

Nadeem Khan vs State & Anr on 21 July, 2020

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

\$~11 & 12

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL. M.C. 1492/2020

NADEEM KHAN

..... Petitioner

Through: Mr. Hemant Kumar, Advocate.
Versus

STATE & ANR.

..... Respondents

Through: Dr. M.P. Singh, APP for State with SI
Vikas Tiwari, P.S. Vikas Puri.
Mr. R.N. Dubey, Advocate for R-2
with R-2 in person.

AND

CRL. M.C. 1574/2020
NADEEM KHAN

..... Petitioner

Through: Mr. Shivam Jangra and Mr. Hemant
Kumar, Advocates.

Versus

STATE & ANR.

..... Respondents

Through: Dr. M.P. Singh, APP for State with SI
Vikas Tiwari, P.S. Vikas Puri.
Mr. R.N. Dubey, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

ORDER

% 21.07.2020

1. By the above-noted petitions filed under Section 439(2) read with Section 482 Cr.P.C., the petitioner seeks cancellation of interim bail granted to the accused/respondents namely Sandeep and Himanshu vide orders dated 19.05.2020 and 08.07.2020 respectively.

2. Learned counsel for the petitioners submits that although the respondents' case does not fall in the criteria laid down by the guidelines issued by High Powered Committee dated 07.04.2020 but they have been granted interim bail on the basis of the aforesaid guidelines.

3. It is contended that the respondents have also been charged under Section 120B read with Section 395 IPC and one of the sentences that can be awarded under Section 395 IPC is life sentence and

hence the respondents do not meet the criteria laid down by the High Powered Committee. It is also submitted that though the respondent/Sandeep briefly had remained without interim protection but subsequently his interim protection was extended. So far as respondent/Himanshu is concerned, it is stated that earlier his interim bail was rejected on 10.06.2020 for not meeting the criteria but later, it was granted vide the impugned order.

4. Mr. R.N. Dubey, learned counsel for the respondents has referred to the order on charge dated 20.02.2020 to submit that the respondents are charged with the offence of conspiracy to commit dacoity and respondent/Himanshu is also charged with attempt to commit dacoity. It is submitted that one of possible sentences under Section 395 IPC is rigorous imprisonment upto 10 years and thus the respondents' case falls under the criteria laid down in the Minutes of Meeting of the High Powered Committee. It is also submitted that the order on charge has not been challenged by the petitioner.

5. Dr. M.P. Singh, learned APP for the state, on instructions, submitted that the respondents have not been found involved in any other case.

6. Section 395 IPC reads as under:

"395. Punishment for dacoity.--Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

7. The relevant portion of the Minutes of Meeting dated 07.04.2020 of the High Powered Committee is reproduced hereunder:

"In view thereof the Committee is of the opinion that the criteria needs to be further relaxed to give effect to directions of Hon'ble Supreme Court of India. On directions of Hon'ble Chairpersons, DG (Prisons) was requested to furnish the information, for the impact analysis qua the proposed relaxed criteria of UTPs. The same is accordingly submitted.

The Members of the Committee discussed and resolved that following categories of prisoners 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 senior citizens more than 60 years of age and are in custody for six months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less;

(ii) Under trial prisoners (UTPs), who are less than 60 years of age and are in custody for one year or more, facing trial in a case which prescribes a maximum sentence of 10 years or less ;

(iii) Under trial prisoners (UTPs)/Remand Prisoners (with respect to whom, Charge sheets are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of 7 years or less ;

xxx It is clarified that the decision taken by this Committee for release of prisoners on "interim bail" vide criterion adopted in the meeting dated 28.03.2020 and the one adopted hereinabove today, shall in no way affect the rights of other UTPs, who do not stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular / interim bail. The concerned courts on filing of applications by such UTPs may consider the same on merits, in accordance with law."

8. Thereafter, the High Powered Committee, vide its Minutes of Meeting dated 18.05.2020, has further relaxed the criteria for grant of interim bail.

9. I deem it apposite to refer to the relevant portion of the order on charge which is as follows :-

"....In nutshell, prosecution case is that written complaint was filed by complainant/victim on 16.05.2019 alleging therein that on that date at about 5 p.m. while he was on his way to his house, some boys surrounded him and out of them three pointed out a pistol, abused him and tried to fire upon him but in vain and on raising alarm, four of them were apprehended at the spot while other managed to flee away from that place and later on, Himanshu Mishra disclosed the name of other accused persons as well involving the name of Const. Sandeep, the then Naib Court, and also wife of the complainant/victim. It is also case of the prosecution that later on during investigation of the present matter, arms and ammunition were also got recovered. CDRs were also collected. One of the apprehended boy from the spot was found juvenile and was sent to JJB for his trial. Remaining accused were also arrested and chargesheet was prepared against the accused persons to face trial for the offences punishable under Sec. 395/511/398/201/120-B/34 IPC and 25 Arms Act.

xxx ...With the above observations, this court is of the view that there is sufficient material on record to make out prima facie case under Sec. 120-B IPC read with Sec. 395 IPC against all the accused persons. Further, this court is also of the view that there is sufficient material on record to make out prima facie case under Sec. 395/511 read with Sec. 120-B IPC against accused persons Himanshu Mishra; Kamal Singh and Ashish Panwar; 398 IPC against Himanshu Mishra; 25/54/59 Arms Act against Himanshu Mishra; and 201 IPC against accused Sandeep...."

10. Nominal Rolls of both the respondents have been summoned and placed on the record. According to the Nominal Rolls, the respondent/ Sandeep had remained in custody for a period of 1 year and 4 days and the respondent/Himanshu Mishra had remained in custody for a period of 1 year, 1 month and 25 days till their release on interim bail.

11. As per the charge sheet, the present case relates to an attempt to commit dacoity and the conspiracy to commit it. As the present challenge is only confined to grant of interim bail, without going into the merits of the case and in view of the prevailing situation caused on account of COVID - 19 pandemic, prima facie, I find considerable force in the submission of learned counsel for the respondents that as one of the alternate punishments under Section 395 IPC provides for a maximum sentence upto 10 years, the respondents' case falls under the criteria laid down by the High Powered Committee as they also meet the other eligibility conditions, inasmuch as, both the respondents have spent more than one year in custody and are not found involved in any other case.

12. As a result, the above-noted petitions are dismissed.

13. A copy of this order be communicated to the concerned court.

MANOJ KUMAR OHRI, J JULY 21, 2020/ga