

Mithlesh Anand vs State on 6 February, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 2832/2018

MITHLESH ANAND

..... Petitioner

Through: Mr. Akshay Chowdhary, Adv.

versus

STATE

..... Responde

Through:

Ms. Rebecca M. John, Sr. Adv.

(Amicus Curiae) with Mr. Pravin

Singh, Ms. Adya R. Luthra and M

Anushka Baruah, Adv. with SI

Shubhanshu, PS Mandawali.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% 06.02.2023

1. As per the previous order of this Court, it had been noted that the petitioner had not surrendered having been released on interim bail on account of HPC recommendations pursuant to the directions of the Hon'ble Supreme Court during the Covid Pandemic. The State had submitted that they were seeking clarifications from the Hon'ble Supreme Court and further directions were, therefore, awaited. This Court had requested Ms. Rebecca John, Senior Advocate to assist this Court as an Amicus to interpret these various orders of the Hon'ble Supreme Court and this Court in this regard. She has brought attention to the following:

(i) This Court in W.P.(C) 4921/2021 (Court on its own Motion v.

State) vide order dated 22nd October, 2021 had passed directions in relation to two different categories of undertrials.

First was 793 undertrials involved in heinous crimes who had been granted bails by the District Courts in which cases a direction was given that there would no further extension of interim bail but, however, to avoid any inconvenience caused to the jail authorities for surrender of a large number of undertrials a phased schedule was provided. As regards the second category of 3828 prisoners who were granted bail on the recommendations of HPC, this Court noted that they were not directed to surrender at that stage and would have to await further orders/directions from the Hon'ble Supreme Court.

(ii) The Order dated 03rd June, 2022 of the Hon'ble Supreme Court in S.M.W(C) No.1/2020 where the Vacation Bench of the Hon'ble Supreme Court directed as under:

"The Interlocutory Applications as well as Special Leave Petitions are dismissed.

Pending Intervention Application shall stand disposed of.

However, 15 days time is granted to the applicants/petitioners/prisoners to surrender before the prison authorities."

(iii) The order dated 09th January, 2023 in S.M.W(C) No.1/2020 by which the Hon'ble Supreme Court has directed the listing of the main suo motu writ petition on 20th January, 2023.

2. The Ld. Amicus Curiae, therefore, submits that a plain reading of the order dated 03rd June, 2022 though passed in interlocutory applications in SLPs, would indicated that the prisoners who had been released on guidelines of HPC were given 15 days time to surrender before the prison authorities. However, she fairly states that the main suo motu writ petition is still pending disposal by the Hon'ble Supreme Court.

3. The learned counsel for the petitioner states that notwithstanding the order of 03rd June, 2022 which seems to have been passed in specific petitions and applications, the State has sought a clarification before the Hon'ble Supreme Court which is listed on 20th February, 2023 and further directions may be awaited. They have also brought to attention a letter of 09th September, 2022 written by the Delhi State Legal Services Authority (DSLISA) to the Director General of Prisons, Tihar, New Delhi adverting to this order dated 03rd June, 2022 and stating that the authority was not in a position to give any clarification regarding the fate of these prisoners released pursuant to recommendations of HPC.

4. Though in the considered opinion of this Court, the directions of 03rd June, 2022 would commend that the undertrials released on the HPC recommendations should surrender, considering that the Covid-19 Pandemic is not amidst us any more, it would be prudent to await the directions of the Hon'ble Supreme Court till the end of this month. It is also pointed by the Ld. APP that Coordinate Benches of this Court have directed prisoners to surrender. The Ld. APP may on the next date bring those relevant orders before this Court in order to assist the Court in that regard.

5. List on 01st March, 2023.

6. This Court will take a confirmed view on the next date before this Court regarding the issue of surrender. In this regard, it is made clear this Court has not given any directions to surrender in the meantime.

7. Order be uploaded on the website of this Court.

ANISH DAYAL, J FEBRUARY 6, 2023/MK