

State Vs. Swapnil

CNR No.: DLCT01-018221-2021

SC No.: 748/2021

FIR No.: 30/2021

Under Sections: 364A/377/419/347/120B IPC & 25/27 Arms
Act

P.S.: Darya Ganj

23.01.2024

Present : Mr. Amit Dabas, Ld. Addl. PP for the State.
Mr. Chetan Pangasa and Mr. Lakshay Dhillon, Ld.
Counsel for the applicant/accused, namely, Swapnil.
Mr. Vikas Dagar, Asst. Superintendent, CJ-01, Tihar,
New Delhi.

ORDER

1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as '**Cr.P.C.**') on behalf of the accused, namely, Swapnil (hereinafter referred to as the '**applicant/accused**'), seeking extension of interim bail for a further period of 2 (two) months from 03.01.2024, i.e., the period of expiration of the extension of the interim bail, granted by this Court *vide* order dated 16.12.2023.

2. Learned Counsel for applicant/accused submitted that the applicant/accused is suffering with severe and complex medical condition and is in requirement of intensive physiotherapy, wheelchair for ambulation, proper medical assistance and continued help to perform his day-to-day chores. It was further submitted that necessary medical assistance, as required by the applicant/accused, is not available in the jail and that even in past, the applicant's ailment grossly aggravated when he was taken in judicial custody. It was further submitted by Ld. Counsel for the applicant that the applicant was granted interim bail by Ld. Predecessor Judge *vide* order dated

05.08.2023 and ever since then his the applicant's interim bail has been extended from time to time. Even otherwise, Ld. Counsel submitted, there are no chances of applicant tampering with the prosecution case or fleeing from justice, as he has deep roots in society, having a permanent place of residence. In this regard, Ld. Counsel further submitted that the applicant, ever since his release on interim bail, never misused the liberty granted to him by this Court and is ready to ready to abide all the terms and conditions imposed by this Court while extending interim bail, including co-operating the investigating authorities and making himself available for investigation/further investigation, as and when called for.

3. *Per contra* Ld. Addl. PP for the State opposed the present application on the ground that the applicant was actively involved in the commission of offence in the instant case, being a grave offence. It was further submitted that in case bail is granted to the applicant, there are chances that the prosecution's witnesses would be exposed to threat, coercion and/ or undue influence, especially when the proceedings are/instant trial is still at its nascent stage. Further, as per the Ld. Addl. PP for the State, there is no exigency remaining/forthcoming in view of the applicant's medical report as well as the various reports received from the concerned jail. Consequently, Ld. Addl. PP for the State submitted that the applicant deserves no indulgence from this Court.

4. The arguments of the learned counsel for the applicant/accused as well as that of Ld. Addl. PP For the State, heard as well as the documents, thoroughly perused.

5. Pertinent to outrightly note for the purpose of present determination, that the applicant was granted interim bail

by the Ld. Predecessor Judge on 05.08.2022 and subsequently, the said order was extended from time to time, with the last extension order, being passed by the Ld. Predecessor Judge on 01.08.2023, extending the interim bail of the applicant for the further period of 3 months. In the meanwhile, upon the undersigned's taking charge of the present court on 31.08.2023, a fresh application for extension of interim bail was filed before the undersigned in the month of November, 2023, which was disposed off by the undersigned *vide* order dated 04.12.2023 *inter alia* extending the interim bail of the applicant for a period of one month. In the meanwhile, the undersigned had directed the constitution of a Medical Board for a thorough medical evaluation of the applicant by the Medical Board at G.B. Pant Hospital, Delhi. Significantly, a necessity of the said order was felt for the reason that it was vehemently contended on behalf of the applicant that he was in requirement of physiotherapy and occupational therapy as many as 2-3 times in a day and that the said facility was admittedly not available at the concerned jail.

6. Subsequently, on 02.12.2023, the interim bail granted to the applicant by the undersigned was extended for a further period of 15 days, considering that it was brought to the notice of this court by Dr. Chetan Ray, Medical Officer In-charge, Medical Board, G.B. Pant Hospital, Delhi that due to the unavailability of a Urologist and Neurologist at G.B. Pant Hospital, Delhi, the medical evaluation of the applicant could not be carried out. Consequently, while extending the interim bail of the applicant for the aforesaid period, this court had specifically directed the Medical Superintendents of G.B. Pant Hospital, Delhi and RML Hospital, Delhi to get conducted, a thorough evaluation of the medical conditions of the applicant.

7. Thereafter, on 16.12.2023, this court further extended interim bail of the applicant till 05.01.2024 on the ground that despite specific directions of this court and an explicit question being posed to the Medical Superintendent at the both the aforesaid hospitals regarding the evaluation of applicant's requirement of physiotherapy and occupational therapy as many as 2-3 times in a day, no report *qua* the same was forthcoming. Following that, the present matter/issue was considered by this court on 03.01.2024, wherein Dr. Shrrey, Senior Resident, RML Hospita, Delhi and Dr. Tushar Sharma, Senior Resident, G.B. Pant Hospital, Delhi entered appearance and *inter alia* submitted that no need for any surgical intervention was felt for the applicant and that the applicant's condition could be taken care of by the medicines, which were prescribed to him by the doctors at both the hospitals. However, even then, since no report on the applicant's requirement for physiotherapy was brought to the notice of this court, this court specifically raised a query regarding the same from Dr. Sharma to which, he stated that the report regarding the same would be filed upon consultation with occupational therapy department at G.B. Pant Hospital. Accordingly, time was granted to the concerned officials at G.B. Pant Hospital, Delhi to take necessary steps in this regard on or before 04.01.2024. In the meanwhile, however, the undersigned had called for a report regarding the availability of the aforesaid medicines, as prescribed by the concerned doctors at G.B. Pant Hospital and RML Hospital for the applicant, from the concerned Jail Superintendent.

8. On 04.01.2024, a report was received from concerned Jail Superintendent confirming the availability of the

aforesaid medicines, however, since no reply from G.B. Pant Hospital, Delhi was forthcoming on 04.01.2024, the matter was posted for 05.01.2024. Thereafter, on 05.01.2024, fresh notice was issued to the Medical Superintendent, G.B. Pant Hospital, Delhi to *inter alia* submit a report on or before 11.01.2024, regarding the status of frequency and requirement of physiotherapy and occupational therapy as contended by/on behalf of the applicant. Needless to mention, the applicant's interim bail was extended on 05.01.2024, till the said date, i.e., on 11.01.2024.

9. On 11.01.2024, Dr. Rashmi Mishra, Medical Officer In-charge, Medical Board, G.B. Pant Hospital; Dr. Mohita, Occupational Therapist, G.B. Pant Hospital and Dr. Bhaskar Munjal, Physiotherapist entered appearance before this court and the following observations were made by this court, in view of the statements made by the said doctors;

“Relevant to note at this stage that, as per the report of Dr. Mohita, Occupational Therapist, G.B. Pant Hospital, Delhi as well as from the queries put to her in Court today, it is observed that as on date the applicant/accused is stated to be capable of performing the exercises specified/proposed by her in her report dated 08.01.2024, ‘unsupervised as per the tolerance and respect fatigue i.e. take intermittent rest interval during exercise and has to be reviewed after 03 months’. In fact, Dr. Mohita confirmed that there is no requirement of any assistance by the applicant/accused in so far as occupational therapy is concerned.

Pertinently, as per the report of Dr. Bhaskar Munjal, it is observed that several exercises have been prescribed to the applicant/accused, two of which, i.e. ‘...3. Active- assisted exercises for bilateral lower limbs – around 15 to 20 repetitions – around 3 times daily. 4. Resisted exercises for left quadriceps – around 15 to 20 repetitions – around 3 times daily...’ are advised to be performed with the assistance of an attendant.

It is further confirmed by Dr. Bhaskar Munjal and Dr. Rashmi Mishra that the aforesaid exercises require constant supervision of an attendant (who need not be a doctor) as well as the fact that the same are required to be performed on a daily basis. Nevertheless, as per the said doctors, the said exercises have been already taught to the applicant/accused.

At this stage, it is confirmed by Dr. Bhaskar Munjal that for the said exercises as well as for the applicant's/accused's proper treatment following are (additionally) required by the applicant/accused on a daily basis:

- "1. Hard bed with normal mattress;*
- 2. Incentive spirometer;*
- 3. 2 kg. Dumbbells;*
- 4. Ankle foot orthosis (left and right side), extra large in size;*
- 5. Wheelchair;*
- 6. Two pillows; and*
- 7. Attendant on a daily basis"*

*In light of the aforesaid, **issue notice to the Jail Superintendent** to file a reply inter-alia specifying the availability of the aforesaid facilities as well as the availability of an attendant for the applicant/accused on a daily basis in jail, as per the recommendation of the Medical Board. **Copy of this order along with medical report(s) be annexed with the said notice.***

*List for reply and further proceedings on **19.01.2024.***

*In the meanwhile, **the interim bail granted to the applicant/ accused stands extended till the next date of hearing i.e. till 19.01.2024 on the same terms and conditions as specified under order dated 04.11.2023.***

10. Pursuant to the aforesaid order, a report was received from Central Jail No.01, Tihar on 19.01.2024, wherein it was observed that facilities mentioned at serial numbers 1 to 6 in the order dated 11.01.2024, of this court, were available at the jail. However, since no report *qua* the availability of an attendant for the applicant was forthcoming, fresh notice was issued to the concerned Jail superintendent with the following directions;

"In light of the aforesaid, let fresh notice be issued to the concerned Jail Superintendent to file a response explicitly

specifying the availability of an attendant for the applicant/accused, namely, Swapnil in the jail on a daily basis or whether such an attendant can be made available for the applicant/accused on daily basis, as per rules.
The concerned Jail Superintendent is directed to depute a responsible officer to be present before this Court on the next date of hearing.

List for further proceedings on the pending bail application of the accused, namely, Swapnil on **23.01.2024 at 02.00 p.m.**

In the meanwhile, **the interim bail granted to the applicant/ accused, namely, Swapnil stands extended till 23.01.2024 on the same terms and conditions as specified under order dated 04.11.2023.**”

11. Consequent to the aforesaid, a report has been filed today wherein it has been noted, as under;

“...In this regard it is submitted that as per Delhi Prison Rules 2018, **Rule No. 571 under the chapter Appointment of attendants and Training of Nursing Orderlies**, it is stated that:-

“For the purpose of attending to sick prisoner a few educated convicts of good conduct and undergoing long sentences shall be selected by the Superintendents in consultation with the Medical Officer In-charge and trained as nursing orderlies. A brief syllabus for their training shall be prepared as guide to the Medical Officer who, under the direction of the Medical Officer In-charge, shall be responsible for conducting such training.”

It is further submitted that any convict may be appointed to take care of the accused as an attendant on daily basis as per Delhi Prison Rules 2018.”

12. Further, Mr. Vikas Dagar, Asst. Superintendent, CJ-01, Tihar, New Delhi, entered appearance on behalf of Superintendent, CJ-01, Tihar, New Delhi in compliance of the order passed on 19.01.2024 reiterated the aforesaid facts and stated that an attendant can be made available on daily basis for the applicant/accused as per the aforesaid rules. Simultaneously,

as per Mr. Vikas Dagar, Asst. Superintendent, CJ-01, Tihar, New Delhi, the family members may be permitted as attendant to take care of the applicant in case of the applicant's reference to a hospital or medical facility, outside the jail if the patient is transferred to such facility by the jail, subject to the order/specific permission granted by the concerned Court at relevant point of time.

13. In light of the aforesaid, it is observed by this court that the medical exigency expressed by the applicant is no longer observed to be such that cannot be taken care of, while the applicant is in custody. Pertinently, as hereinunder noted that the interim bail was granted to the applicant, considering the emergent circumstance demonstrated by him. However, as on date, in light of the aforesaid medical opinion of the respective Medical Boards as well as the report received from concerned Jail, no exigency is observed. It is reiterated that the medical condition expressed by the applicant can be taken care of at concerned Jail and that no compelling circumstances are forthcoming to grant further indulgence to the applicant herein. Needless to mention, this Court is cognizant of the settled law that interim bail can be granted only under compelling circumstances and that in no circumstances, interim bail can be devised as an alternate or substitute of regular bail. However, as aforesaid, neither any compelling grounds are established nor any exigency demonstrated to extend the interim bail of the applicant for any further period.

14. Consequently, in conspectus of the above, and keeping in view the nature and gravity of the offence, fact of involvement of applicant in crime of heinous nature, severity of punishment, stage of proceedings, manner of commission of

offence and fact that no compelling circumstances are forthcoming to grant any further indulgence in favour of the applicant/accused, this Court does not deem fit to extend interim bail of the applicant/accused for any further period. Needless to reiterate interim bail cannot be devised as an alternate or substitute of regular bail.

15. Accordingly, the present application for extension of interim bail of the applicant/accused, namely, Swapnil is hereby ***dismissed***. **The applicant is directed to surrender before the concerned Jail Superintendent within a period of two days from today.**

16. Copy of this order be given ***dasti*** to the Ld. Counsel for the accused/applicant, namely, Swapnil.

17. **A copy of this order be also sent to the concerned Jail Superintendent for record and information purposes.**

Abhishek Goyal
ASJ-03, Central District,
Tis Hazari Courts, Delhi
23.01.2024