

State Vs. Satpal & ors. (Applicant Suresh @ Maal)

FIR No: 215/2014

**Under Section: 395/397/307/412/353/186/506/34 IPC and 25/27/54/59
Arms Act**

PS:Lahori Gate

06.07.2020

Through video conferencing

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

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

Sh. Vineet Mehta, Ld. Counsel for the applicant.

Arguments on bail application heard.

The copies of relevant judicial record (sent to me electronically by Ahlmad) perused.

The applicant is seeking regular bail in light of the order dated 19.03.2018 of Hon'ble Delhi High Court whereby he was granted regular bail subject to furnishing of his latest residential address. The record reveals that subsequently the applicant was released from jail, however, later on his bail was cancelled by Ld. Predecessor of this court vide order dated 24.04.2019 as his address was found to be incorrect. His application for grant of bail was also dismissed by Ld. Predecessor vide order dated 07.06.2019 observing that since accused has breached the condition imposed by Hon'ble High Court, therefore, he has to be taken into custody.

Digitally signed
by ANUJ
AGRAWAL
Date:
2020.07.06
15:05:57
+0530

Contd.....2..

After hearing Ld. APP for State as well as Ld. Counsel, I am of the view that accused deserves to be granted bail in light of the order dated 19.03.2018 of Hon'ble High Court wherein it has been specifically observed that the role of the applicant is not stark. The observations made by Ld. Predecessor of this court cannot come into way of this court to decide the application of the accused as each day of incarceration gives him an independent right to apply for bail and in the instant case, accused is in custody since more than 2 years after cancellation of his bail. As per applicant, he shall be residing with his sister on being enlarged on bail. He has disclosed her address as G-336A, J.J. Colony, Old Seemapuri, Delhi-110095.

In the facts and circumstances of the case, considering his role and in light of the order dated 19.03.2020 of Hon'ble High Court, accused Suresh @ Maal is admitted to bail on furnishing PB and SB in the sum of Rs. 20,000/- to the satisfaction of Ld. Duty MM and subject to verification of the address as disclosed him in his application.

With these observation, the application is disposed off.

Copy of the order be sent to concerned Jail Superintendent for information. Another copy of this order be given dasti, if requested, to Ld. Defence Counsel.

ANUJ
AGRAWAL

Digitally signed by
ANUJ AGRAWAL
Date: 2020.07.06
15:06:06 +0530

(Anuj Agrawal)
ASJ-03, Central District
Tis Hazari Courts, Delhi
06.07.2020

State Vs. Mohan Lal @ Sonu

FIR No: 378/14

Under Section: 395/394/397/342/412/506/201/120B/34 IPC

PS: Lahori Gate (Crime Branch)

06.07.2020

Through video conferencing

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

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

Sh. Ajay M. Lal, 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 has been argued that the mother of accused is a senior citizen suffering from joint pain, Blood Pressure and Sugar and there is no one in the family to take care of her. It is further argued that the co-accused Roop Singh has already been granted interim bail vide order dated 04.06.2020 by Ld. ASJ (on duty) and, therefore, accused also deserves to be granted bail on the ground of parity in the facts and circumstances of the present case.

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

Ld. APP for State has opposed the bail application.

Heard. Record perused.

ANUJ
AGRAWAL

Digitally signed by
ANUJ AGRAWAL
Date: 2020.07.06
14:54:38 +0530

Contd.....2..

The offence involved is inter-alia U/s 395 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. Even otherwise, the matter has been investigated by Crime Branch, and therefore, the present matter falls within the 'exclusion list' as laid down by High Powered Committee vide said minutes.

The reasons cited by accused 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'. The diseases, from which the applicant's mother is suffering from, are common lifestyle diseases and cannot said to be serious in nature. Even otherwise, the accused is in custody since 22.12.2014, therefore, it is evident that his mother is taking care of herself at her own (since long) even in his absence. There can be no question of parity while considering the interim bail and the case of applicant has to be judged on its own merit.

In the matter of **Ather Parvez Vs. State (Crl. Ref. No. 01/2015 Date of decision 26.02.2016)**, it has been observed by Hon'ble Delhi High Court that:

“...The trial of the appellate courts after conviction are entitled to grant “interim bail” to the accused/convict when

..3..

exceptional and extra-ordinary circumstances would justify this indulgence. The power is to be sparingly used, when intolerable grief and suffering in the given facts may justify temporary release...”

It is a settled principle of law that interim bail can only be granted in exceptional circumstances. In the instant application, there are no exceptional circumstances to release the applicant/accused on interim bail. The accused is facing trial for commission of a very serious offence.

In view of the above, I am not inclined to release the applicant/accused Mohan Lal @ Sonu 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.

ANUJ
AGRAWAL

Digitally signed
by ANUJ
AGRAWAL
Date:
2020.07.06
14:55:04
+0530

(Anuj Agrawal)
ASJ-03, Central District
Tis Hazari Courts, Delhi
06.07.2020

Crl. Rev. No. 181/19

Dur Vijay Yadav Vs. State

06.07.2020

Through video conferencing

Work has been suspended in view of notification no. 22/DHC/2020 dated 29.06.2020 of Hon'ble High Court and only urgent matters are taken up through video conferencing. Considering the urgency involved, the matter was heard.

Present: Sh. Arvind Kumar Shukla, Ld. Counsel for revisionist.

IO/Inspr. Dharmender in person.

Arguments heard.

Vide my separate judgment of even date, the present revision petition is allowed and the impugned order dated 09.06.2020 of Ld. Duty MM is set aside. Copy of the order and judgment be sent to Ld. Trial Court.

Revision file be consigned to record room.

Copy of judgment be given dasti to Ld. Defence counsel through official email.

**ANUJ
AGRAWAL** Digitally signed
by ANUJ
AGRAWAL
Date:
2020.07.06
15:08:32 +0530

**(Anuj Agrawal)
ASJ-03, Central District
Tis Hazari Courts, Delhi
06.07.2020**

**IN THE COURT OF SH. ANUJ AGGARWAL, ASJ-03, (CENTRAL)
TIS HAZARI COURTS: DELHI**

CR No. 181/19

**Dur Vijay Yadav
S/o Sh. Ram Milan,
Aged about 37 years,
R/o House No. 630, 2nd Floor,
Aksardham Apartment, Sector-19,
Dwarka, Delhi-110075.**

... **Revisionist**

Versus

State

... **Respondents**

Date of Institution	: 01.07.2016
Date of hearing arguments	: 06.07.2020
Date of Decision	: 06.07.2020

ORDER

1. This order shall decide the revision petition filed by revisionist Dur Vijay Yadav assailing the order dated 09.06.2020 passed by the court of Ld. Duty MM (Central), Tis Hazari Courts, Delhi in case FIR No. 113/2017, U/s 420/406/120B IPC, PS EOW. By the said order, Ld. Duty MM has dismissed the application for release of vehicle bearing

**CR No.181/19
Dur Vijay Yadav Vs. State**

Digitally signed
by ANUJ
AGRAWAL
Date:
2020.07.06
15:00:22 +0530

Page No. 1 of 11

registration no. DL-8C-AK-4506.

2. Ld. Counsel for revisionist has assailed the impugned order primarily on the ground that :
- (a) That the applicant has moved the present application for release of impounded vehicle after getting bail.
 - (b) That the applicant has no any other vehicle except the present one and in the current situation of pandemic, using of public transport is not safe and due to this family of applicant suffers a lot to manage their daily chores in the absence of their private vehicle.
 - (c) That the said vehicle was impounded on 22.05.2019 and the said vehicle has not been used in committing the offence. That the value of the vehicle is deteriorating day by day as the same is standing still in the parking.
 - (d) That the applicant has moved the application before the Ld. Trial Court to release the vehicle on superdari, however, the same was declined by the Ld Duty MM on the report of IO that the said vehicle was purchased by unexplained source.
 - (e) That the applicant is ready to furnish the relevant records and

documents to establish the source of funds for purchasing the vehicle.

3. On the other hand, Ld. APP for respondent State has submitted that the order passed by Ld. Duty MM is valid in law. It is further argued that the revision petition against the order of superdari is not maintainable as the same is interlocutory order and he cited judgment of Hon'ble Supreme Court in case titled as **Sethuraman v. Rajamanickam, Crl. Appeal No. 486-487 of 2009 decided on 18.03.2009**. The Hon'ble Supreme Court in the said judgment of Sethuraman v. Rajamanickam observed that the order of the trial court refusing to call the documents u/s 91 Cr.P.C. and rejecting the application U/s 311 Cr.P.C. to recall the witness, were interlocutory orders and the revision petition was not maintainable.

4. Countering the said arguments, Ld. Counsel for revisionist has stated that the present petition is very much maintainable and cited judgment of our own Hon'ble High Court in case titled as **Swadesh Kumar & Ors. v. State of Delhi, Crl. M. (M) No. 1441/2002 decided on**

08.05.2002.

5. Firstly, I shall decide the issue regarding maintainability of the revision petition. The question is as to what is interlocutory order. Our own High Court in case titled as **Sudesh Kumar** (*supra*) followed the judgment of Hon'ble Supreme Court in case titled as **Amar Nath v. State of Haryana, AIR 1977 SC 2185**. In the said judgment Hon'ble Supreme Court has observed that the interlocutory order means orders of purely interim or temporary nature which do not decide or touch the important right or the liabilities of the parties and any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order and further observed that orders summoning witnesses, adjourning cases, passing orders for bail, calling for a reports and such other steps in aid of pending proceedings, may no doubt, amount to interlocutory orders, against which no revision would lie but orders which affect or adjudicate the rights of the accused or a particular aspect of the trial, cannot said to be interlocutory order. The order of Ld. Duty Magistrate

declining the custody of the vehicle during the trial cannot be said to be interlocutory order as it substantially affects the right and liabilities of the parties in particular case like present. The cited judgment of Hon'ble Supreme Court is distinguishable on the facts. The said judgment was with respect to application U/s 311 Cr.P.C.

6. In case of **S.V. Chandran V. The State, Cr. R.C. No. 1217/2018, dated 17.12.2018**, Hon'ble High Court of Madras held as follows:

“In any case, after perusing the various judgments, which are brought to the attention of this Court, this Court is of the view that the orders passed under Section 451 of Cr.P.C. cannot be characterised as an interlocutory order essentially. It depends upon the property seized and properties produced before the Court. Some may lose its value by passage of time; some may perish due to exposure to rain and sun or due to efflux of time and in such event, the Magistrate is empowered to dispose of the properties, pending finalisation of the trial. In such circumstances, it should be considered that the order to be passed under Section 451 of Cr.P.C. is almost like final orders touching upon valuable right to property of the petitioner.

Any decision rendered by the Courts, exercising power under Section 451 of Cr.P.C. will affect the rights of the petitioner to have his property

returned and in such circumstances to turn the petitioner away on the ground that the revision case is not maintainable, will not secure the ends of justice. More so, such orders passed under Section 451 of Cr.P.C. are also not appealable.

For the above said reasons, this Court is more inclined to accept the decision of various High Courts which held that the revision is maintainable against the order passed under Section 451 of Cr.P.C as the same is not interlocutory in nature, but such order determines rights of the petitioner for return of properties or for disposing of properties. Therefore the revision case shall be disposed of on its merits, by holding that the revision is maintainable.”

7. Now coming to the other aspect of the matter, Ld. APP for State has vehemently argued that there cannot be only one principle that it is the registered owner only to whom the property can be released nor it is the principle that the person from whose possession the vehicle has been seized, is only entitled to the same. I am in agreement with Ld. APP for State on this count. However, in my considered view, there should be compelling reasons to deny interim custody of vehicle to a registered owner or to the person from whose possession the same was seized by investigating agency.

ANUJ
AGRAWAL
Digitally signed
by ANUJ
AGRAWAL
Date: 2020.07.06
15:03:11 +0530

8. Having discussed the various principles of law and after being satisfied regarding maintainability of present petition, it is to be adjudicated whether the impugned order can be sustained in law or not in facts and circumstances of the present case.
9. In the case in hand, the following facts are admitted :
- (a) that the applicant is the registered owner of the vehicle bearing no. DL-8C-AK-4506 (Skoda Rapid);
- (b) that applicant Dur Vijay is accused in FIR no.113/17 PS EOW;
- (c) that the vehicle was seized from his possession by the IO.
- (d) that the chargesheet in the instant case has already been filed in the concerned court.
10. Therefore, it is to be seen whether there was any specific reason for declining the prayer of applicant (who is the registered owner of vehicle in question) for release of vehicle by Ld. Duty MM. The

reasons cited by Ld. Duty MM while declining the custody of the vehicle to the applicant on superdari is as follows:

“In the present case, the allegations against the accused are that he duped several innocent persons and out of the cheated amount, he purchased the present vehicle. Thus prima-facie, it seems that the alleged vehicle is purchased from the cheated/duped amount. So, accused cannot be said to be entitled for the vehicle. The charge sheet in the present case has already been filed. So, at this stage, it is very difficult to even prima facie say that accused is entitled to get release of the vehicle. The charge sheet in the present case has already been filed . So, at this stage, it is very difficult to even prima facie say that accused is entitled to get release of the vehicle. So, in view of the above stated reasons, present application stands dismissed.”

11. Therefore, the reasons for Ld. Duty MM to arrive at aforesaid conclusion, appear to be the report of IO that the applicant could not provide the source of fund from which he purchased the vehicle in question. On specific directions of this court, IO had filed a reply wherein he has contended that it was found during investigation that accused has purchased the vehicle in question from the cheated amount and he has no right over same. It has further been reported by IO that if the vehicle is released to applicant, same may affect the outcome of the case.

12. In my considered view, the contention of investigating officer that the vehicle in question was purchased from 'proceeds of crime' is yet to pass the muster of criminal trial before concerned court. Applicant being registered owner, he is entitled for interim custody of the said vehicle more so, when there is nothing on record to suggest if any other claimant has approached investigating agency or trial court/ Duty Magistrate, claiming interim custody of vehicle in question. Merely 'non-explanation of the source of funds' could not be a good ground to presume that the vehicle was purchased from cheated amount as there is no theory of reverse burden under general principles of criminal law. Further, no explanation is forthcoming from prosecution as to how the outcome of the case would be affected if the vehicle is to be released to the applicant.

13. Therefore, in the facts and circumstances of the present case and considering the current situation of pandemic, where a private vehicle can be a very valuable property, in case of a medical emergency, I am

inclined to grant interim custody of said vehicle to the applicant who is the registered owner of the same. There is no compelling reason for denying him the interim custody of the vehicle in question. Rather, denying the same would result into further deterioration of the vehicle, which must be lying parked in the custody of concerned investigating agency since date of its seizure.

14. Therefore, in the facts and circumstances of the present case, concerned SHO/IO is directed to release the vehicle to the applicant on furnishing of an indemnity bond to the tune of Rs. 4 lakhs to the satisfaction of concerned SHO/IO or trial court. However, following conditions are imposed before release of vehicle to the applicant:
- (a) Applicant shall intimate the IO/trial court regarding change of address/mobile number, if any.
 - (b) Applicant shall not dispose of the vehicle without prior permission of the trial court.
 - (c) The IO shall take photographs of the said vehicle from all angles and shall also prepare the Panchnama and thereafter, file the same in the trial court.

ANUJ
AGRAWAL
Digitally signed
by ANUJ
AGRAWAL
Date: 2020.07.06
15:03:56 +0530

(d) The applicant shall produce the vehicle as and when directed to do so.

15. Needless to say that the observations made herein above have been made for the purpose of deciding the present revision petition and is not an expression on the merit of the case. Further, the observations made by this court shall not come in the way of Ld. Trial Court to decide the question of title or custody of the vehicle in terms of provisions of Section 452 Cr. P.C. at the conclusion of trial.

16. **Accordingly, the present revision petition is allowed. The impugned order dated 09.06.2020 of Ld. Duty MM is set aside. Copy of the order be sent to trial Court. Revision file be consigned to record room.**

Announced in open court
on 06th July, 2020

ANUJ
AGRAWAL
Digitally signed
by ANUJ
AGRAWAL
Date: 2020.07.06
15:04:44 +0530

(ANUJ AGRAWAL)
Addl. Sessions Judge-03 (Central)
Delhi