

Pankaj Mehra vs State (Gnct Delhi) on 19 May, 2020

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN.903/2020
PANKAJ MEHRA Applicant
Through: Mr. Hemant Gulati, Adv.

versus

STATE (GNCT DELHI) Respondent
Through: Mr. Ashok Kumar Garg, APP for
State.
Mr. Nitin Mehra, Adv. for
complainant.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 19.05.2020 The status report of the State is on the record.

In view of the submissions that had been made on behalf of the applicant that his father is to be operated upon on 20.05.2020, a submission has been made on behalf of the complainant and as submitted through the status report that there are the brother Mr. Anil Mehra and a sister Ms. Sabeena of the applicant residing in the same locality where the father of the applicant lives and that they can look after the well being of the father of the applicant as well as the surgery that is to be performed. In view of submissions that have been made on behalf of the applicant by learned counsel for the applicant that the applicant's brother and sister do not even visit the father, the State was called upon to submit a status report in relation to the said submission, vide which status report submitted under the signature of Inspr. Amit Kumar, Inspr. Investigation, Shalimar Bagh, it has been reported to the effect that the elder brother of the applicant named Mr. Anil Mehra and his sister Ms. Sabeena daily visit their parental home and presently the treatment of the applicant's father is being carried out by his elder brother Mr. Anil Mehra and elder sister Ms. Sabeena.

Learned counsel for the applicant however submits that the said information is incorrect and that an affidavit of the mother of the applicant in relation thereto can be submitted.

Without adverting to the said aspect, in view of the status report that has been submitted by the State, which is an official act, which is presumed to have been done appropriately and in accordance with law, the Court does not consider it appropriate to enter into controversy of any other persons being available to look after the father of the applicant, in as much as the status report that has been submitted by the State submitting to the effect that Mr. Anil Mehra and Ms. Sabeena, the brother

and sister of the applicant daily visit their parental home and the treatment of the applicant's father is being carried out by the elder brother Mr. Anil Mehra and elder sister Ms. Sabeena of the applicant.

The prayer made in the application could thus be disposed of in view thereof.

It has however now been submitted by learned counsel for the applicant that in terms of the decision of the Hon'ble High Powered Committee of this Court dated 18.05.2020 at 6 pm through video conferencing, the inmates who are in custody in cases under Section 302 of the Indian Penal Code, 1860 for a period of more than 2 years would be entitled to interim bail for a period of 45 days. The copy of the said decision of the Hon'ble High Powered Committee of this Court dated 18.05.2020 has been sent through email. A perusal thereof indicates that the said minutes of the Hon'ble High Powered Committee dated 18.05.2020 are in view of risk of COVID-19 to inmates of the Rohini Jail in as much as there have been 15 inmates in Rohini Jail and one staffer of the Rohini Jail who have tested positive for COVID-19, it is essential to observe that it has been specifically directed by the Hon'ble High Powered Committee vide minutes dated 18.05.2020 qua item no.6, which reads to the effect:

"ITEM NO.6:- DETERMINING FRESH CATEGORY OF PRISONERS WHO CAN BE RELEASED ON INTERIM BAIL Members of the Committee have taken into consideration that on the basis of the criteria adopted earlier, as on date 3678 inmates/ convicts/UTPs have been released on parole/interim bail.

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee about the letter/representation dated 16.05.2020 wherein DG (Prisons) submitted that first case of COVID-19 (Novel Corona Virus) positive has been detected in Delhi Prisons (Rohini Jail). He has informed that one inmate was admitted in DDU Hospital on 10.05.2020 for intestinal problem where he was operated. After operation, he was also tested for COVID-19 (Novel Corona Virus) on 11.05.2020 and was found positive on 13.05.2020. It is also submitted by DG (Prisons) that before being admitted to DDU Hospital, this inmate, namely "K"

was sharing barrack with 19 other inmates, all of whom along with five jail staff were tested for COVID-19 (Novel Corona Virus). He informed that as per the report received, 15 inmates and one staff have been found to be COVID-19 positive.

In view of this situation vide his letter dated 16.05.2020, DG (Prisons) has requested that the criteria adopted earlier needs to be relaxed so as to further decongest the jails as still the present occupancy of the Jail exceeds the optimum capacity of the Jail.

In view of the prevailing situation and to prevent the spread of COVID-19 (Novel Corona Virus) and to ensure social distancing amongst prisoners, 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 the report submitted by DG (Prisons) vide his letter dated 16.05.2020 and resolved that prisoners falling in following criteria 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) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case;
- (ii) Under trial prisoners (UTPs) facing trial for offence under Section 304 IPC and are in jail for more than one year with no involvement in any other case;
- (iii) Under trial prisoners (UTPs) facing trial in a case under Section 307 or 308 IPC and are in jail for more than six months with no involvement in any other case;
- (iv) Under trial prisoners (UTPs) facing trial/remand prisoners in Theft cases and are in jail for more than 15 days;
- (v) Male Under trial prisoners (above 65 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;
- (vi) Female Under trial prisoners (above 60 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;

It has further been resolved that following category of UTPs, even if falling in the above criterion or the criteria adopted in the earlier Meetings, should not be considered :-

- (i) Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;
- (ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;
- (iii) Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;
- (iv) Those UTPs who are foreign nationals ;
- (v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ;

and

(vi) Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc. DG (Prisons) has informed that on the basis of this new criterion, approximately 1500 - 1700 UTPs would be benefited and their release would further ease out the Jail Population.

Chairperson has directed Member Secretary, DSLSA to take steps for having the applications of UTPs falling in the above relaxed criterion, be moved through the Panel Lawyers of DSLSA, annexing the copy of custody warrants with the applications.

The applications for interim bail of UTPs falling in abovementioned categories for being considered, should have a certificate of good conduct during their respective custody period from Jail Superintendent for him to qualify in the abovementioned category.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to request District Judges to depute a Designated Court/Special Additional Sessions Judge, if feasible for hearing the applications for interim bail preferred by the panel lawyers of DSLSA on the basis of criteria laid down by this Committee, so as to have expeditious disposal of the applications. In the event of Court being satisfied that the under trial prisoners falling in the above mentioned criteria as well as the criteria adopted earlier, are to be released on interim bail, they may be released on 'Personal Bond', to the satisfaction of Jail Superintendent so as to implement the social distancing policy of the Government.

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, 07.04.2020, 18.04.2020, 05.05.2020 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.....", observing thus inter alia to the effect that the under trial/ prisoners who are facing trial for the offences under Section 302 of the Indian Penal Code, 1860 and in jail for more than 2 years with no involvement in any other case coupled with the aspect that it has been specifically directed that application for interim bail of UTPs falling in the said categories i.e. Item No.6 for being considered, should have a certificate of good conduct during their respective custody period from Jail Superintendent for them to qualify in the said category, it is considered essential that the nominal roll is called for from the Superintendent Jail, Delhi, which be called for for the date 21.05.2020.

ANU MALHOTRA, J MAY 19, 2020/vm