

CNR No. DLNT01-006875-2021

IA No. 10/2021

Session Case No. 436/2021

FIR No. 218/2021

PS- Crime Branch North

State Vs- Sushil Kumar etc.(Interim bail of accused Ajay Kumar)

U/s-

302/307/308/364/365/452/323/342/188/269/147/148/149/506(II)/392/394/397/41
1/201/109/120B/34 IPC & u/s 25(1)(B),27(1) Arms Act

15/02/2022

As per direction of Hon'ble High Court vide order no. 67/RG/DHC/2022 dated 11/02/2022 and subsequent order of Id. Principal District & Sessions Judge, North District, Rohini Courts, Delhi bearing no.4331-4400/PD&SJ Sectt./Covid/North/RC/2022 dated 11/02/2022, around 50% of the total strength of judicial officers shall hold the Court physically on the allocated day, while the others shall take-up the matters through virtual mode till 28/02/2022. It is further directed that all the judicial officers may permit hybrid hearing/video-conferencing hearing, where-ever possible, if a request to such effect is made by any of the parties and/or their counsel on the physical hearing of Court.

The case is fixed for arguments on the application for grant of interim bail for a period of four weeks u/s 439 Cr.P.C, moved on behalf of above named applicant/accused. The same is taken-up through virtual hearing. The CISCO Webex App is having meeting ID176-157-5605. The official email ID of this Court is reader.asj04north@gmail.com.

(AS PER ROSTER, VIRTUAL HEARING IS DONE TODAY)

Present in the Court None for parties.

Present through Webex Sh. Sanjay Jindal, Id. Addl. PP for the State.

Sh. Mangesh Tyagi, IO of the case.

Sh. Nitin Vashisht, Id counsel for complainant.

Sh. Sumeet Shokeen, Id counsel for applicant/accused.

Reply of the bail application has been received from the concerned P.S as well as from the concerned Jail Superintendent.

It is submitted by Id counsel for applicant/accused that he has moved the present application for grant of interim bail on the ground of medical condition of the applicant/accused. He has further submitted that in the year 2012 while doing physical workout the applicant suffered injury in his right shoulder and in the year 2013 the applicant had to undergo a major surgery in Sir Ganga Ram

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-2-

Hospital. Ld counsel has further submitted that applicant is a Physical Education Teacher with the Government of NCT of Delhi in a government school and in the second week of March, 2021, while giving training to the students the applicant again suffered strain and deformity in his right shoulder. He has further submitted that since August, 2021, the applicant is having severe pain in his right shoulder and now the same has reached at advance stage and almost 80 to 90 % movement of the right shoulder of the applicant has been blocked, due to which he is facing difficulties in performing his daily routines work. It has been further submitted by him that due to the blockage in the right shoulder of the applicant, he is also facing pain in his lower back since September, 2021. He has further submitted that applicant is now experiencing numbness in his legs while walking and doing regular daily chores. Ld counsel has further submitted that applicant is also facing problem of nasal obstructions due to which he has to face difficulties in breathing many times. Ld counsel has further submitted that Safdarjung hospital has given the date of MRI as 28.04.2022 which is a long date and applicant is facing sever problem which is unbearable. He has further submitted that problem of the applicant is not improving despite taking treatment from the jail authority and submitted that applicant is ready to get himself treated from a good private hospital at his own expenses and prayed that applicant may be granted interim bail so that he can get treatment.

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-3-

On the other hand, Id counsel for complainant and Id Additional P.P for State have opposed the bail application. It is submitted by Id counsel for complainant in the CCTV footage the present applicant is seen having one pistol in his hand. He has further submitted that in the Jail Authority better treatments are being provided to the inmates and for the said purpose there is no need for grant of interim bail. Id Additional P.P for State has further submitted that in view of the nature and gravity of offence, at the most the government hospital can be given directions to perform the surgery of the applicant/accused on priority basis. He has further submitted that present application for grant of interim bail may be dismissed.

I have heard the submissions of Id counsel for applicant/accused, Id counsel for the complainant as well as Id Additional P.P for State and also perused the medical status report of the applicant/accused sent by the concerned Jail Authority. As per the jail report the present applicant was lodged in Tihar Jail No. 4 on 25.06.2021 and on his medical examination the applicant gave history of old operated case of right shoulder 7-8 years back. The persual of jail report also reveals that " At present inmate patient is suffering from glenohumeral arthritis right shoulder(Actue pain with restriction of movement) with gross DNS left and spur towards right with bilateral hypertrophy of turbinates. Despite the ongoing treatment inmate patient symptoms are not getting improved as patient next review at spots injury centre, Safdarjung awaits the MRI right shoulder report(Scheduled for

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-4-

28.04.2022) only after that decision for re-exploration surgery could be taken, whereas the septoplasty in view of DNS got delayed due to ongoing COVID-19 spike". Since the applicant is taking continuous treatment from the concerned Jail Authority and has visited the doctor of jail authority for his problem of right shoulder on various dates since the month of July 2021, but his condition is not improving since a long time and further in view of the fact that as per the report the treatment of the applicant/accused got delayed due to ongoing COVID-19 spike, the applicant/accused can not be denied treatment for his problem from the doctor of his choice. The submission of Id Additional P.P for State that government hospital may be directed to provide treatment to the applicant/accused on priority basis can not be accepted since government hospital are already over burdened due to COVID patients moreover giving priority to one patient over the other patient would not be justified. Accordingly in view of the physical conditions of the applicant/accused and in view of the fact that applicant was a physical Education Teacher in the government school prior to the present incident, in view of the fact that for the said problem he has already been operated in the year 2013 and in view of the fact that conditions of applicant is not improving even after taking treatment for a long time in the Jail authority and further considering that fact that due to the problem applicant is facing numbness in his other body parts and is facing difficulties in performing his day to day daily routines and needs to be operated on urgency ground, it would be

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-5-

inhumane if he is not permitted to take treatment from the hospital of his choice. Hence, the applicant/accused is allowed to be released on **interim bail for a period of 15 days** from the date of his release on his furnishing personal bond in the sum of **Rs. 1,00,000/- with two sureties in the like** amount. However in view of the nature and gravity of offence the applicant is strictly directed that he shall not make any contact with the **complainant in any manner and shall not leave the city**. He is further directed to deposit his passport with the IO/SHO concerned immediately after his release on interim bail. He is also directed to keep his mobile phone on with his locations available at all times to the IO of the case. He is further directed not to threaten the prosecution witnesses or tamper with evidence or indulge in any such crime and to download the *Aarogya Setu* APP and to follow the guidelines issued by Govt. of India qua COVID-19. In case, it is prima facie brought to the notice of the Court that the applicants/accused is violating the said conditions, the interim bail granted to him shall be liable to be cancelled.

Since the applicant and victims belongs to same fraternity and locality, the IO of the case is also directed to be vigilant regarding the safety and security of the applicant/accused. The applicant is further **directed to surrender before the concerned Jail authority** after expiry of the period of interim bail and the concerned Jail Authority shall send his report immediately thereafter. The interim bail

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-6-

application is disposed of accordingly. Nothing stated herein shall tantamount to any expression of opinion on the merits of the case. Copy of order be sent to the concerned Jail Authority subject to furnishing of bail bond and surety bond in terms above.

(Shivaji Anand)

Addl. Sessions Judge: 04 (North)

Rohini Courts: Delhi:15/02/2022(M)