

(2020) 05 DEL CK 0080

In the Delhi High Court

Case No : Criminal Writ Petition No. 814 Of 2020

Malvinder Mohan Singh

APPELLANT

Vs

State & Anr.

RESPONDENT

Date of Decision : 15-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 376, 376A, 376B, 376C, 376D, 376E, 409
Prevention of Money Laundering Act, 2002 — Section 3, 4, 44, 45, 70
Protection of Children from Sexual Offences Act, 2012 — Section 4, 6

Citation : (2020) 05 DEL CK 0080

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Mukul Rohatgi, Kailash Vasdev, Neoma Vasdev, Rahul Mehra, Chaitanya Gosain

Judgement

Anu Malhotra, J

CRL.M.A. 6440/2020

1. This is an application filed by the petitioner under Article 226 of the Constitution r/w Section 482 of the Cr.PC, 1973 seeking urgent relief seeking that the minutes of the meeting of the Hon'ble High Powered Committee of this Court held on 28.03.2020 be stayed and the respondent be directed to release the petitioner on bail/ parole on such terms and conditions as the Court may consider appropriate.

2. As per averments in the FIR No.50/2019, PS EOW, Mandir Marg, the petitioner along with Mr. Shivinder Mohan Singh as being the promoter of M/s Religare Enterprises Limited (hereinafter referred as REL) is alleged to have played a significant role in the management and conduct of affairs of Religare Finvest Limited (hereinafter referred as RFL) a subsidiary of REL, a public company listed on stock exchanges and licensed by the Reserve Bank of India to undertake the

business of financial services as a non-deposit taking/ lending Non-Banking Financial Company (NBFC) which operated as a small and medium enterprise (SME) financing focussed NBFC and was in the business of extending SME working capital loans, secure SME business expansion loans, short term trade finance and other loans to various entities with it being submitted that the RFL is classified as a systematically important NBFC by the RBI.

3. The petitioner herein along with Mr. Shivinder Mohan Singh allegedly in conspiracy with Mr. Sunil Godhwani, Executive Director of RFL is alleged to have forged documents to secure high value purported loans to shell companies and related known entities of the petitioner and of Mr. Shivinder Mohan Singh and such loans were given by RFL on the sole and express basis that these entities were known to the petitioner and Mr. Shivinder Mohan Singh and thus pursuant to instructions received from the petitioner and Mr. Shivinder Mohan Singh or Mr. Sunil Godhwani, an alleged co-conspirator their agents/ nominees/ associates, sums to the tune of hundreds of crores were allegedly disbursed by the RFL at very short notice and at times without adequate documentation for the same and it is alleged that in many such instances, the documentation was created only subsequently and antedated and thus forged.

4. The allegations levelled against the petitioner are to the effect that an amount of Rs.2397 crores as principal amount and Rs.415 crores as the interest amount had been loaned out to entities who never intended to repay these purported loans to RFL and defaulted on their obligations simultaneously with the exit of the present petitioner and Mr. Shivinder Mohan Singh from REL.

5. It has been alleged in the complaint filed by the Directorate of Enforcement that some such loans were learnt to have been extended to entities which appear to be eventually controlled by the promoters of the REL and entities which were known to and controlled by Mr. Narender Kumar Goushal, a long time associate of the promoters. The complainant i.e. the Directorate of Enforcement vide its complaint dated 10.01.2020 under Sections 44/45 of the Prevention of Money Laundering Act, 2002 qua the alleged commission of offences punishable under Section 3 r/w Section 70, punishable under Section 4 of the PMLA Act, 2002 has thus alleged that the present petitioner and Mr. Shivinder Mohan Singh and Mr. Sunil Godhwani in collusion with Mr. Narender Kumar Goushal by abusing their position caused the RFL to enter into transactions whereby public moneys were transferred to shell companies/ suspicious entities and siphoned away. It has also been alleged that the present petitioner and Mr. Shivinder Mohan Singh and Mr. Sunil Godhwani by concealing facts and abusing their position caused RFL to lend money to entities owned and controlled by them and Mr. Narender Kumar Goushal (directly or indirectly) with no intention of ever returning the said money(s) and that the said acts and omissions on behalf of the present petitioner and Mr. Shivinder Mohan Singh, Mr. Sunil Godhwani and their officials/ associates including Mr. Narender Kumar Goushal who abused their position in REL and the RFL have greatly hampered the interests of the public shareholders

of REL.

6. As per the complaint filed by the Directorate of Enforcement, the petitioner is allegedly involved in acquisition and utilization of proceeds of crime generated out of the criminal activity and its projection as untainted property and has thus committed an offence of money laundering in terms of Section 3 of the PMLA Act, 2002.

7. Without adverting to the merits or demerits of the allegations that have been levelled against the petitioner herein, it is essential to observe that it was submitted on behalf of the petitioner that in view of the verdict of the Hon'ble Supreme Court in *Suo Moto Writ Petition (C) No.1/2020 in Re: Contagion of Covid-19 Virus in Prisons*, the Hon'ble Supreme Court has observed that the issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Coronavirus (COVID-19) and that it had become imperative to ensure that the spread of Corona Virus within the prisons was controlled having regard to the provisions of Section 21 of the Constitution of India. It was thus submitted that the Hon'ble Supreme Court vide the said verdict dated 23.03.2020 thus directed to the effect:

"We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

The High Powered Committee shall take into account the directions contained in para no.11 in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273."

8. The petitioner has thus submitted that he seeks his urgent release from the prison in as much as there are several inmates lodged in the prison with grim prison facilities and that there are three under trial prisoners quarantined at the Tihar Jail in as much as one of the persons had come in contact with the victim who tested positive for COVID-19 and that the apprehension of the petitioner of contracting COVID-19 is reasonable and well founded. The petitioner further submits that the offences alleged against him are in the nature of an economic offence arising from and pertaining to an international arbitration award from

which proceedings pending appeal in Court of competent jurisdiction outside India and that charge sheets have already been filed in all cases and that the petitioner has deep roots in society and that the petitioner is also suffering from several ailments and that he be thus released on interim bail/ parole. It was further submitted on behalf of the petitioner that he has been incarcerated for eight months and in view of the guidelines laid down by the Hon'ble Supreme Court in Sanjay Chandra vs. CBI AIR2012SC830, he cannot be penalized any further without culmination of the trial.

9. The petitioner has further submitted that the guidelines made by the Hon'ble High Powered Committee of this Court on 28.03.2020 vide which it has been stipulated to the effect:

"ITEM NO.3:- DETERMINING FRESH CATEGORY OF UNDER TRIAL PRISONERS WHO CAN BE RELEASED ON INTERIM BAIL':

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Kanwal Jeet Arora, Member Secretary informed the Committee, that immediately on receipt of letter from Govt. of NCT of Delhi regarding formation of present Committee, he on being directed by Hon'ble Chairperson had requested D.G. (Prisons) through the letter dated 26.03.2020 to furnish requisite information for the impact analysis on the proposed relaxed criterion of under trial prisoners. The same is accordingly submitted.

The Members of the Committee discussed and deliberated upon the proposed category of prisoners, who 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) who are facing trial in a case which prescribes a maximum sentence of 7 years or less; or
- (ii) Even If , the UTP has more than one case and in all other cases, he is "on bail", except the one for which he is being considered and the same prescribes punishment for 7 years or less; and if
- (iii) UTP is in custody for a period of one month or more;
- (iv) In case of Women UTP, if she is in custody for a period of 15 days or more;

Besides the UTPs falling in above categories, those inmates who are undergoing Civil Imprisonment can also be considered for 'interim bail' of 45 days.

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

- (i) All 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;

and

(v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act)/ PMLA ; and

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

to the effect inter alia that persons facing trial under the PMLA do not fall within the category of UTPs who may be released on interim bail due to COVID-19 are arbitrary and that the same does not fall within the contours of the order dated 23.03.2020 of the Hon'ble Supreme Court in Suit Moto Writ Petition (C) No.1/2020. A further submission made on behalf of the petitioner is to the effect that the said guidelines are wholly arbitrary and that the same is an irrational classification of persons in judicial custody infringing thus the rights of the petitioner who is immune compromised and is likely to be adversely affected by it if he contracts the fatal Coronavirus.

10. It is further submitted on behalf of the petitioner that he has been suffering from acute attacks of Gastroenteritis and haemorrhoids which were infected.

11. On behalf of the State it was submitted by the learned Standing Counsel for the State Mr. Rahul Mehra that the prayer made by the petitioner seeking grant of interim bail/ parole cannot be considered by this Court in view of the minutes of meeting of the Hon'ble High Powered Committee dated 28.03.2020 in as much as the case of the petitioner specifically falls within the domain of alleged commission of economic offences and thus he is not entitled to be released on parole/ interim bail despite the prevailing pandemic. It was further submitted on behalf of the State placing reliance on the status report dated 15.05.2020 submitted by the Superintendent Jail, Central Jail No.8/9, Tihar Jail, Delhi to the effect that the petitioner herein is lodged in the Tihar Jail in the cases i.e.

1. ECIR/05/DLZO-II/2019, FIR No. 50/19, US-409/420/120B IPC PS- EOW/SEC-VI, New Delhi, NDOH- 20.05.2020.

2. ECIR/DLZOII/05/2019, CC No.01/20, Titled as Directorate of Enforcement Vs Malvinder Mohan Singh etc, NDOH- 20.05.2020.

3. FIR No. 189/19, US- 409/420/120B IPC, PS- EOW, NDOH-20.05.2020."

and that the said status report indicates that at present the general condition of the petitioner is stable and all prescribed medications are being provided to him from the Jail Dispensary itself. The details of the said medical status report dated

15.05.2020 are to the effect:

"Sub: Medical status report of inmate Malvinder Mohan Singh S/o Dr. Parvinder Singh.

With reference to subject cited above, as per available medical records this is to inform you that the above mentioned inmate is lodged at Central Jail-8/9 since 17.10.2019. On the same day medical examination was done, he gave no fresh complaint, no history of chronic illness, no history of any drug abuse. On examination he was conscious and oriented, vitals stable and systemic examinations were within normal limit. On local examination there was no fresh external injury seen.

The inmate patient has been visited at Dispensary Central Jail No.8/9 for the complaints of loose motion, cough with expectoration, Low Backache with bilateral shoulder pain, he was examined on all the occasions and advised medications accordingly.

On 30.11.2019, 14.10.2019, 11.01.2020, 18.01.2020, 22.02.2020, 18.04.2020, 25.04.2020, 09.05.2020 inmate patient was reviewed by jail visiting SR Dermatology as case of tenia cruris (rash with irritation in groin region), he was examined and advised medications accordingly.

On 30.11.2019, 14.12.2019, 11.01.2020, 18.04.2020, 25.04.2020, 09.05.2020, inmate patient was reviewed by jail visiting SR Orthopedic as a follow up case of Low Backache with radiculopathy, Neck pain, B/L shoulder pain with B/L knee pain, he has been examined and advised Physiotherapy & medications accordingly.

On 30.03.2020 inmate patient was reviewed by jail visiting SR Medicine for the complaint of Loose stools, pain on defecation, congestion in chest, pain in gums, orthostatic hypotension and alleged history of fissure in ano with history of left knee arthroscopy, he has been examined and advised RBS Charting and medications accordingly and also advised to review with old medical report.

On 08.04.2020 inmate patient was reviewed by jail visiting SR Ophthalmology as a case of refractive error with presbyopia, he was examined and advised to wear prescribed bifocal glasses.

On 09.04.2020 inmate patient was reviewed by jail visiting SR Medicine as a case of recently detected DM-II on the basis of RBS Charting, HbA1c-6.4% and history of hypothyroidism, he was examined and advised blood investigations and blood investigations accordingly

On 20.04.2020, 27.04.2020, inmate patient was reviewed by jail visiting SR Medicine as a case of DM-II with hypothyroidism and complaint of constipation, no bleeding manifestation and urinary incontinence he was examined and advised blood investigations and medications accordingly. Blood investigations were done on 21.04.2020 which reveals TSH-6.94 iu/ml.

On 27.04.2020, 11.05.2020 inmate patient was reviewed by Jail Visiting SR ENT for his complaint of Vertigo and nasal blockage, he has been examined and advised medications accordingly.

On 11.05.2020 inmate patient was reviewed by jail visiting SR Medicine for his complaint of rash with irritation in groin region with excessive sweating and alleged history of arthroscopy left knee, he was examined and advised medications accordingly.

On 14.05.2020 inmate patient was reviewed by jail visiting SR Medicine as a case of Dm-II with hypothyroidism with fissure in ano, he was examined, on examination RBS-115mg/dl, BP-114/70mm/hg and advised ECG and medications accordingly and also advised to review SR Surgery.

At present, the general condition of inmate is stable. All prescribed medications are being provided to him from Jail Dispensary itself.

This is for your kind information and onwards submission of the Hon'ble High Court."

12. It was further submitted on behalf of the State by the learned senior Standing Counsel Mr. Rahul Mehra that the petitioner is virtually in isolation in Central Jail No.8/9 at the Tihar Jail, New Delhi and is not in contact with any other inmate and thus clearly social distancing is being observed and maintained.

13. Reliance was also placed on behalf of the State by the learned senior Standing Counsel on proceedings dated 06.04.2020 in W.P.(CRL.)-URGENT 10/2020 of this Court wherein the prayer made by Mr. Shivinder Mohan Singh, the other co-promoter of REL, a co-accused in the instant case seeking grant of interim bail was declined with it having been observed that the said accused was involved in an offence punishable for more than 7 years of sentence and in more than one case and that too under the PMLA Act and that he does not qualify to be released pursuant to directions of the Hon'ble High Powered Committee dated 28.03.2020.

14. Reliance was also placed on behalf of the applicant/ petitioner on a catena of verdicts i.e. the verdicts of this Court in Anil Mahajan Vs. Commissioner of Customs and Ors. 2000III AD (Delhi) 369, Arvind Yadav vs. Govt. Of NCT of Delhi in BAIL APPLICATION 778/2020, Babu Lal vs. State (N.C.T. OF DELHI) in CRL.A. 291/2020, H.B. Chaturvedi vs. CBI 2011IAD(Delhi)447, Dr. Shivender Mohan Singh (IN J.C.) vs. State of NCT of Delhi & Ors. in W.P.(CRL.)-URGENT 10/2020 and the verdict of the Hon'ble Supreme Court in Ashok Dhingra Vs. N.C.T. of Delhi (2000) 9 SCC 533, P. Chidambaram vs. Directorate of Enforcement in Criminal Appeal No.1831/2019, Kishan Khubchand Korani & ANR. vs. The State of Gujarat & Anr. in Criminal Appeal No(s). 859/2018, Mohan Singh, Advocate vs. Union Territory, Chandigarh (1978) 2 SCC 366, Prem Shankar Shukla vs. Delhi Administration (1980) 3 SCC 526, Sanjay Chandra VS. Central Bureau of Investigation (2012) 1 SCC 40, Capt. Satish Kumar Sharma vs.

Delhi Administration and Others. In Criminal Writ No.265/90, SMD Kiran Pasha vs. Government of Andhra Pradesh and Others (1990) 1 SCC 328 to contend to the effect that the petitioner be released on interim bail/ parole. It is essential to observe that the facts and circumstances of the said case relied upon on behalf of the petitioner are distinguishable from the facts and circumstances of the present case and are not in pari materia with the facts of the instant case.

15. It is essential to observe that vide minutes of meeting dated 18.04.2020 i.e. after the meeting dated 28.03.2020, the Hon'ble High Powered Committee of this Court has reiterated to the effect:

"It has further been resolved that following category of UTPs, even if falling in the above criterion, 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, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc."

16. It is essential to observe that during the course the hearing of the present proceedings, it was suo moto by this Court brought to the notice of both the learned Senior counsel for the petitioner Mr. Mukul Rohatgi and learned Senior Standing Counsel for the State Mr. Rahul Mehra that in Writ Petition Civil Diary No.10829/2020 vide order dated 07.04.2020, the Hon'ble Supreme Court permitted the petitioner thereof who had challenged the criterion of the Hon'ble High Powered Committee of this Court dated 28.03.2020 putting an embargo to the release on interim bail/ parole of under trials in cases of alleged commission of economic offences and whereby vide order dated 07.04.2020, the Hon'ble Supreme Court in the said writ petition thus granted the prayer of the petitioner thereof to withdraw the writ petition with liberty to prefer a representation before the Hon'ble High Powered Committee of this Court.

17. Though it is submitted on behalf of the petitioner that merely because another litigant had withdrawn the prayer made before the Hon'ble Supreme Court submitting in relation to the alleged arbitrariness of the criteria laid down

by the Hon'ble High Powered Committee in relation to the economic offences, the same cannot apply qua the submissions made by the petitioner, nevertheless, it is essential to observe that in as much as there are allegations against the petitioner of the alleged commission of economic offences inter alia punishable under the PMLA Act, 2002 as also punishable under Section 409 of the Indian Penal Code, 1860, which is punishable with imprisonment for life or that which may extend to 10 years and to a fine and thus as the case of the petitioner clearly does not fall within the parameters of the guidelines laid down by the Hon'ble High Powered Committee of this Court dated 28.03.2020 nor within the guidelines of the Hon'ble High Powered Committee laid down on 18.04.2020 referred to hereinabove, coupled with the factum that the status report dated 15.05.2020 that is of date as received from the Medical Superintendent of the Central Jail No.8/9, Tihar Jail brings forth that the condition of the applicant is stable, there is no ground whatsoever for the grant of interim bail / parole as prayed on behalf of the petitioner.

18. The Crl.M.A.6440/2020 is declined.

19. However, nothing stated hereinabove shall amount to any expression on the merits or demerits of W.P.(Crl.) No.814/2020 nor shall the dismissal of the prayer made by the present petitioner seeking grant of interim bail/ parole prevent the petitioner from seeking redressal, if any, before the Hon'ble High Powered Committee of this Court by moving a representation on lines similar to the observations made vide order dated 07.04.2020 of the Hon'ble Supreme Court in Writ Petition Civil Diary No.10829/2020.