

Court On Its Own Motion vs State & Ors on 24 July, 2020

Author: Siddharth Mridul

Bench: Chief Justice, Siddharth Mridul, Talwant Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3037/2020

COURT ON ITS OWN MOTION

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Through: Court on its own motion

versus

STATE & ORS

Through:

Mr. Maninder Si
Ms. Aekta Vats,
Applicants/Inte
Mr. Rahul Mehra
(Criminal), GNC

IN RE:

Extension of Interim Orders

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 24.07.2020 CM APPL.16289/2020 & CM APPL.16292/2020 (Exemption) Exemption granted subject to all just exceptions. The application is disposed of accordingly.

CM APPL.16290/2020 & CM APPL.16293/2020 (Exemption) The present applications under Section 151 of the Code of Civil Procedure, 1908 have been filed on behalf of the applicant/intervener seeking exemption from filing duly signed and affirmed affidavits in support of the accompanying applications and to pay the requisite court fees.

For the reasons stated in the applications and in view of the present prevailing situation, the same are allowed. The applicant/intervener is allowed to file the duly signed and affirmed affidavits

within a period of one week from the date of resumption of regular functioning of the Court. Further, the applicant/intervener is allowed to file the requisite court fee within a period of 72 hours from the date of resumption of regular functioning of the Court.

With the above directions, the present applications are disposed of. CM APPL.16287/2020 (Impleadment & Clarification) By way of the present application Irshad Ali, son of Shaid Ahmed, seeks to be impleaded in Writ Petition (Civil) No.3037/2020, titled as 'Court on its own motion vs. State and Others', limited to the purpose of seeking impleadment and clarification of the order dated 13.07.2020 rendered by this Full Bench.

Notice.

Mr. Rahul Mehra, learned Standing Counsel (Criminal) accepts notice on behalf of the official respondent.

Having heard learned counsel appearing on behalf of the parties and in view of the circumstance that, it is considered necessary to clarify the scope and ambit of this Full Bench's order dated 13.07.2020, in view of the conflicting interpretations stated to be given to the said order by different Single Benches of this Court, the present application is allowed only for the limited purpose of clarifying the said order dated 13.07.2020, passed by this Full Bench.

This Full Bench by way of its order dated 13.07.2020 directed in paragraph 7 thereof, as follows:-

"7. In this regard, we make it clear that all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi. So far as the criminal matters are concerned, these directions have been issued keeping in view the fact that the jail authorities have limited space to keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to maintain physical distancing amongst jail inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by this Court or the Courts subordinate to this Court, to other inmates of the jail on their return to the jail, the decision of extension of interim bail/bail/parole has been taken from time to time. It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all undertrials/convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole before or after 16th March, 2020.

The above directions were in continuation of our orders dated 25.03.2020, 15.05.2020 and 15.06.2020.

By way of order of even date viz. 13.07.2020, in Criminal Appeal No.193/2020, titled as 'Harpreet Singh vs. State', the Full Bench also answered the following queries, referred to it by the Hon'ble Single Judge vide his order dated 01.07.2020, seeking clarification and guidance from the Hon'ble Full Bench of the orders passed in the

said Writ Petition (Civil) No.3037/2020, titled as 'Court on its motion vs. State & Ors.':-

"7. The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

a. Whether the orders made by the Hon'ble Full Bench in W.P. (C) No.3037/2020, including last order dated 15.06.2020, apply to all interim orders, whether made in civil or criminal matters, and regardless of whether such orders were made on or before 16.03.2020 or thereafter?

b. Where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No.3037/2020?

8. While deciding the issue, the Hon'ble Full Bench may consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C) No.3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020 appear not to be covered thereby."

The Full Bench observed as follows in this behalf:-

"...A plain reading of the order of reference dated 01.7.2020 and in particular paragraph 11 thereof, clearly reflects that the implementation of the directions contained in the orders dated 25.03.2020, 15.05.2020 and 15.06.2020, rendered by the Full Bench are stated to have created conflicting situations between the interpretation given thereto by different Single Judges that need to be resolved.

In this behalf, at the very outset it is observed that this Court was pleased to pass certain directions, whilst taking suo motu cognizance of the extraordinary circumstances, that arose on account of the Covid-19 pandemic.

In this behalf, it is further observed that the functioning of this Court had been restricted only to urgent matters, on account of the outbreak of Covid-19 w.e.f. 16.03.2020.

On the 24.03.2020, the Government of India issued orders whereunder strong measures were enforced to prevent the spread of Covid-19 and a nationwide lockdown was declared, initially for a period of 21 days w.e.f. 25.03.2020, which was thereafter extended from time to time.

In view of the foregoing, and in order to maintain parity, between orders granted on or before 16.03.2020, and those issued thereafter; and further taking note that

insofar as, criminal matters are concerned, those enlarged on interim bail/parole may spread the infection amongst the inmates of the respective jails, where they may be required to surrender; and also in the backdrop of the circumstance, that the jails are overcrowded and have an inherent vulnerability to assist the unchecked spread of Covid-19, owing to space constraints and over congestion, we make it clear that all the directions issued by the Full Bench from time to time in the suo motu proceedings in W.P.(C) 3037/20 have been rendered with a view to check the ongoing spread of the pandemic in Delhi as also the spread of the disease in prisons resultantly, persons who are enlarged on interim bail/parole, granted by this Court or the Courts subordinate to this Court either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except there any orders to the contrary have been passed by the Hon'ble Supreme Court of India, in any particular matter, during the intervening period."

It is relevant to observe that, no clarification of the above order/orders of the Full Bench have been sought, either on behalf of the Government of NCT of Delhi or the Director General of Prisons.

From a plain reading of the foregoing directions, it is axiomatic that, the Full Bench while taking suo motu cognizance of the extraordinary circumstances, arising out of the Covid-19 pandemic, had made it clear that insofar as, criminal matters are concerned, in view of the serious threat posed by the possibility of the unchecked spread of the coronavirus pandemic, by those who have been enlarged on interim bail/parole; and who may carry back with them the Covid-19 infection, so as to infect other inmates of the jail, if they are required to surrender, to the already congested and over-crowded jails, which may not be in a position to strictly maintain physical distancing amongst jail inmates; and considering the inherent vulnerability of the jails, owing to serious space constraints, to effectively control, check and prevent the spread of Covid-19; it was directed that, the interim bail/parole granted to such persons by this Court or the Courts subordinate to this Court, either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except where there are any orders to the contrary, passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period. It is further clarified that this order of extension of interim bail/parole shall be applicable to all under trials/convicts, who have been enlarged on interim bail or parole, as on date, irrespective of the fact that they were so released on interim bail/parole, before or after 16.03.2020.

With the above clarification, the present application is disposed of. CM APPL.16288/2020 (Stay) & CM APPL.16291/2020 (Exemption to Surrender) In view of the clarification issued hereinabove, as well as, the circumstance that, this Full Bench was neither seized off nor considered individual applications, that may have been instituted, praying for grant of interim bail/parole, on their merits in these proceedings, the present applications are not maintainable before this Bench.

The applications are accordingly dismissed, whilst reserving liberty to the applicant to institute appropriate proceedings, in accordance with law.

CHIEF JUSTICE SIDDHARTH MRIDUL, J TALWANT SINGH, J JULY 24, 2020 dn /di