

**B.A.No. 196/2021
FIR No.277/2018
PS Sarai Rohilla
State v. Shivani
U/s 302/5201/120B/34 IPC**

23.07.2021

Present: Sh. K.P. Singh, Ld Addl. PP for State through
videoconferencing.

Sh. Anil Jha, Ld. Counsel for accused-applicant
through video conferencing.

Hearing is conducted through video conferencing.

This is an application u/s 439 Cr.P.C. for grant of interim
bail on behalf of accused-applicant Shivani in case FIR No.
277/2018.

Report from Jail Superintendent received. Copy
supplied.

Arguments heard. For orders, put up at 4 pm.



(Neelofer Abida Perveen)
Special Judge-02, NDPS/
ASJ, (Central), THC / Delhi
23.07.2021

At 4pm
ORDER

This is an application u/s 439 Cr.P.C. for grant of interim

bail on behalf of accused-applicant Shivani in case FIR No. 277/2018.

Ld. Counsel for accused-applicant contended that interim bail is being sought as per HPC guidelines. Ld. Counsel for accused-applicant submitted that other two co-accused had been released on interim bail as per HPC by the Jail Authorities. That earlier also accused-applicant was granted interim bail under the HPC and she has never misused the concession granted and has surrendered at jail in time. Ld. counsel has referred to order dated 07.05.2021 passed by the Hon'ble Supreme Court of India in Suo Moto Writ (C)No. 01/2020.

Ld. Addl. PP submits that Hon'ble High Court in B. A. No. 2294/2021 titled as Pawan @ Anand @ Nikhil v. State Govt. of NCT vide order dated 07.07.2021 has observed that there is no further requirement of decongestion of the prisons at present and therefore there arises no occasion for grant of interim bail as per the guidelines.

Heard.

It came to be submitted that the accused-applicant in the year 2020 had been granted interim bail as per the HPC guidelines, and that two of the co-accused have since been released by the Jail authorities on interim bail as per the HPC Guidelines in pursuance to directions passed by the HPC on 11.5.2021, report was therefore called for from the Jail

Superintendent concerned so as to assess the circumstances under which the accused-applicant who as per the submission made by the Ld. Counsel had been granted interim bail in the year 2020 as per HPC guidelines has not been extended the same benefit as the co-accused in accordance with the directions passed by the HPC in its minutes of meeting dated 11.5.2021, and record was also sought from the office as the bail order in respect of the applicant passed in the year 2020 was not annexed with the application. Jail report confirms that the co-accused have been released on personal bond as per the guidelines, and the record reflects that the accused-applicant was granted interim bail of 30 days vide order dated 24.06.2020 in order to enable the accused-applicant to take care of her children in the pandemic situation as the mother in law in whose custody and care the children had been, had suffered an accident. The interim bail in the year 2020 was not as per the guidelines of the HPC but on the merits of the grounds set up for grant of interim bail. High Powered Committee of Hon'ble High Court in its Minutes of Meeting dated 04.05.2021 laid down following guidelines regarding grant of interim bail to the under trials:-

“Members of the Committee discussed and deliberated upon the proposed category of prisoners, who may be considered for grant of interim bail for 90 days in view of the circumstances in which we are in, preferably on Personal Bond:

- (i) Inmates undergoing Civil Imprisonment;*

- (ii) *Under trial prisoners (UTPs) who are facing trial in a case which prescribes a maximum sentence of 7 years or less wherein he/she is in custody for a period of 15 days or more;*
- (iii) *Under trial prisoners (UTFs/Remand Prisoners (with respect to whom, Charge sheets are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of 7 years or less;*
- (iv) *Under trial prisoners (UTPs), who are senior citizens more than 60 years of age and are in custody for three months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less:*
- (v) *Under trial prisoners (UTPs), who are less than 60 years of age and are in custody for six months or more, facing trial in a case which prescribes a maximum sentence 10 years or less subject to the condition that he should not be involved in any other case which prescribes punishment of more than 7 years*
- (vi) *Under trial prisoners (UTPs), who are suffering from HIV, Cancer, Chronic Kidney Dysfunction(UTPs requiring Dialysis), Hepatitis B or C, Asthma, and TB and are in custody, facing trial in a case which prescribes maximum sentence of 10 years or less and are not involved in multiple cases;*
- (vii) *Under trial prisoners (UTPs) who are suffering from HIV, Cancer, Chronic Kidney Dysfunction (UTPs requiring Dialysis), Hepatitis B or C, Asthma, and TB and are in custody for a period of three months or more and facing trial in a case which prescribes punishment of 10 years upto life imprisonment and are not involved in multiple cases.*
- (viii) *Under trial prisoner (UTPs) facing trial for offence under Section 304 IPC and are in jail for more than six months with no involvement in any other case;*
- (ix) *Under trial prisoners (UTPs) facing trial in a case under Section 307 IPC and are in jail for more than six months; subject to the condition that he should*

- not be involved in any other case which prescribes punishment of more than 7 years;*
- (x) *Under trial prisoners (UTPs) (who are related as spouse of the deceased) facing trial for a case under 304B IPC and are in jail for more than one year with no involvement in any other case,*
 - (xi) *Under trial prisoners (UTPs) (who are related as father-in-law, mother-in-law, brothers-in-law, sisters-in-law of the deceased) facing trial for offence under Section 304B IPC and are in jail for more than six years with no involvement in any other case.*

Thereafter vide MOM dated 11.5.2021, the following clause (xii) was also added:

- (xii) *Under trial prisoner (UTPs) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case.*

The accused-applicant is in custody in connection with the present case FIR that pertains to commission of offence under section 302 IPC since 3.8.2018 as per the custody certificate and was released on interim bail of 30 days on 27.7.2020 and had surrendered in time on 18.3.2021, and the total custody reported is of 2 years 3 months and 22 days. The accused-applicant has clean antecedents and is not alleged to have involved herself in criminal activities during the interim bail period, the accused-applicant otherwise would have been eligible for the benefit, Ld.APP however has referred to order dated 7.7.2021, passed by H'ble the High Court of Delhi, in BAIL APPLN.2294/2021, in the bail application preferred under the guidelines which came to be

dismissed with the following observations:

“3. The guidelines were laid down by the High Powered Committee in May 2021 due to surge in COVID-19 cases thereby necessitating the decongestion of the Jail. Since the situation of COVID-19 in Delhi at the moment is under control, this Court finds no ground to grant interim bail to the petitioner in terms of the guidelines issued by the High Powered Committee”

The benefit of the concession under the guidelines is therefore not being accorded to the accused-applicant and the application is dismissed in view of order dated 7.7.2021, passed by H'ble the High Court of Delhi, in BAIL APPLN.2294/2021.

Copy of order be forwarded to Ld.Counsel for accused-applicant through electronic mode.



(Neelofer Abida Perveen)
SpecialJudge-02, NDPS/
ASJ, (Central), THC / Delhi
23.07.2021