

Harmeet Singh vs State Of Nct Of Delhi And Ors on 25 November, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

\$~24, 25 & 26

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 4172/2021 & CRL.M.A. 18800/2021

HARMEET SINGH

..... Petitioner

Through:

Mr.Varun Goswami

versus

STATE OF NCT OF DELHI AND ORS

Through:

Mr.Mukesh Kumar, APP for State
with SI Vivek Lamba, Police Station
Janakpuri.

Ms.Jaspreet Gogia, SC
Mr.Karanvir Gogia, Ms.Shivangi
Singhal & Ms.Vazhika Gupta,
Advocates for R-2 & 3.

+ BAIL APPLN. 4173/2021 & CRL.M.A. 18801/2021

DEVYA SINGH

Through:

Mr.Varun Goswami

versus

STATE OF NCT OF DELHI AND ORS

Through:

Mr.Mukesh Kumar, APP for State
with SI Vivek Lamba, Police Station
Janakpuri.

Ms.Jaspreet Gogia, SC
Mr.Karanvir Gogia, Ms.Shivangi
Singhal & Ms.Vazhika Gupta,
Advocates for R-2 & 3.

+ BAIL APPLN. 4174/2021 & CRL.M.A. 18802/2021

HIMANSHU YADAV

Through: Mr.Varun Goswami, Advocate.

versus

STATE OF NCT OF DELHI AND ORS

..... Respondent

BAIL APPLN. 4172/2021, BAIL APPLN. 4173/2021 & BAIL APPLN. 4174/2021

Signature

Not Verified

Digitally Signed

By:SUMIT GHAI

Signing

Date:25.11.2021

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PS to HMJ ANU
MALHOTRA.

Through: Mr.Mukesh Ku
with SI Vivek
Janakpuri.
Ms.Jaspreet
Mr.Karanvir G
Singhal & Ms.
Advocates for

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 25.11.2021 CRL.M.A. 18800/2021 (Ex.) CRL.M.A. 18801/2021 (Ex.) CRL.M.A. 18802/2021 (Ex.)
Exemptions allowed subject to all just exceptions. The applications stand disposed of.

The applicants, vide the present applications seek the grant of anticipatory bail or transit bail for a period of 30 days in relation to an unknown FIR stated to be registered at PS Kapurthala, Punjab for the offences allegedly punishable under Sections 420/379/34 of the Indian Penal Code, 1860 submitting to the effect that they apprehend arrest, in as much as, they have been called upon to put in appearance on 27.11.2021 as per information received by the lawyer on 22.11.2021. It has inter alia been submitted on behalf of the applicants that the atmosphere is very hostile and that the counsel for the applicants has not even been supplied with the copy of the complaint.

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A catena of verdicts is sought to be relied upon on behalf of the applicants to the effect:-

- (i) Capt. Satish Kumar Sharma Vs. Delhi Administration and Others, ILR (1990) 3 DEL 203;
- (ii) Pritam Singh Vs. State of Punjab, 19 (1981) DLT 300;
- (iii) Pritam Singh Vs. State of Punjab, 18 (1980) DLT 405;
- (iv) Devender Garg Vs. State in Bail Appln.393 of 2019, judgment dated 15.02.2019;
- (v) Satish Garg Vs. State in Bail Appln.394 of 2019;
- (vi) Surya Pratap Singh & Anr. Vs. State of Karnataka & Anr. in Bail Appln. 1937 of 2019, judgment dated 07.08.2019.

with inter alia reliance also placed on behalf of the applicants on the verdict dated 03.11.2021 in Bail Appl. Nos.3942/2021 & 3943/2021 of this Court whereby, the transit bails have been granted.

On behalf of the State of the NCT of Delhi, the learned APP for the State submits that the details of the allegations against the applicants be allowed to be supplied to them and beyond that the applicants may seek redressal before the Court of the concerned territorial jurisdiction.

On behalf of the respondent nos. 2 & 3, the learned SC places reliance on the order dated 14.06.2013 of the Hon'ble Supreme Court in "Sandeep Sunilkumar Lohariya Vs. Jawahar Chelaram Bijlani @ Suresh Bijlani & Ors." in Petition(s) for Special Leave to Appeal (Crl) No(s).4829/2013, wherein there are observations inter alia to the effect that it was difficult to comprehend under what provisions and under what authority of law such an application seeking grant of transit bail had even registered by the High Court of Madhya Pradesh. There are observations however in the first paragraph of this order which indicate that no notice had also been issued to Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.11.2021 19:07:11 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the State of Maharashtra where the case had been registered under Sections 302/120B/34 of the Indian Penal Code, 1860 and Sections 3 & 25 of the Arms Act, 1959 in relation to an offence at Navi Mumbai, Maharashtra.

Significantly, the said order indicates also that the accused had applied for anticipatory bail before the High Court of Bombay which had been rejected vide order dated 25.02.2013, whereafter, the application for anticipatory bail in the nature of a transit bail had been filed before the High Court of Madhya Pradesh. The said facts put forth through this order relied upon on behalf of the respondent nos.2 & 3 are at complete variance to the facts put forth in the instant case.

As regards the submission qua the maintainability of such an application which is opposed on behalf of the respondent nos.2 & 3 as well as on behalf of the complainant by the learned counsel who is present, it is essential to observe that in view of the verdict of the Hon'ble Division Bench of this Court in "Capt. Satish Kumar Sharma Vs. Delhi Administration and Others", ILR (1990) 3 DEL 203 and the consistent view of this Court in "Pritam Singh Vs. State of Punjab" 19 (1981) DLT 300; "Pritam Singh Vs. State of Punjab" 18 (1980) DLT 405; "Devender Garg Vs. State" in Bail Appln.393 of 2019, a judgment dated 15.02.2019;

"Satish Garg Vs. State" in Bail Appln.394 of 2019 and "Surya Pratap Singh & Anr. Vs. State of Karnataka & Anr." in Bail Appln. 1937 of 2019, a judgment dated 07.08.2019, it has been categorically observed by the High Court of Delhi that no restrictions for grant of anticipatory bail have been imposed in Section 438(1) of the Cr.P.C. for exercise of jurisdiction by that High Court or Court of Sessions within whose territorial jurisdiction, a Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.11.2021 19:07:11 This file is digitally signed by PS to HMJ ANU MALHOTRA.

person has a reason to believe that he may be arrested on an accusation of having committed a non-bailable offence and that such High Court or Court of Sessions has been conferred jurisdiction to exercise such power and that though it is no doubt true

that the High Court and Court of Sessions within whose territorial jurisdiction the offence has been committed and within whose jurisdiction the offence ordinarily being inquired into and tried by the Court shall also have the jurisdiction to grant anticipatory bail, it however does not take away the jurisdiction of the High Court and the Court of Sessions to grant anticipatory bail where a person has reason to believe that he would be arrested in connection with a non-bailable offence and by taking away the jurisdiction of the High Court or the Court of Sessions for the grant of anticipatory bail within its territorial jurisdiction in respect of a person who may be arrested in connection with a non-bailable offence would be reading words in the section which are not found therein and that the beneficial provisions contained in Section 438 of the Cr.P.C. must be saved, not jettisoned with it having been observed therein that an over- generous infusion of constraints and conditions which are not to be found in Section 438 can make its provision constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions.

In the facts put forth in Capt. Satish Kumar Sharma (supra), it had been categorically observed to the effect that it cannot be disputed that since there is a threat of deprivation of liberty of the petitioner in the State of Delhi in connection with an offence alleged to be committed in the State of Uttar Pradesh, the cause of action in part certainly arises in Delhi and that Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.11.2021 19:07:11 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the Court at Delhi would have thus, the jurisdiction in the matter irrespective of the seat of the Government or the High Court within whose jurisdiction the offence is alleged to have committed.

As observed hereinabove already, the verdicts relied upon on behalf of the applicants referred to hereinabove are consistent in its view that the grant of transit bail or anticipatory bail by a Court even of the Court of Sessions or a High Court cannot be held to have been curtailed by the provisions of Section 438 of the Cr.P.C., 1973. This Court further fortified by the observations of this Court in Pritam Singh (supra) vide paragraph 4 thereof, which reads to the effect:-

"4. I have heard the learned counsel at length. The offence of S. 406 I.P.C. which is the only non-bailable offence in these cases can be tried both in the courts in Punjab and in the courts at Delhi, and if the Delhi courts have the jurisdiction to try, they will also have the right to grant bail. That apart, it seems to me that there is nothing in S. 438 Cr. P.C. which restricts the jurisdiction of the High Court or the court of session. One need not mix up the jurisdiction relating to cognizance of an offence with that of granting of bails. Bails are against arrest and detention. Therefore, an appropriate court within whose jurisdiction the arrest takes place or is apprehended or is contemplated will also have jurisdiction to grant bail to the person concerned. If the

court of session or the High Court has the jurisdiction to grant interim bail, then the power to grant full anticipatory bail will emanate from the same jurisdiction. Concurrent jurisdiction in courts situated in different States is not outside the scope of the Cr. P.C. It is not possible to divide the jurisdiction under S. 438 Cr. P.C. into an ad interim and complete, but it is permissible if it is so expedient or desirable, for any of the courts competent to take cognizance of and to try an offence and the courts competent to grant bails to grant anticipatory bail for a specified period only. I, therefore, reject Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.11.2021 19:07:11 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the contention of the State of Punjab with regard to the jurisdiction of this court. I also do not see any reason or circumstances why this court should only grant interim bail in these case and direct the petitioners to approach the courts in Punjab."

Thus, the submission that has been made on behalf of the respondent nos.2 & 3 and on behalf of the complainant that the applications are not maintainable, cannot be accepted.

However, taking into account the factum that the applicants have been aware since 22.11.2021 of the complaint having been made against them for which they have been summoned for the date 27.11.2021, in as much as, it has been undertaken on behalf of the respondent nos.2 & 3 by the learned Standing Counsel that the details of the said complaint and all allegations levelled against the applicants would be made available to them during the course of the day within 15 minutes, the said undertaking be complied with by the respondent nos.2 & 3 and it would be open to the applicants to seek redressal before the Court having territorial jurisdiction.

In view thereof, the prayer made by the applicants seeking the grant of transit bail or anticipatory bail cannot be granted.

The applications are disposed of accordingly.

ANU MALHOTRA, J NOVEMBER 25, 2021 'Neha Chopra' Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.11.2021 19:07:11 This file is digitally signed by PS to HMJ ANU MALHOTRA.