

(2020) 06 DEL CK 0065

In the Delhi High Court

Case No : Bail Application No. 1142 Of 2020

Behruddin

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 11-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 302, 304, 307, 308, 376, 376A, 376B, 376C, 376D, 376E, 452
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6

Citation : (2020) 06 DEL CK 0065

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Lal Singh Thakur, Hirein Sharma

Final Decision : Disposed Of

Judgement

C. Hari Shankar, J

1. This matter has been taken up for hearing by video-conferencing.
2. This is an application for regular bail.
3. The applicant was arrested on 12th April, 2016, consequent on lodging of FIR 326/2016, and charged with commission of offences under Section 302/307/452/147/148/149 read with Section 34 of the Indian Penal Code, 1860 (the IPC).
4. The applicant is in judicial custody since 12th April, 2016, i.e. for exactly four years and two months, as on date.
5. The incident, in connection with which the applicant was incarcerated, relates to assault, by a crowd, on an 18 year boy at 12 midnight on 23rd March, 2016.
6. The application states that the mother of the applicant is suffering from severe lumber spondylitis, and has been advised bed rest and possible surgery.

7. It is further stated that, owing to the lockdown restrictions imposed consequent to the COVID-2019 pandemic, the father of the applicant is unable to come to Delhi.

8. Mr. Lal Singh Thakur, learned counsel for the applicant, also places particular reliance on the decision of the High Powered Committee of this Court, dated 18th May, 2020, which "determines", inter alia, "the fresh category of prisoners who can be released on interim bail". The recommendations of the Committee, to the extent relevant, may be reproduced thus:

"ITEM NO. 6:- DETERMINING FRESH CATEGORY OF PRISONERS WHO CAN BE RELEASED ON INTERIM BAIL

Members of the Committee have taken into consideration that on the basis of the criteria adopted earlier, as on date 3678 inmates/ convicts/UTPs have been released on parole/interim bail.

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee about the letter/representation dated 16.05.2020 wherein DG (Prisons) submitted that first case of COVID-19 (Novel Corona Virus) positive has been detected in Delhi Prisons (Rohini Jail). He has informed that one inmate was admitted in DDU Hospital on 10.05.2020 for intestinal problem where he was operated. After operation, he was also tested for COVID-19 (Novel Corona Virus) on 11.05.2020 and was found positive on 13.05.2020. It is also submitted by DG (Prisons) that before being admitted to DDU Hospital, this inmate, namely "K" was sharing barrack with 19 other inmates, all of whom along with five jail staff were tested for COVID-19 (Novel Corona Virus). He informed that as per the report received, 15 inmates and one staff have been found to be COVID-19 positive.

In view of this situation vide his letter dated 16.05.2020, DG (Prisons) has requested that the criteria adopted earlier needs to be relaxed so as to further decongest the jails as still the present occupancy of the Jail exceeds the optimum capacity of the Jail.

In view of the prevailing situation and to prevent the spread of COVID-19 (Novel Corona Virus) and to ensure social distancing amongst prisoners, the Committee is of the opinion that the criteria needs to be further relaxed to give effect to directions of Hon'ble Supreme Court of India. On directions of Hon'ble Chairpersons, DG (Prisons) was requested to furnish the information, for the impact analysis qua the proposed relaxed criteria of UTPs. The same is accordingly submitted.

The Members of the Committee discussed the report submitted by DG (Prisons) vide his letter dated 16.05.2020 and resolved that prisoners falling in following criteria may now be considered for grant of interim bail for 45 days in view of the circumstances in which we are in, preferably on 'Personal Bond':

(i) Under trial prisoners (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;

- (ii) Under trial prisoners (UTPs) facing trial for offence under Section 304 IPC and are in jail for more than one year with no involvement in any other case;
- (iii) Under trial prisoners (UTPs) facing trial in a case under Section 307 or 308 IPC and are in jail for more than six months with no involvement in any other case;
- (iv) Under trial prisoners (UTPs) facing trial/remand prisoners in Theft cases and are in jail for more than 15 days;
- (v) Male Under trial prisoners (above 65 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;
- (vi) Female Under trial prisoners (above 60 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;

It has further been resolved that following category of UTPs, even if falling in the above criterion or the criteria adopted in the earlier Meetings, should not be considered :-

- (i) Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act;
- (ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;
- (iii) Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;
- (iv) Those UTPs who are foreign nationals;
- (v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ;

and

- (vi) Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc."

9. Mr. Thakur points out that his client falls within category (i) in the categories of prisoners who, according to the above recommendations, may be considered for grant of 45 days' interim bail, on personal bond, namely, "under trial prisoners (UTPs) facing trial for a case under Section 302 IPC (who) are in jail for more than two years with no involvement in any other case".

10. Consequent to issuance of notice, a status report, dated 4th June, 2020, has been filed by the SHO, PS Vikas Puri, Delhi.

11. The status report reiterates the allegation against the applicant and

asseverates, further, that the father of the applicant had returned to Delhi, consequent to the relaxation of lockdown and that the applicant has two brothers and two sisters, who are perfectly capable of looking after the mother of the applicant.

12. Regarding the mother of the applicant, it is asserted, in the status report, that she was admitted in hospital on 31st May, 2020 with acute gastroenteritis and was discharged on 1st June, 2020, and has not been recommended surgery.

13. The nominal roll of the applicant states that his conduct, during incarceration, was unsatisfactory. However, Annexure-A to the nominal roll reads thus:

"Annexure-A

S.No.

Date of punishment

Type of punishment

1.

18.02.2017

As Per Kalandra attached/received from Tis Hazari Courts vide DD No. 15-A dated 18.02.2017 it has been reported that above said UTP had taken one packet tobacco make (Kuber) from his relative/friends during the time of his production in Court.

2.

09.01.2020

During the search Five mobile phones recovered from inmates.

"

Further, it appears that, the applicant has already been punished with stoppage of "mulaqat" for two weeks.

14. The status report also confirms that the applicant is not facing trial in any case other than the present.

15. Mr. Hiren Sharma, learned APP for the State, opposes the request for interim bail, by referring to the seriousness of the allegations against the applicant, and by pointing out that there are other persons, in his family, who can also take care of his mother. He also submits that the decision of the High Powered Committee, of this Court, on which Mr. Thakur relies, is purely recommendatory in nature and does not mandate enlargement, of an under trial prisoner, who is facing trial for having committed an offence under Section 302 IPC, on interim bail, necessarily and in all cases.

16. I have considered, with the necessary circumspection, the contentions advanced by learned counsel.

17. There is no doubt that the decision of the High Powered Committee, on which Mr. Thakur relies, is recommendatory in nature. However, a holistic reading thereof reveals that the recommendations have been made in view of the prevailing COVID-2019 pandemic, and are intended to decongest the jails, so that appropriate social distancing may be maintained, among the inmates incarcerated therein.

18. It is for this reason that certain categories of inmates have been recommended as deserving favourable consideration, for enlargement on interim bail, subject to furnishing of a personal bond. These recommendations, having been arrived at, by a High Powered Committee of this Court, are, unless the circumstances otherwise justify, required to be adhered to, and the onus would be on the prosecution to, in cases which fall within the categories stated to be deserving of interim bail, therein, establish that the inmate concerned does not deserve to be so enlarged.

19. The reliance, by Mr. Sharma, learned APP for the State, on the incident in relation to which the applicant is suffering incarceration, cannot, in my view, be said to justify denial, to the applicant, of the benefit of the said recommendations, especially as he still an undertrial, and cannot, therefore, be said to have been found guilty of the offence with which he has been charged. Moreover, the recommendations are only for the purpose of interim bail of 45 days, and have been issued in general public interest.

20. The applicant, unquestionably, has suffered incarceration far in excess of the two year-limit, stipulated in the recommendations, as he is in judicial custody for four years and two months as on date.

21. Insofar as the nominal roll of the applicant is concerned, though his conduct, during incarceration, is stated to be unsatisfactory, that is only case he was found to have taken one packet of tobacco from a visiting relative.

22. Insofar as the allegation of recovery of mobile phones is concerned, it is, on its face, delightfully vague. Annexure A to the Nominal Roll does not even state that the applicant was one of the inmates from whom a mobile phone was recovered.

23. It would be appropriate that jail authorities, while forwarding nominal rolls of inmates to this Court, are more specific regarding the grounds on which the conduct of an under trial is stated to be unsatisfactory, as they may make all the difference between grant, or denial, to the inmate, of his prayer for liberty, even if transient.

24. Mr. Sharma, learned APP, is also unable to assist in this regard, and merely submits that, possibly, the applicant may have been one of the persons from whom the phones were recovered.

25. Be that as it may, the allegations in Annexure-A to the nominal roll cannot be said to be such as to vitiate the applicant's claim for enlargement on interim bail in the face of the recommendation of the High Powered Committee, to which, reference has been made hereinabove.

26. Resultantly, I am of the opinion that the applicant is entitled to the benefits of recommendations of the High Powered Committee of this Court, as

(i) he is involved only in the present case, in which he is charged of having committed offence under Section 302 of IPC,

(ii) he has suffered incarceration for four years and two months, as on date, and

(iii) the reference, to his "unsatisfactory" conduct during incarceration, as contained in his Nominal Roll, is restricted to the two allegations set out in Annexure A thereto, which, in my opinion, do not serve to discountenance the applicant's prayer for interim bail.

27. In view thereof, the application is allowed.

28. The applicant is directed to be released on interim bail for a period of 45 days, from the date of his release, on submission of a personal bond in the sum of ₹ 10,000/- with one surety in the like amount, to the satisfaction of the Jail Superintendent, Delhi, with directions that he shall not leave the city of Delhi, shall not tamper with the evidence, shall conduct himself, at all times, legally and with due propriety, and shall surrender before the jail authorities on the expiry of 45 days.

29. In the event of there being any complaint regarding the applicant's conduct during the currency of the period of interim bail, or FIR or DD entry registered against the applicant, the State shall bring it to the notice of the Court forthwith.

30. The application is disposed of.

31. Copy of this judgment be uploaded on the website of this Court as soon as possible, and also be forwarded to the counsel for the parties via email.

32. The Registry/Court Master is also directed to ensure that a copy of this judgement is forwarded to the Jail Superintendent under whose custody the applicant is incarcerated, by e-mail and/or Special Messenger, for due compliance.