

**(2014) 05 AHC CK 0334**

**In the Allahabad High Court**

**Case No :** Criminal Misc. Bail Extention Application No. 156299 of 2014 in  
Criminal Misc. II Bail Application No. 22648 of 2013

Pradeep Shukla

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

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**Date of Decision :** 12-05-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 420, 468, 471

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

**Citation :** (2015) 1 ACR 924 : (2014) 86 ALLCC 420

**Hon'ble Judges :** Amreshwar Pratap Sahi, J

**Bench :** Single Bench

**Advocate :** Sudeep Harkauli, Advocate for the Appellant; Anurag Khanna,  
Advocate for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.P. Sahi, J.—This application to extend bail has been filed on the assumption that Bail Application No. 22648 of 2013 as per the case status report obtained from the computer section of the High Court and even otherwise is still pending. The said information received from the computer section has been placed before the Court. The application, which arises out of the aforesaid bail application, has been placed before this Bench as matters relating to the NRHM scam have been nominated by Hon'ble the Chief Justice to this Bench for hearing.

2. I have heard learned Counsel for the applicant and the learned Counsel for the Central Bureau of Investigation at length and have perused the contents of the orders passed from time to time by this Court as well as by the Apex Court. The applicant's First Bail Application No. 13938 of 2013 was considered and rejected by a learned single Judge of this Court on 31.5.2013. The applicant challenged the same before the Apex Court in Special Leave to Appeal (Criminal) No. 4974 of 2013 which was withdrawn by the applicant and was dismissed accordingly on

5.7.2013 by the following order:--

"Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the petitioner, prays that CrI. M.P. No. 13625 of 2013 application for permission to withdraw the SLP be allowed. Mr. Luthra, learned Additional Solicitor General appearing for the C.B.I., has no objection to that. Accordingly, CrI. M.P. No. 13625 of 2013 is allowed and consequently, the SLP shall stand dismissed as withdrawn.

It will be open to the respondent to apply to the Trial Court to proceed with the trial at the earliest, preferably on day-to-day basis."

3. The second Bail Application No. 22648 of 2013 was filed praying for bail on the grounds of continuing ailment and the medical treatment that was required to be undergone by the applicant apart from other grounds. The Central Bureau of Investigation filed a counter-affidavit and also took a plea that ailment by itself cannot be a ground for grant of bail. The C.B.I. also contested the second bail on the ground that since the first Bail Application had been rejected on merits and the SLP filed by the applicant had been withdrawn, the second Bail could not be entertained by this Court.

4. The learned single Judge held that second bail Application was maintainable as the SLP had been withdrawn and had not been decided on merits. This finding recorded by the learned single judge in the order dated 31.10.2013 has not been put to any further challenge by the C.B.I.

5. On the issue relating to the second Bail being entertained on medical grounds, the learned Judge observed that the C.B.I. has not challenged the deteriorating medical condition of the applicant and on a consideration of the said fact, the applicant was found to be entitled for being enlarged on "Short Term Bail" on medical grounds so that he may receive proper treatment. The order passed by the learned single Judge in the later part of paragraph No. 14 of the said order is extracted here under:

"Thus in the interest of justice, the applicant can be enlarged on short term bail on medical ground so as to enable him to get proper treatment and in order to ensure the speedy and fair trial, certain directions can be imposed upon the applicant. Therefore, without touching the merit of the case, the applicant be enlarged on interim/short term bail for a period of six months to enable him to get proper medical treatment."

6. Thereafter, the learned Single Judge passed the operative part of the bail order contained in Paragraph No. 15 thereof which is extracted here under:--

"15. Let the applicant Pradeep Shukla involved in R.C. 220 2012 E 0002 u/s 10-B I.P.C. read with 420, 468, 471 I.P.C. and section 13(2) PC Act read with section 13(1)(d) PC Act, P.S. CBI, EOU-IV, EO II, New Delhi be released on short term bail for six months on his executing a personal bond and two sureties each in the like amount to the satisfaction of the C.B.I. Court on following conditions:

1. That the applicant will not try to influence the witnesses and will cooperate in the speedy and expeditious trial before the C.B.I. Court.

2. That the applicant will produce the progress/status report from the attending physician or surgeon regarding his health after every two months.

3. That the applicant will not leave the country without prior permission of the Court."

7. It is in the aforesaid background that the present application has been filed which is a Misc. Application praying for extending the said period of bail in view of the continuing ailment of the applicant.

8. To substantiate his submissions" Sri R. Basant, learned Senior Counsel, submits that the applicant is the victim of political cross fire as a result whereof he was implicated in this case and has now landed up in troubled waters on account of his poor physical condition and serious ailment. The applicant as per expert Medical diagnosis is suffering from spinal tumor due to growth detected between vertebrae T4 & T5, recurring Transient Ischemic Attacks and Cardiac Artillery Disorder. Sri Basant has invited the attention of the Court to various documents and prescriptions from several hospitals to submit that in spite of the order dated 31.10.2013, the applicant continued to receive treatment and was discharged from hospital only on 3.12.2013. He has continuously been admitted to hospital on several occasions even thereafter and the aforesaid diseases with which the applicant is suffering would leave no room for doubt and his deteriorating health condition, which fact remains undisputed by the C.B.I., has made him susceptible to conditions that are threatening to life. He has cited an authority of neurology and has also raised his submissions inviting the attention of the Court to the continuing medical unfitness of the applicant that is so serious that the applicant deserves to be continued on further bail.

9. The issue of consideration of merits of the ailment would arise only if the present application is found to be maintainable. The reason is simple, namely the application would be maintainable if the Bail Application itself is treated to be pending as urged by the learned Counsel for the applicant. Learned Counsel had been apprised about the two decisions of the Apex Court in the case of Nazma Vs. Javed @ Anjum, and the case of Rakesh Kumar Pandey v. Udai Bhan Singh (2008) 17 SCC 764, where the observations indicate clearly to the effect that a misc. application in a disposed of matter in a criminal case would not be maintainable as per the statutory law prescribed. It is this objection that had been raised by the Bench itself on the previous occasion that the learned Counsel had been called upon to answer.

10. Sri Basant, therefore, submits that what was intended by the order dated 31.10.2013, particularly the observations contained in paragraph Nos. 14 and 15 extracted herein above, has to be looked into holistically and not in isolation. He submits that the Court clearly intended to grant a bail as an interim measure on the ground of facilitating proper medical treatment and, therefore, the

application has been rightly understood by the computer section of the High Court to be pending. He contends that, however, he does not intend to canvass that the Court is bound to accept the said indication of the computer section but what can be reasonably inferred is that the word "interim" having been used by the Court, and there being no concept of short-term bail, the application should be treated to be pending particularly in view of the second condition imposed in the order dated 31.10.2013. He submits that submission of medical reports was intended to be placed before this Court and, therefore, the bail application cannot be treated to have been finally disposed of. The only legitimate inference, therefore, that can be drawn is that the matter was yet to be disposed off after a periodical assessment, and even if there is a doubt about pendency, then in the back ground aforesaid, benefit should enure to the applicant by adequately protecting the liberty of the applicant more so when the trial is moving at a snail's pace.

11. The submission is that the applicant was under a bona fide belief of the pendency of the said bail application and the semantic inadequacy of the language, if any, in the order dated 31.10.2013 should enure to the benefit of the applicant. It is urged that the applicant had moved the extension application well within time before the expiry of 6 months on 24.4.2014 with a clear averment that the applicant had neither violated any terms of the bail or has done nothing objectionable. Learned Counsel contends that the powers of this Court even otherwise u/s 482 Cr.P.C. are clearly attracted in such a situation. He further submits that as a matter of protection, the applicant is also moving a third bail application, even assuming though not admitting, that the present application is not maintainable. On an over all view of the matter particularly the ailment of the applicant, if the liberty of the applicant is curtailed, there is every likelihood of the applicant not receiving appropriate medical assistance for the diseases from which he is suffering, and in the event of refusal, there is every likelihood of an irreversible loss being suffered by the applicant.

12. It is contended that apart from this, in such a piquant situation, where the third bail application is not likely to be entertained as per Chapter-VIII Rule 18 immediately, compassion should be shown by this Court to entertain this application for extending the bail further so as to make available the applicant the medical facilities effectively. It is submitted that the applicant is cooperating with the trial and has not abused any of the conditions imposed in the order dated 31.10.2013. Consequently, this Court may take a compassionate view in this piquant situation and entertain this application at a juncture when where the applicant would be taken into custody without any opportunity to pursue a fresh bail application.

13. Opposing this application, Sri Anurag Khanna submits that the applicant's bail had already been rejected on merits on 31.5.2013 which stands affirmed by the Apex Court after the withdrawal application was disposed off on 5.7.2013. He further submits that the second bail was filed with all prayers including the

ground of medical ailment and the Court vide order dated 31.10.2013 chose only to grant a short term bail for a limited period of 6 months only. He, therefore, contends that the bail application stood disposed of and no relief in the second bail application any further remained to be granted or considered subsequently. He submits that much capital is being made out by the learned Counsel from the second condition imposed in the order dated 31.10.2013 which was clearly meant to be reported to the C.B.I. Court and not this Court. He contends that the learned Counsel for the applicant cannot dispute the legal proposition that there is no concept of a short-term bail and, therefore, even assuming that the word "interim" has been used in the order dated 31.10.2013, it only reflects the intention of the Court to bail out the applicant on medical grounds for a short period of 6 months only. According to him, the application stood finally disposed of by the order dated 31.10.2013 and any information obtained by the applicant from the computer section is absolutely misleading and is not authentic.

14. Sri Khanna submits that he has instructions to state that in case this Extension Application is being treated by this Court to be maintainable, then in that event the C.B.I. proposes to file a detailed counter-affidavit on the merits of such claim of extension. Sri Khanna submits that the learned Counsel for the applicant is not correct in his submission in construing the contents of order dated 31.10.2013 and there is no reason to believe that the applicant was unaware of the correct gist of the bail order dated 31.10.2013. He submits that the applicant cannot take any undue advantage on the plea of ignorance of law as he is well assisted by efficient counsel, who are aware of the legal position. The submission, therefore, is that the extension application is not maintainable.

15. Sri Basant, on the issue of consideration of such matters and on the meaning of the word "custody" has relied on the Apex Court decision in the case of Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, as explained in the latest decision of the Apex Court in the case of Sandeep Kumar Bafna v. State of Maharashtra and another, Criminal Appeal No. 689 of 2014, decided on 27.3.2014. Sri Basant submits that the High Court should not be influenced by any external media reports magnifying the nature of the alleged scam so as to curtail the liberty of the applicant which otherwise is impermissible in law.

16. Having heard learned Counsel for the parties and having considered the aforesaid submissions, it is clear that the first bail application of the applicant before the High Court was considered on merits and rejected on 31.5.2013. The applicant filed a Special Leave to Appeal that was dismissed as withdrawn in terms as contained in the order of the Apex Court dated 5.7.2013 where after the second bail application was filed. The second bail Application was considered by the learned single Judge without touching the merits of the case purely on medical grounds and on the footing that the C.B.I. has not challenged the deteriorating medical condition of the applicant. Not only this, the Court proceeded on a presumption that the applicant can be enlarged for a short-term

on bail on medical grounds. As canvassed by Sri Basant and as understood by the law of the land, the Criminal Procedure Code or any law for the time being in force does not acknowledge the existence of a concept of a short-term bail. The issue, therefore, is as to whether the order dated 31.10.2013 is an interim order of bail or not?

17. In my considered opinion, even if it is a bail for an interim period, the entire tenor of the order would leave no room for doubt that the applicant was let off for 6 months only on medical grounds. The tenor of the language employed reflects a unhesitant disposal with conditions without any direction to place the matter again for further reconsideration by the Court. As suggested, the order is not a perpetual retention of any discretion to be exercised on an interval of six months in the same application like a festive announcement.

18. There is nothing like a renewal in the same application as it would amount to restoring the same application and reanimate the same. This resumption is not permissible after a pause or a rest. On the facts as discussed above, the application cannot be revived by reinforcements of subsequent facts relating to medical grounds after the order dated 30.10.2013 through an extension application. The fresh grounds of continuing ailment can be made a ground for a fresh bail but such facts which were not available before cannot be pressed into service for a reopening and reconsideration in the same application as it would set up a perpetual precedent to file an application in the same bail application that would go contrary to the correct procedure of law.

19. The order dated 31.10.2013 disposing off the second bail application does not offer more than what it recites and this Court is not required to read more than what is written therein. To read between the lines to find out an intention would be adding more than what is transcribed. The order is not benevolent to the extent as suggested by the learned Counsel. The language of the order brooks no mystery for any further interpretation nor can one suspect or doubt the clarity of it which is as clear as a window pane.

20. To my mind, the learned Judge had not left anything to be decided in future and the application stood disposed of on 31.10.2013 finally. There is yet another reason to conclude the above, namely, the prayer made by the applicant was not of either a short-term bail or an interim bail and, therefore, it was not the case of either of the parties before the learned Judge to consider the grant of an interim or a short-term bail. The learned Judge, who disposed of the matter on 31.10.2013, exercised his judicious discretion to grant a bail for 6 months especially on medical grounds. The description of the bail either as interim or short-term, in my opinion, is absolutely immaterial for the purpose of status of the bail application. The application had been considered after the counter-affidavit had been filed by the C.B.I. and after full scale arguments. The learned Judge, therefore, in my opinion, had disposed of the application finally and nothing remained pending to be reconsidered by the High Court in the same.

21. The argument, which has been raised on the strength of the information given by the computer section, is unacceptable inasmuch as the entire order-sheet of the bail application as maintained by the High Court and the endorsements made, do not indicate the status of this application to be pending. Sri Basant submits that the order-sheet even otherwise does not make even an endorsement of a final disposal. I am unable to accept this contention inasmuch as on 2.10.2013, the entire bail application was heard after Affidavits were exchanged and orders were reserved. The learned Single Judge has not issued any direction to the office so as to presume that the bail application shall again be listed for orders after 6 months. In the absence of any such indication in the order dated 31.10.2013, the raising of any such presumption would be incorrect and against the records.

22. It is not understood as to how the computer section was showing the status of the case to be pending but it goes without saying that the case status report which is issued by the computer section clearly contains a disclaimer that it is not authentic or certified copy of the order regarding the status of a case. To remove any doubts it was open to the learned Counsel for the applicant to have filed a question-answer, the provisions whereof are available under the Allahabad High Court Rules, 1952, and the applicant would have been informed about the correct legal status of the disposal of the application. Thus, to argue that the applicant could draw a legitimate inference from such information of the computer section of the High Court does not appear to hold water. The clear intention of the learned Judge, while passing the order on 31.10.2013, was to bail out the applicant only for a period of 6 months and nothing further. There is, therefore, no occasion to brook any doubt about the same or extend the benefit thereof to the applicant.

23. Having recorded so, I find the present application to be not maintainable and, therefore, this Court does not have the jurisdiction to entertain this application as per the ratio of the judicial pronouncement of the Apex Court in the case of Nazma Vs. Javed @ Anjum, and the case of Rakesh Kumar Pandey v. Udai Bhan Singh (2008) 17 SCC 764.

24. The application, therefore, being not maintainable, is accordingly rejected without prejudice to the rights of the applicant to move a proper regular fresh bail application if so advised in accordance with law. The Registrar General is directed to instruct the office not to furnish any information without verifying the correct status of any proceeding before this Court as the information given by the computer section in the present case has raised a confusion even though the same is legally unfounded as indicated above. The Registrar General may, therefore, take steps for issuing appropriate instructions to the computer section and to the office in this regard.