

(2020) 08 DEL CK 0076

In the Delhi High Court

Case No : Bail Application No. 2043 Of 2020

Mohsin Khan Alias Potli

APPELLANT

Vs

State Of NCT Of Delhi

RESPONDENT

Date of Decision : 13-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 302, 307, 376, 376A, 376AB, 376B, 376C, 376D, 376E, 376DA, 376DB, 427, 452
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 4, 6

Citation : (2020) 08 DEL CK 0076

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Lal Singh Thakur, Hirein Sharma

Final Decision : Allowed

Judgement

C. Hari Shankar, J

BAIL APPLN. 2043/2020

1. This is an application filed by the applicant seeking interim bail, for 45 days, essentially on the basis of the recommendations, dated 18th May, 2020,

of the High Powered Committee, chaired by a sitting Judge of this Court, which made certain recommendations, regarding release of undertrial

prisoners on interim bail, inter alia with the objective of decongesting prisons, during the currency of the present COVID-2019 pandemic.

2. The applicant is in custody since 4th May, 2016, consequent to the lodging of FIR 0326/2016 dated 24th March, 2016. The FIR was lodged by one

Rachit, son of Vikas Sethi, in connection with the alleged assault and murder of his uncle Pankaj Narang. According to the recital of facts in the FIR,

the complainant, Rachit was playing, outside the house of the deceased Pankaj

Narang, at about 12 midnight on 23rd March, 2016, and, during the course of playing cricket, the ball crossed the gate of the house to the road outside. Rachit, and his friends, proceeded to the road, searching for the ball, when a motorcycle approached, which was allegedly being driven, in a zigzag manner, by two youths. The deceased Pankaj Narang shepherded the complainant and his friends to the side of road and requested the rider of the motorcycle to slow down, whereupon an altercation resulted. The two youths on the motorcycle, alleges the FIR, called their friends, who were armed. This group, thereafter, proceeded to belabour Pankaj Narang and the father of the complainant Rachit, who were seriously injured and had to be taken to the hospital. There, Pankaj Narang succumbed to his injuries, as a result of which Section 302 was added to the provisions already invoked in the FIR. The applicant is alleged to have been one of those who assaulted the deceased Pankaj Narang and, consequently, stands accused, in the FIR, of having committed the offences under Section

302/307/452/427/147/148/149 read with Section 34 of the IPC.

3. The applicant has been continuously in custody, since 4th May, 2016 and has never been granted bail or parole in the interregnum. The nominal roll, as filed on record by the Jail Superintendent, reveals that the conduct of the applicant over the last one year, as well as overall during the period of his incarceration, has been satisfactory.

4. The applicant, in the circumstances, has moved this Court, seeking interim bail of 45 days, in accordance with the guidelines framed by the High Powered Committee of this Court, in its recommendations dated 18th May, 2020. The applicant has also placed reliance on other orders, in similar cases, where, following the said recommendations, 45 days interim bail has been granted, including my judgment dated 11th June, 2020 in Bail Application 1142/2020 (Behruddin v. State), filed by one of the co-accused in the instant case.

5. Mr. Hirein Sharma, learned APP strenuously opposes the grant of bail to the applicant, primarily on the ground that the HPC recommendations, on which the applicant places reliance were, subsequently, revisited on 20th June, 2020, and, in this revisit, it was recommended that the following categories of undertrial prisoners been not considered for grant of interim bail:

â??(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, 376AB, 376B, 376C, 376D, 376DA, 376DB, 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.â??

6. Mr. Sharma submits that, as the allegations against the applicant inter alia involve rioting â?" Section 147 of the IPC being one of the provisions

invoked against him â?" the case of the applicant falls within exception (vi) in the revised High Powered Committee recommendations and cannot,

therefore, merit consideration for grant of interim bail.

7. To a specific query, from the Court, as to whether these exempted categories were present in the original HPC recommendations dated 18th May,

2020, Mr. Sharma responded in the negative.

8. Mr. Lal Singh Thakur, learned Counsel for the applicant however, points out that the submission of Mr. Sharma is incorrect and that, in fact, the six

categories of undertrial prisoners, who have been excepted in the revised High Powered Committee recommendations dated 20th June, 2020, from

being considered for interim bail, were also exempted from such consideration in the High Powered Committee recommendations dated 18th May,

2020.

9. This Court is constrained to record that the submission of Mr. Thakur is correct, and that, therefore the submission of Mr. Hirein Sharma, learned

APP, was not. Insofar as the excepted categories of prisoners are concerned, there is no difference qua the category of prisoners who have been

recommended for non-grant of interim bail, by the High Powered Committee recommendation dated 18th May, 2020, vis-a-vis the excepted category

in the revised High Powered Committee recommendations.

10. On this being pointed out, Mr. Hirein Sharma modifies his stand to submit that, at the time of grant of bail to Behruddin, on which the applicant

places reliance, the fact that riot cases were exempted from the grant of facility of interim bail, was not brought to the notice of this Court.

11. In my view, the applicant cannot be denied interim bail on the ground of exception (vi) in the High Powered Committee recommendations dated

18th May, 2020, or as revisited on 20th June, 2020. The category of cases excepted at Serial No. (vi) are "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." I am in agreement with Mr. Lal Singh Thakur, learned Counsel for the applicant that the expression "riot

cases", as employed, is to be read ejusdem generis with the other categories of cases with which it keeps company, i.e. cases investigated by

CBI/ED/NIA/Special Cell of Delhi Police, cases investigated by the Crime Branch, cases investigated by the SFIO, Terror related Cases, Riot cases

and cases under Anti-National Activities and Unlawful Activities (Prevention) Act. The use of the concluding "et cetera" supports this view, as it

clearly indicates that the categories of cases envisaged as falling under the said head constitute a broad genus. It is obvious that the intention of the

High Powered Committee was essentially to except, from the facility of interim bail, cases where there was large scale rioting, as would render them

analogous to the other categories of cases, visualised in category (vi) supra, and would not apply to the cases where a group of six to seven persons

came together, in a common act of assault, consequent on a sudden altercation, resulting in the death of the person assaulted. Such a case cannot be

treated, in my view, as a "riot case", as envisaged by category (vi) of the excepted categories of cases in the recommendations of the High

Powered Committee, though Section 147 may have been invoked against the accused.

12. Apart from my judgment in Behruddin (supra), a Coordinate Bench of this Court has also granted interim bail, to an accused, against whom

Section 147 of the IPC, inter alia, was invoked, in order dated 27th May, 2020 in Bail Application 275/2020 (Mayser v. State).

13. The applicant, otherwise, fulfils the criteria, on the basis whereof his case deserves consideration for the grant of interim bail, inasmuch as there is no other case pending against him, he has suffered more than two years of incarceration, and his conduct, both over the past one year as well as overall during the period of his incarceration, has been certified as satisfactory by the Jail Superintendent.

14. It is well known that continuous uninterrupted period of incarceration, especially for an undertrial prisoner, has serious and debilitating consequences both physical and psychological.

15. In view thereof, I am of the opinion that the applicant is entitled to be enlarged on interim bail for 45 days in accordance, with the recommendations of the High Powered Committee of this Court, and even otherwise on the merits of the case.

16. The applicant is directed to be released on interim bail of 45 days with effect from the date of his release, subject to furnishing of a personal bond

for ₹ 10,000/- to the satisfaction of the Jail Superintendent. During the period of his interim bail, he shall not leave the borders of Delhi without the

consent either of the learned Trial Court or of this Court. The applicant shall also report at the jurisdictional Police station at Vikas Puri every Tuesday

and Friday at 11 a.m. The applicant shall also provide, prior to his release, to the Jail Superintendent, the mobile contact no. of at least one responsible

person, which would be kept active during the period of the applicant's interim bail, and who could be contacted, should need arise.

17. The applicant shall conduct himself with all due propriety during the period of his interim bail, and it shall be open to the police authorities to, at any

time, visit the premises of the applicant and ensure that these conditions are being complied with. The applicant is also directed to surrender

immediately on the expiry of 45 days, of his release from the jail.

18. The Jail Superintendent shall act on the basis of this order, as uploaded on the website of this Court/emailed to learned Counsel and as produced

before him either by the applicant or by the learned Counsel.

19. The application stands allowed in the aforesaid terms.