

Kaushal @ Sahil vs State Of Nct Of Delhi on 25 January, 2022

Author: Rajnish Bhatnagar

Bench: Rajnish Bhatnagar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1476/2021

KAUSHAL @ SAHIL

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Through: Mr. Daviender Hora, Advoc

versus

STATE OF NCT OF DELHI

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Through: Ms. Rajni Gupta, APP for t
with SI Madhav

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
ORDER

% 25.01.2022 CRL.M.A. 20735/2021 In BAIL APPLN. 1476/2021

1. The matter was listed on an office note dated 29.07.2021 which was to the effect that the petitioner has not surrendered before the jail authorities till 19.07.2021 on the expiry of his interim bail, therefore, the predecessor Court directed the investigation officer to proceed with the matter and obtain the NBW against the petitioner/accused from the appropriate form. Again on 02.12.2021, the file was taken up on office note as no report has been filed by the State in regard to the status of the non bailable warrant issued against the petitioner and the State was directed to file a report in this regard and the matter was listed for 03.02.2022. In the meanwhile, the petitioner moved an application seeking cancellation of order dated 30.07.2021.

2. It is averred in the application that vide order dated 02.06.2021, interim bail was granted to the petitioner for a period of 45 days and he was to surrender before the jail authorities on 19.07.2021 and it is further submitted that in the meanwhile, the chare-sheet was filed. It is further averred in the application that as there was change in the circumstances, the applicant/petitioner approached the Court of Ld. A.S.J. for grant of regular bail/interim bail U/s 439 Cr.P.C. which was heard by the Ld. ASJ Rohini Court who was pleased to grant interim bail to the petitioner vide order dated 19.07.2021 till 29.07.2021.

3. It is further averred that on 29.07.2021 the bail application again came up for hearing before the Court of Ld. A.S.J. and again interim protection was extended till the next date of hearing which is

still pending and the interim bail of the petitioner/accused got extended from time to time. It is further averred that on 16.12.2021 the IO of the case appeared before the Ld. ASJ and apprised the Court that non bailable warrants have been issued by this Court against the petitioner on 30.07.2021. It is submitted that this revelation by the IO came as a shock to the counsel for the petitioner who searched for the orders on internet as the petitioner had been granted interim regular bail vide order dated 19.07.2021.

4. It is further submitted that the investigating officer has not apprised this Court about the interim regular bail and succeeded in misleading this Court and got the non bailable warrants issued against the petitioner on the ground that he has not surrendered before the jail authorities. It is further averred in the application that there was no occasion for the petitioner/applicant to surrender before the jail authorities on 19.07.2021 as the interim bail was granted by the trial Court. It is further averred that the investigating officer was duty bound to inform this Court that the interim bail has been granted to the applicant/petitioner but he failed to do so on 30.07.2021 as well as on 02.12.2021.

5. I have heard the Ld. counsel for the petitioner as well as Ld. APP for the State and perused the records of this case.

6. Ld. counsel for the petitioner has argued on the lines of his application.

7. On the other hand, at the outset, it is submitted by the Ld. APP for the State that the petitioner was granted interim bail for a period of 45 days w.e.f. 02.06.2021 which was to expire on 19.07.2021. However, Ld. ASJ extended the interim bail of the petitioner which should not have been done. It is further submitted by the Ld. APP that the petitioner moved a regular bail application before the Sessions Court Rohini on 17.07.2021 and in the entire bail application, it has not been mentioned that the petitioner is on interim bail in this case and obtained the order by concealing the facts. It is further submitted by the Ld. APP that the petitioner is liable to surrender immediately as his interim bail has already expired and no orders have been passed in his application U/s 439 Cr.P.C which is still pending.

8. In the instant case, the Ld. counsel for the petitioner has not even filed the order dated 19.07.2021 passed by the Ld. A.S.J. alongwith the present application under disposal. In these circumstances a report was called from the Ld. ASJ and the Ld. ASJ has sent the report dated 11.01.2022, relevant portion of which reads as follows:

"It is most respectfully submitted that report has been sought in terms of order dated 10.01.2022 with respect to the bail application having registration No 2340/2021, FIR No. 830/2020, Police Station Samay Pur Badli, Delhi, moved by accused Kaushal @ Sahil. The said bail application was taken by the undersigned in terms of the bail roaster for the first time on 19.07.2021 through video conferencing in view of the Covid-19 pandemic. It was an application under Section 439 Cr.PC for grant of regular bail. The learned Additional Public Prosecutor for the State requested for adjournment as the IO as well the complainant were not present for hearing of the

said application. Thereafter, a wrong submission was advanced on behalf of the accused/applicant stating that he is already on interim bail for 45 days granted by the Sessions Court which was to expire on that day itself. The said wrong submission of the accused/applicant was never refuted or rebutted on behalf of the State as is reflected in the order. In the said backdrop, inadvertently the interim bail of the accused/applicant was extended till next date of hearing. The said fact regarding interim bail being granted by the Hon'ble High Court was though pleaded in the application, but due to oversight got overlooked due to the false submission made on behalf of the accused/applicant. The notice was issued to the IO as well as the complainant for joining the proceedings on the next date of hearing and the matter was adjourned for 29.07.2021. It is further humbly submitted that on that day, due to Covid-19 Pandemic, the matters were being taken up through Video Conferencing and 13 bail applications were listed on that day. Apart from that, 14 regular matters were also listed. The said oversight occurred due to work pressure and the documents being available in soft form. The said unintentional error on the part of undersigned is highly regretted"

9. In the report mentioned hereinabove, the Ld. ASJ has stated that a wrong submission was advanced on behalf of the applicant/accused that he is on interim bail for 45 days granted to him by the sessions court which was to expire on 19.07.2021 and the said wrong submission was never refuted by the State. The report further reveals that due to inadvertence and oversight the interim bail was extended on the basis of the false submissions made on behalf of the accused/applicant.

10. The reading of the report further reveals that the fact regarding interim bail having been granted by this Court was pleaded in the application but the explanation given by the Ld. ASJ is that due to oversight and false submissions made on behalf of the applicant/accused, this fact got over looked. The Ld. ASJ should have been more cautious and he should have called for the order granting interim bail to the petitioner, rather the Ld. Trial Court simply relied on the submissions made on behalf of the applicant/accused.

11. The report given by the Ld. ASJ is mostly stating that wrong and false submissions were made on behalf of the applicant/accused and the wrong submissions were not refuted by the State. Be that as it may, it was the Ld. ASJ who was to pass the order on the bail application so it was his duty to get his record straight and before passing any order he should have gone through the previous orders granting bail to the petitioner/accused. No doubt, Judges sometimes believe the statement made by the two sides but again the entire responsibility lies with the judge so it was the duty of the Ld. A.S.J. to have gone through the orders before passing any order on the bail application of the petitioner. I am leaving it at that and the Ld. ASJ is advised to be cautious in future.

12. The regular bail application of the petitioner is pending for disposal before the Ld. Sessions Court and there are no ground for extension of the interim bail granted to the petitioner/accused by this Court which has already expired on 19.07.2021. In view of this, the petitioner/accused is directed to surrender forthwith. Digitalized copy of this order be sent to the concerned Jail Superintendent for information. The application is disposed of accordingly.

RAJNISH BHATNAGAR, J JANUARY 25, 2022 Sumant