

State Vs. Mohd. Imran

FIR No: 204/19

Under Section: 304/308/34 IPC and 79 JJ ACT

PS: Sadar Bazar

27.07.2020

Through video conferencing

Application under section 438 Cr.P.C for grant of anticipatory bail (filed on behalf of applicant/accused) received by way of transfer.

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

Sh. K.B Shanker, Ld. Counsel for applicant/accused.

IO has requested for grant of time for filing reply. However, in my view, the material on record would suffice for disposal of instant application and therefore, parties have been asked to address arguments.

Ld. Counsel for applicant/accused has vehemently argued for grant of anticipatory bail on the ground that accused has been falsely implicated and he has nothing to do with the present case. It is further argued that fair investigation is not been conducted by investigating agency as accused is not the owner of premises wherein the alleged incident of burning occurred. Ld. Counsel has also raised various other pleas, pointing out the defects in the investigation and lacuna in the statement of witnesses. On these grounds, Ld. Counsel has requested for grant of anticipatory bail.

Per contra, Ld. APP for the State has vehemently opposed the present application stating that previous application of accused was dismissed

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by Ld. ASJ (on duty) on 02.07.2020 and there is no change in the circumstance since passing of said order. It is further argued that accused has been evading arrest since long and has not joined the investigation despite issuance of non-bailable warrants against him by the concerned court.

I have heard rival contentions and perused the record.

The earlier application (seeking anticipatory bail) of accused was dismissed by Ld. ASJ vide detailed order dated 02.07.2020 while considering all the contentions which have been raised in present application. Perusal of order dated 02.07.2020 reveals that Ld. ASJ while noting down facts in details has observed as follow:

*“ Allegations against accused/applicant are of very serious nature. The incident in question is also very tragic one and as many as 45 persons lost their lives in the said incident. IO has collected sufficient material which shows prima facie involvement of accused/applicant. Custodial interrogation of accused/applicant is essential in order to ascertain the exact role of accused/applicant. Accused/applicant is evading process of law since the last several months and even NBWs have been issued against him by Ld. CMM (Central).*

*Keeping in view the totality of facts and circumstances, I find no merits in the application filed by accused/applicant for grant of anticipatory bail. The same is hereby dismissed and disposed of accordingly.”*

Despite repeated queries of this court, Ld. Defence counsel has failed to point out any change of circumstance since passing of order dated 02.07.2020.

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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."*

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*

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*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 of circumstance after dismissal of previous application for bail, therefore, the instant application is also to meet the same fate. The present application appears to be nothing but a desperate attempt on the part of defence to try its luck for grant of anticipatory bail on change of Presiding Officer having bail roaster duty.

In view of the aforesaid discussion, application for anticipatory bail moved on behalf of the applicant Mohd. Imran stands dismissed.

Before parting, I may observe that investigation qua applicant/accused has not been concluded despite lapse of more than 07 months since registration of FIR. Even the coercive process, got issued by investigating agency, has not been taken to its logical conclusion. The apparent reasons may either be current pandemic situation or the indolence of concerned investigating officer. However, considering the gravity of the offence (resulting in loss of forty fives {45} precious human lives), it is expected from the investigating agency that the investigation qua applicant/accused shall be concluded on an early date.

Copy of the order be sent to worthy DCP (Crime) with a request to

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look into the matter personally and for ensuring compliance and thereafter, file a report in the court concerned wherein the main charge sheet (filed against co-accused) is pending.

Copy of the order be also sent to court concerned and Ld. Defence counsel through official e-mail for information.

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(Anuj Agrawal)  
ASJ-03, Central District  
Tis Hazari Courts, Delhi  
27.07.2020

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State Vs. Pramod @ Yash

FIR No: 50/2020

Under Section: 25/54/59 Arms Act

PS: Maurice Nagar

27.07.2020

Through video conferencing

This is an application under Section 439 Cr.P.C for grant of bail to accused/applicant.

Present: Sh. Alok Saxena, Ld. APP for the State.  
Sh Yash Rajput, Ld. Counsel for accused/applicant.

Reply from IO received. Copy supplied to other side electronically.

Ld. Counsel seeks some time to argue the present application.

At request, matter is adjourned for arguments on 05.08.2020.

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(Anuj Agrawal)  
ASJ-03, Central District  
Tis Hazari Courts, Delhi  
27.07.2020

State Vs. Anish Yadav

FIR No: 07/2017

Under Section: 302/307/328/120B/34 IPC

PS: Sadar Bazar

27.07.2020

Through video conferencing

This is an application for grant of interim bail filed on behalf of applicant/accused.

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

Sh. Manish Kumar Singh, Ld. Counsel for accused/applicant.

Reply from IO received. Copy of same supplied to other side electronically.

Accused is seeking interim bail for 45 days on the extreme compassionate ground i.e to take care of his aged ailing mother and for getting maintained his house which has become inhabitable, being in dilapidated condition. Ld. Defence counsel has vehemently argued for grant of interim bail on said grounds.

Per contra, Ld. APP for the State has vehemently opposed the instant application on the ground that earlier three applications (for grant of interim bail) moved by applicant/accused did not find any favour with Ld. ASJs (on duty )/this court. It is further argued that the last of such applications, was dismissed by this court vide detailed order dated 14.07.2020 and there is no change of circumstance since passing of said order.

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I have heard the rival contentions and perused the record.

The earlier application (seeking interim bail) of accused was dismissed by this court vide detailed order dated 14.07.2020 while considering all the contentions (raised in the said application) including ground of illness of his mother. Relevant observations of this court in order dated 14.07.2020 are as follow:

*“ Record further reveals that accused was already granted interim bail for 15 days by Hon'ble High Court vide its order dated 22.06.2020 for taking care of his ailing mother, therefore, he can not be permitted to remain on interim bail time and again on similar ground. Even otherwise, 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.”*

*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."*

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.”*

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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 application for bail and, therefore, the instant application is also to meet the same fate.

Despite repeated queries of this court, Ld. Defence counsel has failed to clarify as to why the additional ground (for getting maintained his house which has become inhabitable) was not pressed in the earlier application. Even otherwise, the said plea does not disclose good grounds to be entertained as it is a settled law that interim bail can be granted in exceptional circumstances only and there is no such exceptional circumstance in the instant case. The accused is facing trial for commission of a very serious offence.

The present application appears to be nothing but a crude and desperate attempt on the part of defence to try its luck for grant of interim

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bail on one plea or other without there being any plausible ground for doing so.

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

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

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