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

+ **BAIL APPLN. 1569/2020 & CRL.M.A. 8725/2020**

SALIL KUMAR CHATTERJEE Applicant

Through: Mr. Sunil Jha, Mr. Brajesh
Pandey and Mr. Upender
Bahadur, Advocates

versus

STATE OF NCT Respondent

Through: Mr. Mukesh Kumar, APP for
the State

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

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06.07.2020

(video-conferencing)

BAIL APPLN. 1569/2020

1. On 18th August, 2019, FIR No. 389, was registered, against the applicant, at PS Prashant Vihar. At that time, the applicant was charged with having committed the offences punishable under Section 506 and 509 of the Indian Penal Code, 1860 (IPC). Subsequently, Section 376, IPC, was also added, to the provisions in respect of which offence was alleged to have been committed by the applicant.

2. The applicant applied for anticipatory bail. The application was rejected on 4th July, 2019. Thereafter, the applicant moved this Court

by way of Bail Application 1684/2019, which was dismissed by this Court *vide* order dated 4th September, 2019.

3. The applicant challenged the said order before the Supreme Court, by way of SLP (Crl.) 11657/2019, which was dismissed *vide* order dated 7th January, 2020, with four weeks' time to the applicant to surrender and apply to the trial court for grant of regular bail.

4. It is a matter of regret that the applicant has not chosen to place, before this Court, in the present proceedings, any of the aforesaid orders i.e. the order dated 4th July, 2019 of the learned Additional Sessions Judge, the order dated 4th September, 2019 of this Court and the order dated 7th January, 2020 of the Supreme Court.

5. Instead of complying with the order of the Supreme Court, the applicant moved Misc. Application 884/2020 before the Supreme Court, seeking clarification of the order dated 7th January, 2020. The applicant has not condescended to place the said application on record, either, or even to make any averment, regarding the ground on which clarification sought from the Supreme Court. Suffice it to state, however, that the Supreme Court rejected the aforesaid clarification application by order dated 2nd June, 2020, which reads thus :

“Even on second call, none appears on behalf of the petitioner.

The respondent-NCT of Delhi is represented through Mr. Chirag M. Shroff, learned counsel.

Refusing to grant anticipatory bail to the petitioner, the special leave petition preferred by the petitioner was dismissed by order dated 07.01.2020.

By the order dated 07.01.2020, the petitioner was granted four weeks' time to surrender and move for regular bail before the concerned Trial Court.

The petitioner seeks clarification of the order dated 07.01.2020. In our considered view, there is no necessity for any clarification as the order is very clear.

M.A. is accordingly, dismissed.

The Registry is directed to communicate this order to the concerned police station.”

6. The Registry of the Supreme Court was directed to communicate the aforesaid order to the Police Station .

7. It is a matter of further regret that, despite the aforesaid directions of the Supreme Court, till date, the applicant is at large and has not been taken into custody. Mr. Mukesh Kumar, learned APP submits that several efforts were made, to arrest the applicant, but could not fructify, *inter alia*, for the ground that the applicant had filed one petition after another in various courts. I am not convinced with this response, at all. Once the Supreme Court directed the applicant to surrender and further directed communication of the order to the concerned police station, there is no justification, whatsoever, for the police authorities not to take all steps to implement the order of the Supreme Court. The bonafides of the police authorities are seriously in question in this matter, but I do not wish to state anything further in that regard.

8. Apparently capitalising on the fact that no efforts were made to implement the directions of the Supreme Court, the applicant moved this Court by way of Bail Application 1258/2020. The said bail

application, which sought grant of 45 days' time to surrender, was disposed of, by a learned Single Judge of this Court *vide* order dated 15th June, 2020. It is obvious that such an application was not maintainable in the first instance in view of the specific directions of the Supreme Court. Apparently conscious of the fact that the application was not maintainable, the applicant withdrew the application on 15th June, 2020. The order passed by this Court on the said date reads thus:

“This matter is being heard through video-conferencing.

CRL.MA. 7655/2020 (for exemption)

Exemption allowed subject to all just exceptions.
Application stands disposed of.

BAIL APPLN. 1258/2020

The present miscellaneous bail application has been filed by the applicant / petitioner with the following prayers:

“On the aforesaid submissions it is most respectfully prayed that this Hon’ble Court be pleased to:

- (a). grant 45 days time for surrender against the FIR No.389 of 2018 PS Prashant Vihar, Delhi in the interest of justice and;*
- (b) Pass any other order or directions which are necessary in the interest of justice.”*

After some arguments, Mr. Pandey, learned counsel for the applicant / petitioner by stating that as the medical documents showing the medical condition of the applicant / petitioner are available, he shall withdraw the application and approach the Trial Court with a fresh application.

In view of the statement made by the learned counsel for the applicant / petitioner that he intends to approach the Trial Court, the application is dismissed as withdrawn.”

9. The applicant has, in the application, averred, that “in compliance of the above liberties/directions passed by this Hon’ble Court”, the applicant moved the learned trial court with a fresh application dated 16th June, 2020. This, again, is an averment which, to the knowledge of the applicant, is false, as no liberty or direction was granted by this Court in its order dated 15th June, 2020, which merely notes the fact that the applicant withdrew his application, stating that he would approach the trial court.

10. The applicant, apparently, moved the learned ASJ, Rohini, thereafter, by way of Bail Application No. 1999/2020, which stands dismissed *vide* order dated 20th June, 2020. The said order, too, has not been placed on record.

11. The applicant has now re-approached this Court by the present application, with the same prayers as were contained in Bail Application 1258/2020. The prayer clause in this application reads thus:

“On the aforesaid submissions it is most respectfully prayed that this Hon’ble Court be pleased to:

- (a) Grant 45 days time for surrender against the FIR No.389 of 2018 PS Prashant Vihar, Delhi in the interest of justice and;
- (b) Pass any other order or directions which are necessary in the interest of justice.”

12. It is obvious that the applicant is playing ducks and drakes with the Court, and is effectively abusing the legal process. The Supreme

Court, as far back as on 7th January, 2020, directed the applicant to surrender within four weeks. The applicant did not do so. He, instead, moved an application for clarification, before the Supreme Court, which was also dismissed on 2nd June, 2020. It is important to note that, while doing so, the Supreme Court held that the order dated 7th January, 2020 was perfectly clear and that no clarification was required, thereof. The Supreme Court did not even extend the time, available to the applicant, to surrender. The applicant ought, *suo moto*, therefore, to have surrendered at least consequent to the said order of the Supreme Court dated 7th January, 2020. Unfortunately, despite the Supreme Court having specifically directed the order to be forwarded to the concerned Police Station, the police authorities have also displayed inexplicable complacency in the matter, and have not chosen to ensure implementation of the order of the Supreme Court. It is high time all authorities, civil and constitutional, were sensitized about Article 144 of the Constitution of India, which obliges every authority, civil and judicial, in the territory of India, to act in aid of the Supreme Court.

13. Be that as it may, the complacency exhibited by the Police authorities emboldened the applicant to re-approach this Court by way of Bail Application 1258/2020, which was withdrawn, with a statement that the applicant would be approaching the learned ASJ. Despite no liberty having been granted, by this Court, to do so, the applicant has averred, falsely, in the application, that liberty was so granted. The bail application filed, by the applicant, before the learned ASJ, was rightly dismissed. It is astonishing, in the

circumstances, that the applicant has chosen to re-approach this Court by way of the present application, with the very same prayers as were contained in Bail Application 1258/2020.

14. The applicant has also chosen to conceal, in the present proceedings, the order dated 4th July, 2019, of the learned ASJ, whereby the anticipatory bail application of the applicant was dismissed, the order dated 4th September, 2019, of this Court, whereby Bail Application 1684/2019 was dismissed, the order, dated 7th January, 2020, whereby SLP (Crl.) 11657/2019 was dismissed by the Supreme Court, and the order of the learned ASJ, Rohini, whereby the bail application filed by the applicant, immediately prior to moving the present petition before this Court, was dismissed.

15. The applicant has also chosen to remain silent regarding the grounds on which the Supreme Court had been moved, seeking clarification of the order dated 7th January, 2020.

16. In any event, in view of the order dated 2nd June, 2020, passed by the Supreme Court, it is impossible for any court, lower in the judicial hierarchy from the Supreme Court, to grant extension of time, to the applicant, to surrender.

17. This application is, therefore, completely misconceived and is, accordingly, dismissed.

18. This Court takes, on record, the assurance, by Mr. Mukesh Kumar, learned APP that he would direct the police authorities to

coordinate with their colleagues in Kolkata and ensure that, in case the applicant is not in a position to travel to Delhi, and is unwilling to surrender as undertaken by him, he is taken in custody in Kolkata forthwith, so that the directions of the Supreme Court are implemented.

C. HARI SHANKAR, J

JULY 06, 2020/kr

