Bafna (Supra) this court finds that the Bombay High Court rejected the accused's bail application on the ground that it had no jurisdiction accept the custody of the accused, the Supreme Court directed the High Court to accept the custody and decide the bail application on merit, on the basis that no provision categorically prohibits the production of accused before either of the courts. After considering the submission made by the counsel for the applicant, this court finds that in the present case no issue of surrender of accused is involved.

Accused applicant is already in jail since 19.4.2020. Only question of consideration of the bail application to the accused applicant is before this court since he has not been able to approach the court of Sessions on account of the lockdown consequent to Covid-19 scare. Extraordinary circumstances requires extraordinary remedies and therefore this court is inclined to consider the present bail application in exercise of its power under Section 439 Cr.P.C., but without making it a precedent for normal times.

... ”

5. Furthermore, the High Court of Judicature at Himachal Pradesh vide its judgment dated 05.06.2020 in Cr. MP (M) No. 678 of 2020, held *inter alia*, as under:

“..... 3. Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

4. The Hon’ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49; held as under:-

“ The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe

more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India , it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

5. *In Manoranjana Singh Alias Gupta versus CBI 2017 (5) SCC 218, The Hon'ble Apex Court has held as under:-*

" This Court in Sanjay Chandra v. CBI, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the

principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive or preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him to taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and the grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted.”

6. The Hon'ble Apex Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee and Another* (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

7. Reliance is placed on judgment passed by the Hon'ble Apex Court in case titled Umarmia Alias Mamumia v. State of Gujarat, (2017) 2 SCC 731, relevant para whereof has been reproduced herein below:-

“11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See: Supreme Court Legal Aid Committee v. Union of India, (1994) 6 SCC 731; Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. (See: Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 and Babba v. State of Maharashtra, (2005) 11 SCC 569).

8. Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018, Dataram Singh vs. State of Uttar Pradesh & Anr., decided on 6.2.2018, has categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is

believed to be innocent until found guilty. Hon'ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Hon'ble Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. The relevant paras of the aforesaid judgment are reproduced as under:

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country.

Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is

required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 prisons ..”

6. It is only in the peculiar facts of the father's illness and the recommendations of the High Powered Committee, coupled with the fact that the pandemic has left the father without much assistance from neighbours who may otherwise have been willing to assist him medically, the applicant is granted Interim Bail for a period of two weeks, from the date of his release on his furnishing a Personal Bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Jail Superintendent/Duty MM concerned. The bail is granted subject to the following conditions:

- i. The applicant shall keep the SHO/IO concerned informed of his whereabouts through a video call every day between either 11 a.m. - 11:30 a.m. or between 5 p.m. - 6 p.m. If a video call is not possible, he may send an SMS apropos his whereabouts as well as 'drop-a-pin' on location app (eg. Google Maps) to indicate his location. Before the release of the applicant from incarceration, the IO shall ensure that the applicant has a video-call facility on his phone. The IO's telephone number is stated as +91 87000 12844.

- ii. The applicant shall not leave the jurisdiction of the local police station of his place of residence, especially in the current pandemic/nationwide lockdown unless there is an absolute necessity for doing so for which he shall keep the IO duly informed.
 - iii. The applicant shall provide his contact number to the IO/SHO concerned and shall ensure that such number is reachable at all times.
 - iv. The applicant shall not contact the complainant in any manner or do anything which will prejudice the case of the prosecution.
7. The application is disposed-off in terms of the above.
8. Nothing stated in this order shall be deemed to be an adjudication on the merits of the case. The Registry is directed to send a copy of this order to the Jail Superintendent concerned for due compliance.
9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

JUNE 09, 2020/RW