

State Vs. Karan Valecha & ors. (Applicant Amit Kumar Singh)

FIR No: 455/2014

Under Section: 394/398/302/34 IPC & 25/27 Arms Act

PS: Kotwali

08.07.2020

Through video conferencing

This is application for extension of interim bail filed on behalf of the applicant.

Present: Sh. Alok Saxena, Ld. APP for the State.

Sh. Sanjay Kumar Pandey, Ld. Counsel for the applicant.

The applicant is seeking extension of interim bail, granted to him vide order dated 23.05.2020 by Ld. ASJ (on duty) in view of guidelines laid down by High Powered Committee.

However, in terms of the directions dated 22.06.2020 of Hon'ble High Court in W.P.(C) 3080/2020, Court on its own motion Vs. Govt. of NCT of Delhi & anr, the interim bail of all such applicants have already been extended by Hon'ble High Court vide a common order for a further period of 45 days. Therefore, there is no requirement of filing the present application.

The application stands disposed off accordingly.

Copy of this order be sent to concerned Jail Superintendent for information.

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(Anuj Agrawal)
ASJ-03, Central District
Tis Hazari Courts, Delhi
08.07.2020

State Vs. Sandeep Kumar @ Sunny

FIR No: 383/2013

Under Section: 363/364A/302/468/471/120B/34 IPC

PS: Burari

08.07.2020

Through video conferencing

Present: Sh. Alok Saxena, Ld. APP for the State.

Sh. Javed Akhter, Ld. Counsel for the applicant.

The applicant is seeking interim bail on the ground that his case is covered under the guidelines laid down by High Powered Committee. As per applicant, he is in custody since more than 5 years and there is constant threat to his life in the jail due to current pandemic. It is further submitted that the applicant has to take care of his parents who are suffering in his absence.

Reply of IO has been filed. Copy has already been supplied.

Ld. APP for State has opposed the bail application.

Heard. Record perused.

This is the third interim bail application filed on behalf of accused. The first of such application was dismissed as withdrawn vide order dated 30.05.2020. Thereafter, vide order dated 08.06.2020 (of Ld. ASJ on duty), his second application for grant of interim bail was dismissed vide detailed order observing that his conduct at jail is not satisfactory and, therefore, he cannot be granted bail under guidelines of High Powered Committee.

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There is no change of circumstances since passing of order dated 08.06.2020.

Even otherwise, the offence involved is inter-alia U/s 364A IPC and said offence is not covered under the guidelines laid down by High Powered Committee vide minutes dated 18.05.2020. Rather, vide minutes dated 20.06.2020, it has been clarified by High Powered Committee that said offence has been deliberately omitted in the minutes dated 18.05.2020 while devising criteria for grant of bail. Furthermore, the conduct of accused at jail has already been reported as unsatisfactory as reflected in order dated 08.06.2020.

The other reason argued Ld. Counsel for grant of interim bail does not disclose good grounds to be entertained as the very incarceration of an accused not only curtails his 'personal liberty' but also certain other rights like 'right to maintain and take care of one's family'. Even otherwise, the accused is in custody since 23.09.2013, therefore, it is evident that his parents are maintaining themselves at their own (since long) even in his absence.

In view of the above, I am not inclined to release the applicant/accused Sandeep Kumar @ Sunny on interim bail. His interim bail application is accordingly dismissed.

Copy of this order be sent concerned Jail Superintendent as well as IO for information.

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(Anuj Agrawal)
ASJ-03, Central District
Tis Hazari Courts, Delhi
08.07.2020

State Vs. Ganga Sahib

FIR No: 294/16

Under Section: 396/302/307/411 IPC and 25/27/54/59 Arms Act

PS: Civil Lines

08.07.2020

Through video conferencing

This is fresh application for grant of regular bail filed on behalf of the applicant.

Present: Sh. Alok Saxena, Ld. APP for the State.

Sh. Vikrant Chaudhary, Ld. Counsel for the applicant.

Reply of IO filed. Copy already supplied to counsel.

Arguments heard.

The relevant record including judicial record perused.

Ld. Counsel is seeking regular bail of accused Ganga Sahib on the ground that no injury was caused by applicant/accused. It is argued that sole eye-witness in the instant case has already been examined and, therefore, there is no possibility of, witness being threatened, in the instant case. It is further argued that the alleged recovery of part of the looted amount, is doubtful as neither the seizure memo was prepared as per law nor public persons were joined while making the alleged recovery. It is further argued that the role of applicant is lessor than accused Arun Kumar who has already been granted bail vide order dated 27.09.2018 by Hon'ble High Court. Ld. Counsel has further challenged the testimony of eye-witness i.e. Sh. Ashok Chabbra in support of his arguments.

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Per contra, Ld. APP for State has argued for dismissal of bail on the ground that earlier applications of accused (for grant of bail) were dismissed by Ld. Predecessor of this court as well as by Hon'ble High Court.

At the outset, I may mention that the factum of dismissal of earlier two bail applications was not disclosed in the present application. The regular bail application of accused was dismissed by Ld. Predecessor of this court vide detailed order dated 08.05.2019 while considering all the contentions which have been raised in present application. Further, Hon'ble High Court vide order dated 24.09.2019 was also pleased to dismiss the regular bail application of accused after noting down all his contentions.

In the case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another**, (2005) 2 SCC 42, the Hon'ble Supreme Court observed as follows:

"Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting."

There is no material change in circumstances since dismissal of the earlier applications for bail. The ground of dismissal of earlier applications continues to subsist.

In the case of **State of Tamil Nadu vs S.A. Raja Appeal (crl.) 1470 of 2005** decided on 26 October, 2005, the Hon'ble Supreme Court held as follows:

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“Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.”

In the case of **Harish Kathuria & Anr. Vs. State, Bail Application No. 1135/2011**, decided on **18.08.2011**, the Hon'ble High Court of Delhi has observed as follows :

“Successive bail applications can be filed as has been held in the catena of judgments but then it has been observed that there must be change in circumstances which warrant fresh consideration of the application. Successive bail applications without there being any change in circumstances is not only to be deprecated but is in effect a gross abuse of the processes of law which must be visited with some amount of sanction by way of cost for wasting the time of the Court. There are cases of persons who are languishing in jail for wanting their appeals to be heard for want of time while as unscrupulous persons like the petitioners, who have embarked on a forum shopping or rather be called a bench hopping, are wasting the time of the Court.”

As there is no change in circumstances after dismissal of previous applications for bail, the instant application is also to meet the same fate.

Further, as mentioned above, applicant Ganga Sahib had even filed a bail application before the Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi, after considering all the facts and circumstances of the case, was pleased to dismiss the application for bail by order dated 24.09.2019.

The applicant has now moved this court for the relief that was declined by Hon'ble High Court of Delhi. In this behalf, it would be relevant to quote from the decision of Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar v. Rajesh Ranjan (2005) 2 SCC 42** wherein it was laid down that judicial discipline and propriety demands that a subordinate court gives due consideration to the rejection of a bail application by a superior court. The following extract is relevant:

"The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier."

Furthermore, trial in the instant case is still going on and therefore, it would be premature to examine the sufficiency/probative value of the evidence at this stage. Therefore, a deep and critical analysis of evidence is not necessary at this stage.

In the case of **Vaman Narain Ghiya v. State of Rajasthan (2009) 2 SCC 281**, the Hon'ble Supreme Court observed as follows:

"While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged."

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Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required."

In the case of State of Orissa vs Mahimananda Mishra Crl. Appeal No. 1175/2018 decided on 18.09.2018, the Hon'ble Supreme Court, while setting aside an order of grant of bail, observed as follows :

"It is also well settled that the Court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused. Keeping in mind the aforementioned principles, we are of the view that the High Court was not justified in going into the evidence on record in such a depth which amounts to ascertaining the probability of the conviction of the accused."

Moreover, the accused has been identified by eye-witness in Test Identification Proceedings (during investigation) as well as while being examined before this court. Accused cannot claim any parity with co-accused Arun Kumar as latter was not identified by eye-witness in Test Identification Proceeding whereas former was.

In light of aforesaid reasons, considering the gravity of allegations, role of accused, nature of evidence appearing against him and since there is no change in circumstance since dismissal of his earlier applications, I am not inclined to grant bail to accused Ganga Sahib. Mere long custody or current

situation of pandemic (additional grounds for bail pressed by counsel during arguments) cannot be good grounds to enlarge accused on bail in the facts and circumstances of the present case. The application for bail is accordingly dismissed.

Copy of this order be sent to concerned jail superintendent as well as IO for information.

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