

State Vs. Ajender Pratap Singh

FIR No: 215/2014

Under Section: 395/397/307/412/353/186/34 IPC and 25/27 Arms Act

PS: Lahori Gate

29.07.2020

Through video conferencing

This is an application filed under Section 439 Cr.P.C for grant of regular bail moved on behalf of applicant/accused.

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

Sh. Subash Chauhan, Ld. Counsel for applicant/accused

As per applicant, this is fourth bail application on behalf of accused. However, I may clarify that this is the sixth bail application moved on behalf of accused for grant of regular bail. Two of such applications were moved before Hon'ble High Court of Delhi. I may also clarify that accused is presently on interim bail till 31.08.2020 in terms of order dated 16.07.2020. He is facing trial for offence under Section 395/120B IPC.

Ld. Counsel is seeking regular bail on the ground that accused/applicant has been falsely implicated in the instant case. It is argued that public witnesses have already been examined and they have not supported the prosecution version. It is further argued that accused is suffering from fever and urinal problem, and the disease of accused might be "Cancer". It is forcefully argued that there is no possibility of witnesses being threatened, as all the material witnesses have already been examined in the instant case. It is argued that prosecution evidence has not been concluded within stipulated time as directed by Hon'ble High Court. On these grounds, Ld. Counsel has requested for grant of bail to accused.

Per contra, Ld. APP for State has opposed the bail application on the

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ground that this is sixth such application moved on behalf of accused for grant of bail and there is no change of circumstance since passing of order dated 05.08.2019 by Ld. Predecessor of this court. It is argued that considering the gravity of the offence, accused cannot be enlarged on bail in the instant case. It is further argued that all the public witnesses have already been examined pursuant to directions dated 11.09.2018 of Hon'ble High Court and the remaining witnesses could not be examined due to reasons (viz absence of accused persons/non-availability of witnesses) beyond control.

I have heard the rival contentions and perused the record.

Previous three applications (for grant of regular bail) moved on behalf of accused has been dismissed by Ld. Predecessors of this court on different dates and last of such order was passed on 05.08.2019. There is no change in circumstance since passing of said order. Mere examination of all public witnesses can be no good ground to release accused on bail considering the gravity of offence. All the contentions raised by applicant have already been dealt by Ld Predecessors of this court on previous occasions.

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:

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"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."

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:

"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."

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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, 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.

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.

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
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amounts to ascertaining the probability of the conviction of the accused.”

In light of aforesaid reasons, considering the gravity of allegations, role of accused and since there is no material change in circumstance since dismissal of his earlier applications, I am not inclined to grant bail to accused Ajender Pratap Singh. Mere long custody or current situation of pandemic cannot be good grounds to enlarge accused on bail in the facts and circumstances of the present case. The ground of illness (Cancer) is not supported by any medical document and appears to have been taken on a hunch without any sound basis. Non-conclusion of evidence within stipulated time is due to reasons (absence of co-accused/witnesses) beyond control and therefore, accused cannot take any advantage on this count. The application for grant of regular bail moved on behalf of applicant/accused Ajender Pratap Singh is accordingly dismissed.

Copy of this order be sent to concerned jail superintendent/IO/SHO /Ld. Defence counsel for information through official e-mail.

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State Vs. Farman @ Rupesh

FIR No: 84/19

Under Section: 307/323/34 IPC r/w 25/27 Arms Act

PS: Prasad Nagar

29.07.2020

Through video conferencing

This is an application for early hearing of pending bail application of accused/applicant

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

Sh. Nitin Kumar, Ld. Counsel for accused/applicant.

This is an application for early hearing of pending bail application filed on 20.01.2020. I may clarify that subsequent to same, applicant had moved another application for grant of regular bail in July, 2020, which was dismissed as withdrawn by this court vide order dated 07.07.2020. Therefore, the bail application (filed on 20.01.2020) has become infructuous subsequent to passing of order dated 07.07.2020. Be that as it may, instead of technicalities, I proceed to dispose of said application on merit.

Reply by IO filed. Same is supplied to other side electronically.

Ld. Counsel has vehemently argued that accused has been falsely implicated in the present case. It is further argued that accused is no more required for investigation as charge sheet has already been filed. It is argued that accused deserves bail on the ground of parity as co-accused have already been granted bail. It is further argued that accused is in JC since May, 2019 and therefore, accused may be granted bail in the facts and circumstance of the instant case.

Per contra, Ld APP for the State has vehemently opposed the bail application on the ground that the allegations against accused are grave and serious.

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State Vs. Farman @ Rupesh

FIR No: 84/19

Under Section: 307/323/34 IPC r/w 25/27 Arms Act

PS: Prasad Nagar

29.07.2020

It is argued that case is still at the stage of consideration of charge and therefore, accused may threaten the material witnesses, if enlarged on bail. On these grounds, Ld APP for State requests of dismissal of instant bail application.

I have heard the rival contentions and perused the record.

Perusal of record reveals that this is fourth application for grant of regular bail filed on behalf of applicant/accused. The earlier three applications were dismissed as withdrawn and last of such order was passed by this court on 07.07.2020.

The allegations against the accused are grave and serious. Applicant/accused is main assailant who had fired gunshots on complainant and his brother. The applicant/accused cannot claim any parity with co-accused (who has been granted bail) as he is main assailant in the instant case and his role is therefore, distinguishable *viz-a-viz* co-accused. As per report of IO, accused/applicant is also involved in three more cases i.e. FIR NO: 350/2018 PS: Paharganj; U/S 25/54/59 Arms Act & 102 Cr.P.C; (2) FIR NO: 398/2018; PS Nabi Karim; u/s: 324/396/34 IPC and 25/54/59 Arms Act and (3) FIR No: 348/2018; PS Nabi Karim; U/S: 336/307/120B IPC & 26/27 Arms Act apart from instant case. Therefore, the possibility of accused committing the offence of similar nature or threatening the witnesses cannot be ruled out.

The mere fact that investigation is complete does not necessarily confer

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State Vs. Farman @ Rupesh

FIR No: 84/19

Under Section: 307/323/34 IPC r/w 25/27 Arms Act

PS: Prasad Nagar

29.07.2020

a right on the accused to be released on bail. It is not even a material change in circumstances. It would be apposite to refer to the decision of Hon'ble Supreme Court in the case of **Virupakshappa Gouda Vs. State of Karnataka, Criminal Appeal No. 601/2017, dated 28.03.2017**. In that case, the earlier application for bail had been rejected. Later, charge-sheet was filed. Taking note of the fact that investigation is no longer pending and after referring to the judgment of Hon'ble Supreme Court in the case of **Sanjay Chandra Vs. Central Bureau of Investigation, 2012 CRI. L.J. 702**, the Trial Court allowed the bail application and released the applicant on bail. The Hon'ble Supreme Court held that bail should not have been granted and the filing of charge-sheet is not a circumstance that tilts the scales in favour of the accused in grant of bail. The Hon'ble Supreme Court also held that its observations in the Sanjay Chandra case (ibid) "cannot be made applicable in each and every case for grant of bail." The following extract of the decision of Hon'ble Supreme Court is relevant:

"On a perusal of the order passed by the learned trial judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons."

In the case of **Masroor Vs. State of U.P. and Another 2009 (6) SCALE 358**, the Hon'ble Supreme Court observed thus :

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State Vs. Farman @ Rupesh

FIR No: 84/19

Under Section: 307/323/34 IPC r/w 25/27 Arms Act

PS: Prasad Nagar

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“There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the Courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned”.

Therefore, considering the totality of the circumstances , I am not inclined to grant bail to applicant/accused Farman @ Rupesh. Accordingly, the application seeking regular bail stands dismissed.

Copy of this order be sent to concerned jail superintendent/ IO/SHO/Ld. Defence counsel through official e-mail for information.

I may clarify that nothing expressed herein shall tantamount to an expression on the merit of present case.

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ASJ-03, Central District
Tis Hazari Courts, Delhi
29.07.2020

State Vs. Tullu Ram

FIR No: 356/15

Under Section: 302, 34 IPC and 25/27 Arms Act

PS: Rajinder Nagar

29.07.2020

Through video conferencing

This is an application for extension of interim bail moved on behalf of accused/applicant.

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

Sh. Michael Peter, Ld. Counsel for accused/applicant.

Reply filed by the IO. Copy supplied to Ld. Defence Counsel electronically.

The applicant is seeking extension of interim bail, granted to him vide order dated 10.06.2020 by Ld. ASJ (on duty).

In terms of the directions dated 13.07.2020 of Hon'ble High Court in W.P.(C) 3037/2020, 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 till 31st August, 2020. The relevant observations of Hon'ble High Court are as follows:

" 5. In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 and 15th June, 2020 till 31st August, 2020 with the same terms and conditions.

6. The Hon'ble Single Bench of this Court in Crl.A.193/2020 titled as Harpreet Singh vs State vide order dated 01st July, 2020 sought clarification to the

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State Vs. Lallu Ram

FIR No: 356/15

Under Section: 302/34 IPC and 25/27 Arms Act

PS: Rajinder Nagar

29.07.2020

following effect:

“7. The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

a. Whether the orders made by the Hon'ble Full Bench in W.P.(C) No. 3037/2020, including last order dated 15.06.2020, apply to all interim orders, whether made in civil or criminal matters, and regardless of whether such orders were made on or before 16.03.2020 or thereafter?

b. Whether interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No. 3037/2020?

8. While deciding the issue, the Hon'ble full Bench may consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C) No. 3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020 appear not to be covered thereby.”

7. In this regard, we make it clear that all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi. So far as the criminal matters are concerned, these directions have

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State Vs. Lallu Ram

FIR No: 356/15

Under Section: 302/34 IPC and 25/27 Arms Act

PS: Rajinder Nagar

29.07.2020

been issued keeping in view the fact that the jail authorities have limited space to keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to maintain physical distancing amongst jail inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by this court or the courts subordinate to this court, to other inmates of the jail on their return to the jail, the decision of extension of interim bail/bail/parole has been taken from time to time. It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all undertrials/convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole before or after 16th March, 2020.

In view of same, there is no necessity for filing the present application separately. Present application stands disposed off accordingly.

Copy of this order be sent to concerned Jail Superintendent/IO for information. Copy of this order be given dasti to counsel through email.

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