

24.06.2020

Arguments on the bail application heard by way of videoconferencing connected by staff of the court.

Present: Learned Addl. Public Prosecutor Shri Parvesh Kumar Ranga.
Counsel for applicant/accused Shri J.P Singh.

By this order, I shall decide the bail application requesting for grant of interim bail to applicant/accused Pargat Singh.

Facts as stated in the bail application are as follows :

It is submitted that the applicant is in judicial custody since 24.06.2018. It is submitted that applicant has not committed this offence and has been falsely implicated by the police. It is submitted that the present application is not filed on merits but is being requested on the grounds of humanity and compassion on the grounds of serious illness of mother of applicant. It is submitted that applicant is also innocent of the alleged offence. It is submitted that recovery of contraband has been planted upon the applicant. It is further submitted that the investigation agency has not made the mandatory compliance of Section 50 of NDPS Act and therefore, applicant should be discharged from this case. It is further submitted that the quantity planted upon the applicant is intermediate in nature and not commercial. It is submitted that the applicant is languishing in judicial custody since 24.06.2018 but there is no effective progress in the trial of the case. The present application for interim bail has been sought mainly on the ground of serious illness of mother of applicant as she is suffering from HIV positive (AIDS) for the last 4 to 5 years.

It is further submitted that father of the applicant died because of the above-mentioned disease. It is further submitted that because of being HIV positive, the mother of applicant has contracted several other diseases because of low immunity including high blood pressure, high sugar level, hypertension etc. It is submitted that the mother of applicant used to take her treatment from a particular institute in Sirsa District, Haryana but now the said institute has been shifted to Bhatinda, Punjab. Relevant medical documents have been annexed alongwith the bail application. Mother of applicant is old age and as per the medical documents, she has lost more than 10 Kg of weight in the last few months because she is not well looked after in the absence of the applicant. The doctors have opined for deep and intensive care for mother of applicant. Apart from the applicant, there is only one son who is 18 years of age and is not in a position to look after the mother under this extraordinary crisis of Covid-19 pandemic because he also is to look after his studies, otherwise his future would be bleak. The physical condition of mother of applicant has been deteriorating on a day-to-day basis in the absence of proper care. Applicant has four elder married sisters and one school going younger brother. The married sisters are unable to look after the mother because of their marital obligations. There is no able-bodied and mature person to look after the mother of the applicant under the present crisis of Corona-19 pandemic. The treatment of mother of applicant has been disturbed because of shifting of the above-mentioned Institute from where she was taking regular treatment. Applicant was also the sole bread earner of the family before he was falsely implicated by the police in the present case. Earlier, some relatives were assisting in looking after the family of the applicant because of his incarceration but because of the financial crisis created because of the Corona virus pandemic, even those relatives have withdrawn their help and support and brother of applicant is not able to fulfill his duties and obligations towards the family alone. In view of the present pandemic, there is no possibility of regular court work being

started and family of applicant should not suffer endlessly because of this peculiar pandemic situation which is unprecedented. The applicant wants to look after his mother as these may be the last days of his mother. The applicant also has the responsibility of arranging funds to look after his mother and also to look after his school going brother. Applicant is ready to abide by all the terms and conditions imposed by the court if bail is granted on these humanitarian grounds. The applicant shall not jump bail and shall not hamper the trial when it is resumed. It is further submitted that all the witnesses in the present case are police officials and there is no possibility of the applicant tampering with any of the witnesses in any manner. It is therefore requested that interim bail for a period of eight weeks be granted to the applicant to look-after his ailing mother and younger school going younger brother.

Learned Addl. Public Prosecutor has opposed the bail application. He has submitted that the younger brother of the applicant who is stated to be school going can also look after the mother of the applicant. Learned Addl. Public Prosecutor has further submitted that intermediate quantity was recovered from the possession of the applicant and there is a possibility that the applicant may jump bail and run away from the process of the court. Investigating Officer has also filed reply in which the bail is opposed. It is submitted that the medical documents could not be verified as the institute has shifted. The younger brother of applicant is stated to be studying in class XII. Bail is opposed on the ground that applicant is not a permanent resident of Delhi and may commit same offence or offence of similar nature if granted bail. Bail is also opposed on the ground that applicant may induce witnesses and try to tamper with the case.

I have heard arguments from both the sides.

Counsel for the applicant has submitted that the medical documents have been given to the IO for verification six times before the present bail application but each time, the investigating officer taking a very callous approach did not get the

documents verified. Ld. Counsel for the applicant further submitted that applicant should not be punished because of this lackadaisical approach of the Investigating Officer in verifying the medical documents of mother of applicant. Ld. Counsel has further submitted that if the mother of applicant expires during this time because of her serious condition and grave disease and applicant is unable to look-after his ailing mother, then it shall be grave injustice with applicant and his family and this will leave a very deep scar on his psyche and his life forever. Ld. counsel for applicant has submitted that applicant is innocent and he shall prove the same during the course of trial but unfortunately because of the pandemic situation in the country, normal court work has been suspended and is not likely to resume very soon. It is further submitted by counsel that applicant is not seeking regular bail at this stage but is only seeking interim bail for a period of eight weeks to look-after his mother and younger brother who is a school going student studying in class XII.

Now, the interim bail has been sought for a period of eight weeks. Investigating Officer has failed to verify the medical documents. The certificate of father of applicant is also annexed alongwith documents of the mother in order to prove the facts mentioned in the application. This court is inclined to grant bail on compassionate and humanitarian grounds without going into the merits of the case considering the present pandemic situation and considering the medical condition of the mother of the applicant who is stated to be suffering from HIV positive (AIDS). Therefore, without going into the merits of the case at this stage, applicant is granted interim bail for a period of 45 days from the date of his release subject to the following conditions.

1. That the applicant shall surrender himself upon the expiry of this period of interim bail in the pre noon session before the jail authorities.

2. That the applicant shall not commit any offence while on interim bail and shall observe good conduct and behaviour.
3. The applicant shall keep his mobile phone turned on at all the times and shall send his location to the concerned SHO every Friday and shall take the call of the SHO or Investigating Officer whenever the same is made as the applicant is stated to be a resident of outside Delhi.
4. The applicant shall attend court on each & every date of hearing and shall not jump bail.
5. That the applicant shall not interfere with the trial in any manner and shall not tamper with the case of prosecution any manner.
6. That the applicant shall furnish a bail bond in the sum of Rs. 50,000/- with one surety of like amount subject to the satisfaction of the concerned SHO.

The application stands disposed of accordingly.

One copy of this order be sent to counsel for applicant, to the IO as well as to the Jail Superintendent through proper channel on their email IDs, if provided and found to be correct.

(SUNIL BENIWAL)
ASJ/Spl. Judge (NDPS)
West District/THC/Delhi
24.06.2020

24.06.2020

Arguments heard through videoconferencing connected by Ahlmad of the court.

Present: Learned Addl. Public Prosecutor Shri Parvesh Kumar Ranga.
Counsel for applicant/accused Shri Tanuj Dogra.

By this order, I shall decide the bail application filed on behalf of applicant Sudhir Kumar.

Facts as stated in the bail application are as follows :

It is submitted that applicant is innocent and belongs to a respectable family and has been falsely implicated. Applicant was arrested on 05.10.2019. Applicant was released on interim bail on 05.05.2020 for three weeks which was further extended to four weeks. Ld. Counsel has argued the facts of the case and the case of the prosecution as described in the charge-sheet. Ld. Counsel submits that there is no evidence against the applicant. It is submitted that applicant was not having any dispute with Manjeet and therefore, there was no motive for the applicant to be involved in the said offence. It is submitted that if the statement of accused recorded U/s 161 Cr.P.C was meant to be a confession, then the same should have been recorded U/s 164 Cr.P.C after following the proper procedure as the statement U/s 161 Cr.P.C is hit by Section 25 of the Indian Evidence Act. It is submitted that the applicant has nothing to do with the alleged offence. Applicant is ready to abide by any term and condition imposed by the court for grant of bail. It is, therefore, requested that the applicant be released on regular bail during the pendency of the case.

Learned Addl. Public Prosecutor has strongly opposed the bail application on the following grounds :

It is submitted that Jai Narayan is an eye witness of the incident, therefore, it can not be said that there is no evidence against the applicant. It is further submitted that accused Devender has given an extra judicial confession against the present applicant. It is further submitted that the car used for the commission of the said offence, has been recovered from the possession of the applicant. It is further submitted that the call detail records of all the accused are matching at the scene of the crime and they show that all the accused were in direct touch during the commission of the said offence U/s 302 IPC. Mobile phones of accused Sudhir and Devender have been sent for forensic laboratory to collect forensic evidence. Bail applications of co-accused Pradeep and Harish have already been dismissed. One co-accused Devender has been granted interim bail for a period of one month but it is only because the said accused is stated to be suffering from tuberculosis.

I have heard arguments from both the sides.

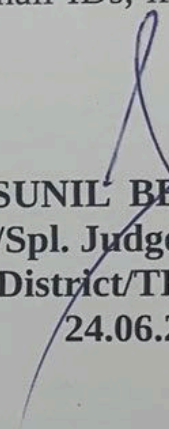
In this case, the court is inclined to agree with submissions of Learned Addl. Public Prosecutor. It can not be said that there is no evidence against the applicant Sudhir. This is an offence U/s 302/506/120B/34 IPC & 27/54/59 Arms Act. It is a capital offence. Allegations against the co-accused are that they murdered the deceased under an conspiracy which make the offence more heinous.

Even the Investigating Officer has given a very strong reply and has strongly opposed the bail application. As per the reply of IO, all the accused persons were in constant touch with each other and their mobile phones were found in the area where the offence was committed. After the incident, the mobile phones were found switched off. One co-accused Harish was arrested after filing of main charge-sheet. There is a strong possibility that applicant may jump bail and run away if

granted regular bail. There is also a strong possibility that the applicant may try to intimidate and harass the prosecution witnesses and may also tamper with prosecution evidence. Moreover, even the charge is not framed against the accused persons. As per the case of the prosecution, the weapon of offence was provided to the applicant by the third accused Pradeep Kumar. Therefore, in view of the above-mentioned discussions and observations, the present bail application is rejected at this stage as there is no ground for grant of bail is made out.

The application stands disposed of accordingly.

One copy of this order be sent to counsel for applicant, to the IO as well as to the Jail Superintendent through proper channel on their email IDs, if provided and found to be correct.


(SUNIL BENIWAL)
ASJ/Spl. Judge (NDPS)
West District/THC/Delhi
24.06.2020