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

+ **BAIL APPLN. 1616/2020 & CRL.M.A. 8919/2020**

PANKAJ SHARMA Petitioner

Through: **Mr. Sumit Gaba, Adv.**

versus

THE STATE Respondent

Through: **Mr. Mukesh Kumar, APP for
State with SI Deepak Kumar,
PS Khyala**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

21.07.2020

(Video-Conferencing)

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1. This is an application for regular bail, though after some hearing, Mr. Sumit Gaba, learned counsel for the petitioner, modifies the prayer to a grant for interim bail for such period as this Court deems proper.

2. The applicant is under custody since 7th May, 2017. Charges were framed, against him, in 2018. He is lodged in Rohini Jail.

3. The application avers that the applicant has undergone splenectomy in 2016 after which he has been immunocompromised. Medical documents, evidencing these facts, have been placed on

record.

4. It is also averred that, the father of the applicant is a heart patient and suffers from renal disease, with a creatinine level of 4.5.

5. To a query from the court, Mr. Gaba acknowledges that the applicant has three brothers, but submits that they are not taking care of him.

6. No such averment, however, is to be found in the bail application.

7. An earlier application for bail, i.e. Bail Appln. 1090/2020, had been moved by the applicant, which was disposed off by this Court, *vide* order dated 10th June, 2020, referring the matter for a decision, on the prayer of the applicant, to the Authority/Committee considering such cases.

8. No response being forthcoming, the applicant has re-approached this Court.

9. Mr. Gaba placed reliance on the guidelines, dated 18th May, 2020, drawn up by the High Powered Committee, of this Court, headed by Hon'ble Ms. Justice Hima Kohli, which has recommended that undertrial prisoners, facing trial for having committed an offence under Section 302 IPC, and in jail for more than two years, with no involvement in any other case, may be considered for a grant of forty-

five days interim bail.

10. Strictly speaking, the aforesaid guidelines may not apply to the applicant, in view of the cautionary caveat, entered therein, to the effect that applications for interim bail, of undertrial prisoners, in the categories specified therein, in order to be considered, should have a certificate of good conduct, during their period of custody from the Jail Superintendent.

11. Such a certificate is lacking in the case of the present applicant.

12. In fact, the nominal roll, filed by the Jail Superintendent, states that the applicant's overall jail conduct is unsatisfactory, in view of the punishments awarded to him from time to time.

13. Mr. Gaba, however, points out that the last punishment awarded to the applicant was on 15th July, 2018, whereafter there has been no complaint about his conduct.

14. Apropos the medical condition of the applicant, the status report, filed by the SHO, PS Khyala, states that though the medical documents, furnished by the applicant, relating to his condition and his father's condition, are genuine, the applicant is presently stable, and is being administered adequate therapy in hospital.

15. It is also acknowledged, in the status report, that out of twenty-three prosecution witnesses, only four have been examined thus far.

16. The status report further avers that, during the investigation, CCTV cameras, installed in the vicinity of the spot where the alleged murder was committed, were checked, and the applicant was found entering and existing the room of the deceased at the said time.

17. Reliance has also been placed on the statement, of the applicant, recorded during the investigation and recovery of certain stolen articles from his possession.

18. It cannot be said, at this stage, therefore, that a *prima facie* case in favour of the applicant, qua his involvement in the alleged offence, is made out.

19. The medical condition of the applicant also appears to be stable, the splenectomy having been undergone by him over four years back.

20. No doubt, the applicant's father is a renal patient, and may have other co-morbid conditions, but the applicant has admittedly three brothers, and there is no averment, in the application that, they are not in position to take care of the applicant's father. In fact, there is no reference to the brothers of the applicant at all.

21. As such, I am of the opinion that no case for the grant of regular bail to the applicant, as sought in the application, is made out, especially in view of the statutory caution, contained in Section 437(1) (i) of the Code of Criminal Procedure, 1973, which reads as under:

“437. When bail may be taken in case of non- bailable offence.

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;...”

22. At the same time, it is also a fact that the applicant has been under incarceration since 7th May, 2017, i.e. for over three years and three months.

23. Out of twenty-three witnesses, only four have been examined.

24. Mr. Mukesh Kumar, learned APP for the State, acknowledges that there is no other case presently pending against the applicant.

25. No doubt, the conduct of the applicant, during incarceration has been characterised as “unsatisfactory”, by the Jail Superintendent, in the nominal roll, but, at the same time, it is also true that the applicant was punished on 25th April, 2018, 6th July, 2018 and 15th July, 2018 and that there is no report by of any satisfactory conduct, on the part of the applicant, after 15th July, 2018.

26. As such, for over two years as on date, the applicant’s conduct, during incarceration, appears to be satisfactory.

27. In the circumstances, I am of the opinion that the case of the applicant deserves a favourable consideration, insofar as a grant of interim bail of forty-five days, as envisaged by the recommendations, dated 18th May, 2020, of the High Powered Committee, is concerned.

28. Though the case of the applicant does not possess a certificate of good conduct from the Jail Superintendent, the recommendations of the High Powered Committee contemplate the grant of interim bail to under trial prisoners who have suffered two years of incarceration, whereas the applicant has suffered over three years and two months.

29. As noted above, for the past two years, there is no report of any unsatisfactory conduct on the part of the applicant.

30. Extended periods of incarceration have its own deleterious consequence, on the physical well-being and mental psyche of under trials prisoners.

31. Cases of persons, who are yet to be convicted and are facing pre-incarceration conviction, have necessarily to be approached, somewhat differently, from cases of persons who already stand convicted.

32. Given an overall view of the considerations and keeping in mind the recommendations of the High Powered Committee, I am of the opinion that the applicant is entitled to be released on interim bail

for a period of forty five days.

33. The release would be subject to furnishing, by the applicant, of a personal bond, accompanied by a surety for ₹ 25,000/- to the satisfaction of the Jail Superintendent.

34. On furnishing the same, the applicant shall be released forthwith.

35. Prior thereto, the applicant shall also provide, to the Jail Superintendent, mobile numbers of at least two of his acquaintances, which could be accessed by the police or the jail authorities, which would remain switched on during the period of interim bail to the applicant.

36. The applicant is also directed to maintain good conduct during the period of his interim bail and not to act in any manner as would justify the cancellation of this facility.

37. The applicant shall also report at the PS Khyala, every Tuesday and Friday, at 11:00 a.m. The Police are also at liberty to visit the premises of the applicant and ensure that he is conducting himself properly during the period of interim bail.

38. The applicant is also directed not to leave the limits of the city without permission, in advance, sought from this Court, or from the learned trial court.

39. The application is allowed to the aforesaid extent.

CRL.M.A. 8919/2020

40. In view of the disposal of bail application, this application does not survive for consideration.

JULY 21, 2020
dsn

C. HARI SHANKAR, J.

