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

+ **BAIL APPLN. 1675/2020 & CRL.M.A. 9111-12/2020**

HARISH

..... Applicant

Through: Mr. Sumit Sarna, Adv.

versus

STATE (GOVT. OF NCT)

..... Respondent

Through: Ms. Kusum Dhalla, APP for the
State

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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21.07.2020

(video-conferencing)

BAIL APPLN. 1675/2020

1. This is an application for interim bail, to the applicant, who is incarcerated in connection with FIR No.326/2016, which charges him of having committed offences under Section 302/307/452/427/147/148/149 read with Section 34 and 120B of the Indian Penal Code, 1860 (IPC). Specific reliance has been placed, in the prayer, on the minutes of the meeting dated 18th May, 2020, of the High Power Committee of this Court, headed by Hon'ble Ms. Justice Hima Kohli, which has made certain recommendations, regarding the release of undertrial prisoners on interim bail.

2. The incident, in which the applicant has been indicted, took place on 24th March, 2016, on which date several persons assaulted one Dr. Pankaj Narang and one Vikas Sethi, both of whom suffered injuries, to which Dr. Pankaj Narang later succumbed. The role ascribed to the applicant, in the status report filed by the SHO, PS Vikas Puri is that he was sitting as the pillion rider, behind the main accused Nasir @ Pali. Though, it is stated that one cricket stump was recovered at his instance, there is no allegation, in the status report, of the applicant having been armed, or of having actually assaulted the deceased Dr. Pankaj Narang.

3. This fact assumes importance because the High Power Committee, while recommending favourable consideration, for the grant of forty-five days interim bail, to persons who have suffered over two years' incarceration and are only indicted under Section 302 IPC, has carved out certain exceptions which include, *inter alia*, "cases investigated by the CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, terror related cases, riot cases, cases under anti-national activities and unlawful activities (Prevention) Act etc." Ms. Kusum Dhalla, learned APP points out that, among the provisions, under which the applicant stands tried, are provisions relating to riot cases.

4. While, strictly speaking, this may be true, the inclusion of the said provisions, in the case of the applicant, is in conjunction with Sections 34 and 120B of the IPC. As already noted hereinabove, no actual act of assault is attributed to the applicant, even in the status report filed by the SHO.

5. The applicant has suffered exactly four years' incarceration as on date, having been taken into custody on 21st July, 2016. The nominal roll, forwarded by the Superintendent of Prisons, records the overall jail conduct of the applicant to be unsatisfactory, but points out that punishment was imposed, on him, only on 18th August, 2017, and 15th November, 2018. As such, for over a year and eight months as on date, the applicant has had a clean jail record. The aforesaid two punishments, too, were attributable to the recovery of loose tobacco from the person of the applicant. No other act of misconduct has been attributed to him, during the applicant's four year sojourn behind bars.

6. Mr. Sumit Sarna, learned Counsel for the applicant points out that one Behruddin, who is also facing trial, with the applicant, for the same offences, was granted interim bail of forty-five days, by this Court *vide* order dated 11th June, 2020.

7. Continuous incarceration of persons, who are yet to be convicted for any offence, has its own deleterious consequences, both on the physical well-being and mental psyche of the person concerned. Cases of incarceration, prior to conviction, merit a different approach *vis-a-vis* cases of convicts who already stand sentenced for having committed offences.

8. In view thereof, I am of the opinion that the applicant is entitled to be released on interim bail for a period of forty-five days. It is accordingly directed. The applicant shall be so released on submission of a personal bond in the sum of Rs. 10,000/- with one surety of like amount, to the satisfaction of the Jail Superintendent, with directions

that he shall not leave the borders of Delhi, shall not tamper with evidence, shall conduct himself at all times legally and with due propriety and shall surrender before the jail authorities on the expiry of forty-five days.

9. The applicant shall also report to the jurisdictional police station Vikas Puri, on every Tuesday and Friday at 11 a.m. The applicant shall also provide, to the Jail Superintendent, the mobile numbers of at least one acquaintance, which shall remain switched on during the period of interim bail of the applicant, and which may be accessed by the jail or the police authorities as and when required. The police authorities would also be at liberty to visit the premises where the applicant is residing and ensure that he is conducting himself with due propriety.

10. The present application stands allowed to the aforesaid extent.

11. It is clarified that all observations made hereinabove are only for the purposes of consideration of the case of the applicant for grant of interim bail, and should not be treated as an opinion of this Court, even tentative, regarding the merits of the case of either party during trial.

C. HARI SHANKAR, J

JULY 21, 2020/kr