

State Vs. Afzal Ali

FIR No: 216/14

Under Section: 419/468/420/471/370/306/120B IPC

PS: Hauz Qazi

10.07.2020

Through video conferencing

This is an application regarding calling status report from jail superintendent.

Present: Sh. Alok Saxena, Ld. APP for the State.

Sh. M.A Qureshi, Ld. Counsel for applicant/accused.

Ld. Counsel for applicant/accused submits that applicant Afzal Ali has already been granted bail vide order dated 07.07.2020, however, applicant/accused has not been released by the concerned jail authorities.

Heard. Order dated 07.07.2020 perused.

Let a report in this regard be called from concerned jail superintendent by next date of hearing.

Put up for hearing on 14.07.2020.

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(Anuj Agrawal)
ASJ-03, Central District
Tis Hazari Courts, Delhi
10.07.2020

State Vs. Naresh (Applicant Anil)

FIR No: 72/11

Under Section: 302/34 IPC

PS: Sadar Bazar

10.07.2020

Through video conferencing

Present: Sh. Alok Saxena, Ld. APP for the State.

Sh. Manoj Sharma, Ld. Counsel for applicant/accused

This is interim bail application of accused/applicant Anil.

Report of IO as well as nominal roll of accused from jail received.
Copy of same has already been supplied to counsel electronically.

Accused is seeking interim bail in view of various guidelines of High Powered Committee. It is argued by Ld. Counsel that as per the report received from IO, accused has already been acquitted in FIR no. 72/2011 by the concerned court. It is further been argued that the accused has been falsely implicated in the present case and the sole eye witness examined in the instant case has not supported the version of prosecution. It is further argued that the family of accused (consisting of his ailing mother and unmarried sister) is on the verge of starvation and therefore, accused deserves to be granted interim bail in the facts and circumstances of the present case.

Per contra, Ld. APP for the State has vehemently opposed the bail application on the ground that the probative value of testimony of witnesses cannot be looked while considering the interim bail of accused. It is further argued that the sole eye witness examined in the present case had supported the prosecution version during examination-in-chief and it was only during cross examination, when he was won over by defence, he turned hostile.

Heard. Considered.

As per report of jail superintendent the overall conduct of accused in jail is unsatisfactory as he has been awarded punishment for assaulting

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fellow inmates. Therefore, it is clear that accused has failed to fulfill the criteria as laid down by High Powered Committee vide minutes dated 18.05.2020.

The other reasons (for maintaining his ailing mother and unmarried sister) cited by accused for grant of interim bail does not disclose good grounds to be entertained as the very incarceration of an accused not only curtails his 'personal liberty' but also certain other rights like 'right to maintain and take care of one's family'. Even otherwise, the accused is in custody since June, 2011 therefore, it is evident that his family members are maintaining themselves at their own (since long) even in his absence.

The other argument, of false implication and eye witness not supporting the version of prosecution, is also not tenable in light of the fact that the matter is already at the final stage. Therefore, it would not be prudent to comment upon the probative value of testimony (recorded in the instant case) by passing a mini judgment while considering the instant application.

In the case of *Vaman Narain Ghiya v. State of Rajasthan (2009) 2 SCC 281*, the Hon'ble Supreme Court observed as follows:

"While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required."

In the case of *State of Orissa vs Mahimananda Mishra Crl. Appeal No. 1175/2018* decided on 18.09.2018, the Hon'ble Supreme Court, while setting aside an order of grant of bail, observed as follows :

"It is also well settled that the Court must not go deep into merits of the matter while considering an application for bail. All that needs to be established

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from the record is the existence of a prima facie case against the accused. Keeping in mind the aforementioned principles, we are of the view that the High Court was not justified in going into the evidence on record in such a depth which amounts to ascertaining the probability of the conviction of the accused.”

Therefore, in the facts and circumstances of the present case and in view of the aforesaid reasons, I am not inclined to grant interim bail to accused/applicant Anil. Hence, interim bail application of accused/applicant Anil is hereby dismissed.

Copy of this order be sent to concerned Jail Superintendent for information. Copy of this order be also given dasti to Ld. Counsel for accused/applicant, if requested.

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