

Madan Lal vs The State (Nct Of Delhi) on 22 April, 2020

Author: Anup Jairam Bhambhani

Bench: Anup Jairam Bhambhani

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL. A. No.9/2020

MADAN LAL

..... Appellant
Through: Ms. Inderjit Sidhu, Advocate

versus

THE STATE (NCT OF DELHI) Respondent
Through: Mr. Kewal Ahuja, APP for the State

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% 22.04.2020 By way of this application, the appellant seeks modification of order dated 31.01.2020 whereby the appellant's sentence has been suspended on the following conditions:-

" xxxxxx It is not in dispute that the applicant has completed more than five years of sentence, out of total sentence of 10 years awarded by the Trial Court.

Taking into account the quantum of sentence already undergone and the hearing of the appeal shall take substantial time, this Court is inclined to suspend the sentence of the applicant during the pendency of the appeal. Therefore, the applicant shall be released on bail on his furnishing personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the Trial Court. The applicant shall not involve himself in any other case and in the event of any report against him, this Court would CRL. A. No.9/2020 page 1 of 8 consider the desirability of cancelling the suspension of sentence. The applicant shall also ensure his presence at the time of hearing of the appeal.

xxxxxx "

(Emphasis supplied) Ms. Inderjit Sidhu, learned counsel for the appellant draws attention to order dated 09.04.2020 made by a Division Bench of this court in Court of its own Motion vs. State WP (Crl.) No. 779/2020, in which matter by reason of the prevailing public health emergency, it has been directed that all bail orders passed by this court or by courts subordinate to it on or before 07.04.2020 stand modified and

be read as granting bail without the condition of furnishing surety bond. Counsel submits that in consonance with that order, the condition/ requirement of furnishing a surety imposed upon the appellant by order dated 31.01.2020 be also modified to that extent.

Mr. Kewal Ahuja, learned APP for the State opposes the application, firstly on the ground that the relaxation granted by the Division Bench by its order dated 09.04.2020 is available only to under-trial persons and not to convicts; and secondly, on the ground that present case is one of heinous offences committed by a father upon his own daughter who was at the relevant time only about 5 years of age.

Para 6 of the Division Bench order dated 09.04.2020 (as reported in MANU/DE/0944/2020) reads as under:-

"6. Thus all bail orders, passed by this Court or by the Courts subordinate to it, on or before 7th April 2020, in pursuance where to the under-trial prisons (sic) have not been released on bail owing to failure to satisfy the condition of CRL. A. No.9/2020 page 2 of 8 furnishing surety bond, are modified and be read as granting bail without the condition of furnishing surety bond and instead allowing such under-trial prisoners to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail."

Ms. Sidhu disputes the State's contention as to the truth of the allegations against the appellant and heinousness of the offence and states that that issue would in any case be decided at the time of final hearing of the appeal. As for the waiver of the condition of furnishing surety bond, Ms. Sidhu contends that since the essential reason for the Division Bench order of 09.04.2020 is the prevailing public health emergency and the dire need to decongest prisons, the rationale of that order must be applied even to convicts seeking suspension of sentence. She urges that since the appellant's sentence has been already been suspended by order dated 31.01.2020, which is before the cut-off date stipulated in the Division Bench order, on grounds of parity the condition imposed upon the appellant for furnishing surety bond be also dispensed with.

In response to the court's query, Ms. Sidhu submits that she has instructions to state that in the event of his release from prison, the appellant shall not stay in the same premises or property as the complainant/victim; and that this may be added as a condition of suspension of sentence.

The Division Bench order dated 09.04.2020 proceeds on the following perspective :

"1. This petition has been registered on receipt by the Registrar General of this Court of communication dated 7th April, 2020 from Member Secretary, Delhi State Legal Services Authority CRL. A. No.9/2020 page 3 of 8 (DSLISA) and which communication in turn is in terms of the Resolution dated 7th April, 2020 of the High Powered Committee (HPC) constituted for Delhi pursuant to directions contained in the order dated 23rd March, 2020 of the Supreme Court in Suo Motu

Writ Petition (C) No. 1/2020 titled In Re:

Contagion of Covid 19 Virus in Prisons concerning inter alia decongestion of prisons. The HPC vide Resolution passed in the meeting held on 7th April, 2020 has recommended as under:

"D.G. (Prisons) has further apprised the Chair that there are large number of UTPs who have been granted bail by different Sessions Courts and Courts of Magistrates, but they are still in jail, for want of sureties.

Members of the Committee deliberated and resolved that UTPs in whose favour, the bail orders were passed by different courts may have been incapacitated to furnish bail bonds and surety bonds, owing to the outbreak of Covid-19 and scant working of the courts, thus, the bail orders qua such UTPs are required to be modified, to the extent that they may be released on furnishing "Personal Bond", with rest of the conditions if any, imposed remaining unaltered.

Keeping in mind the outbreak of pandemic, the functioning of courts was restricted to very urgent matters only, notification in this regard was issued by Delhi High Court bearing notification no. 155/RG/DHC/ 2020 dated 20.03.2020. On 24.03.2020, Order No. 40-3/2020-DM-1(A) was issued by Govt. of India taking strong measures to prevent the spread of Covid-19 and a nationwide lockdown for a period of 21 days was declared with effect from 25.03.2020.

CRL. A. No.9/2020 page 4 of 8 Owing to this restricted movement such UTPs despite being granted bail are languishing in jail for not being able to produce and furnish "Surety Bond". Committee is of the opinion that bail orders qua such UTPs are required to be modified through a Judicial Order. Ordinarily, for modification of bail orders/conditions, applications are required to be filed before concerned court. However, keeping in mind the extraordinary conditions, Committee feels that approaching the Court by each UTP seeking modification of bail order, would result into wastage of time and might go against the measures which are being taken to prevent the spread of Corona virus. Thus, Committee is of the opinion that a Judicial order would be required from Hon'ble High Court of Delhi, for modification of such bail orders passed either by High Court of Delhi or any court subordinate to it, on or before today's date i.e. 07.04.2020, thereby modifying/doing away with the condition of furnishing surety bond and instead allowing such UTPs to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail.

It may however be clarified that the Committee does not recommend change of any other condition (if any) imposed in the bail orders passed by the concerned court.

xxxxxx "4 . We have considered the recommendation of the HPC in the context of the submission of Mr. Rahul Mehra, Advocate and are of the view that in view of the unprecedented prevailing

circumstances and the matter of decongesting the prisons with which the Supreme Court was concerned in the writ petition aforesaid, and without creating any precedent, a case for CRL. A. No.9/2020 page 5 of 8 modifying the bail orders passed either by this Court or by any court subordinate to it, on or before 7th April, 2020, thereby doing away with the condition of furnishing surety bond and instead, allowing the under-trial prisoners to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail, is made out. We order accordingly.

5 . In consonance with the recommendation of the HPC, we further clarify that this order should not be construed as changing any other condition if any imposed in the bail orders aforesaid passed by this Court or by any Court subordinate to it."

(Emphasis supplied) Furthermore, it is seen that in minutes of meetings dated 28.03.2020 and 18.04.2020 of the High Powered Committee, there is reference to grant of 'special remission' and 'emergency parole' to convicts, with which the High Powered Committee has dealt separately, although those deliberations do not find reference in the Division Bench order, since that issue was not before the Division Bench.

Upon a conspectus of the foregoing, this court is persuaded to accept the appellant's contention that the essence of the Division Bench order dated 09.04.2020 should apply equally to both category of inmates, namely undertrials as well as convicts.

The plain fact is that by reason of the nationwide lockdown and the skeletal functioning of courts, it is not possible for convicts who have been granted suspension of sentence to furnish surety bonds just as it is impossible for undertrials. Convicts are equally being exposed to unnecessary health risk in prisons just as undertrials are, not to CRL. A. No.9/2020 page 6 of 8 mention the risk to other prison inmates due to overcrowding of prisons. The impact of the lockdown is therefore the same, whether an inmate is an undertrial or a convict. To apply the principle contained in the Division Bench order dated 09.04.2020 to convicts as it does to undertrials, would accordingly be the only meaningful reading of that order.

Moreover, the apprehension entertained by this court in regard to where the appellant would reside after his temporary release from prison stands allayed by the statement made by Ms. Sidhu, that upon his release from prison the appellant shall not stay in the same premises or property as the complainant/victim.

In the above view of the matter, order dated 31.01.2020 is modified in line with Division Bench order dated 09.04.2020 to the effect that the appellant shall be entitled to suspension of his sentence subject to compliance of all other conditions of order dated 31.01.2020, except that the appellant shall not be required to furnish a surety bond and that the personal bond shall be furnished to the Jail Superintendent instead of the Trial Court.

It is further directed that the appellant shall not reside in the same premises or property as the complainant/victim and shall also furnish to the Investigating Officer and file on record in this appeal, the fresh address where he will be residing upon his release from prison.

Nothing in this order shall be construed as an expression on the merits of the matter.

The application stands disposed of in the above terms. A copy of the order be sent to the concerned Jail Superintendent.

CRL. A. No.9/2020 page 7 of 8 Appeal to remain on the Regular Board and be listed in its turn.

ANUP JAIRAM BHAMBHANI, J

APRIL 22, 2020
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