

B.A.No. 163/2021
FIR No.91/2018
PS Kotwali
State v.Sachin
U/s 342/395/397/412/34 IPC

13.07.2021

Present: Sh. K.P. Singh, Ld Addl. PP for State through
videoconferencing.

Sh. Shamsul Haque, Ld. Counsel for accused-
applicant through videoconferencing.

Hearing is conducted through videoconferencing.

This is an application u/s 439 Cr.P.C. for grant of interim
bail of 90 days under HPC guidelines on behalf of accused-
applicant Sachin in case FIR No. 91/2018.

Arguments heard. For orders, put up at 4 pm.



(NeeloferAbidaPerveen)
SpecialJudge-02, NDPS/
ASJ, (Central), THC/Delhi
13.07.2021

At 4 pm
ORDER

This is an application u/s 439 Cr.P.C. for grant of interim
bail of 90 days under HPC guidelines on behalf of accused-
applicant Sachin in case FIR No. 91/2018.

Ld. Counsel for accused-applicant submits that Section

397 IPC is invoked in respect of co-accused Mohsin Alam and not in respect of accused-applicant. Ld. Counsel for accused-applicant submits that interim bail is being sought as per HPC guidelines. That co-accused namely Mohsin Alam, Sarfaraz Alam and Hashim have already been granted interim bail as per HPC guidelines and that he has forwarded bail order in respect of Mohsin Alam today itself.

Ld. Addl. PP submits that case of the accused-applicant would not fall under the criteria as there is no criteria to release UTPs facing trial in cases for commission of offence under Section 395 IPC and that the present FIR pertains to commission of dacoity. That accused-applicant actively participated in the offence. That amount of Rs.60,000/-, Desi katta and two live cartridges were recovered from the possession of accused-applicant.

Heard.

Case of the prosecution is that on 03.04.18 complainant Sh. Anil Kumar alleged that three youngster armed with Deshi Katta entered into his office i.e. shop No-503, IIInd Floor, Old Lajpat Rai Market and looted Rs. 18 lacs along with Bank Passbook etc. on the point of Desi Katta forcibly and escaped from the spot. During the course of investigation accused person namely Mohsin Alam, Sarfaraz Alam, Aaman, Kasim, Sachin and Hasim @ Haseen were arrested in the case and looted property Rs 13,70,000/- with weapon of offence were recovered from their

possession. That one desi katta alongwith 9 live cartridges from accused Mohsin Alam, one desi katta and 8 live cartridges from accused Kasim and one desi katta and 2 live cartridges from Sachin were recovered. The prosecution alleges involvement of six persons and offence u/s395 IPC is added subsequently.

High Powered Committee of Hon'ble High Court in its Minutes of Meeting dated 04.05.2021 laid down following guidelines regarding grant of interim bail to the under trials:-

“Members of the Committee discussed and deliberated upon the proposed category of prisoners, who may be considered for grant of interim bail for 90 days in view of the circumstances in which we are in, preferably on Personal Bond:

- (i) Inmates undergoing Civil Imprisonment;*
- (ii) Under trial prisoners (UTPs) who are facing trial in a case which prescribes a maximum sentence of 7 years or less wherein he/she is in custody for a period of 15 days or more;*
- (iii) Under trial prisoners (UTFs/Remand Prisoners (with respect to whom, Charge sheets are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of 7 years or less;*
- (iv) Under trial prisoners (UTPs), who are senior citizens more than 60 years of age and are in custody for three months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less;*
- (v) Under trial prisoners (UTPs), who are less than 60 years of age and are in custody for six months or more, facing trial in a case which prescribes a maximum sentence 10 years or less subject to the condition that he should not be involved in any other case which prescribes punishment of more than 7 years*

- (vi) *Under trial prisoners (UTPs), who are suffering from HIV, Cancer, Chronic Kidney Dysfunction (UTPs requiring Dialysis), Hepatitis B or C, Asthma, and TB and are in custody, facing trial in a case which prescribes maximum sentence of 10 years or less and are not involved in multiple cases;*
- (vii) *Under trial prisoners (UTPs) who are suffering from HIV, Cancer, Chronic Kidney Dysfunction (UTPs requiring Dialysis), Hepatitis B or C, Asthma, and TB and are in custody for a period of three months or more and facing trial in a case which prescribes punishment of 10 years upto life imprisonment and are not involved in multiple cases.*
- (viii) *Under trial prisoner (UTPs) facing trial for offence under Section 304 IPC and are in jail for more than six months with no involvement in any other case;*
- (ix) *Under trial prisoners (UTPs) facing trial in a case under Section 307 IPC and are in jail for more than six months; subject to the condition that he should not be involved in any other case which prescribes punishment of more than 7 years;*
- (x) *Under trial prisoners (UTPs) (who are related as spouse of the deceased) facing trial for a case under 304B IPC and are in jail for more than one year with no involvement in any other case,*
- (xi) *Under trial prisoners (UTPs) (who are related as father-in-law, mother-in-law, brothers-in-law, sisters-in-law of the deceased) facing trial for offence under Section 304B IPC and are in jail for more than six years with no involvement in any other case,*

Thereafter vide MOM dated 11.5.2021, the following clause (xii) was also added:

- (xii) *Under trial prisoner (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;*

The accused-applicant with five other co-accused is alleged to

have committed dacoity made punishable u/s 395 IPC with life imprisonment or imprisonment extending upto ten years. It is criteria (vii) alone that extends the benefit of interim bail of 90 days in order to decongest the prisons in the wake of outbreak of second wave of the COVID-19 pandemic to UTP'S facing trial in a case which prescribes punishment of 10 years upto life imprisonment. However, there are certain medical conditions prescribed under the criterion the existence of which alone would render the UTP facing trial in such cases as amenable to the benefit of the criteria. Ld. Counsel seeks to invoke criteria (xii) however the same pertains exclusively to UTP's facing trial for a case u/s 302 IPC. Moreover H'ble the High Court of Delhi vide order dated 7.7.2021, passed in BAIL APPLN.2294/2021, while rejecting the interim bail application under the guidelines made the following observations:

“3. The guidelines were laid down by the High Powered Committee in May 2021 due to surge in COVID-19 cases thereby necessitating the decongestion of the Jail. Since the situation of COVID-19 in Delhi at the moment is under control, this Court finds no ground to grant interim bail to the petitioner in terms of the guidelines issued by the High Powered Committee”

The case of the accused-applicant does not qualify for consideration under the guidelines as the present case pertains to commission of offence under Section 342/395/397/412/34 IPC, not

falling under any of the several criterion outlined under the minutes of meeting dated 4.5.2021, or 11.5.2021, and accordingly the application stands dismissed.

Copy of order be forwarded to Ld.Counsel for accused-applicant through electronic mode.



(NeeloferAbidaPerveen)
SpecialJudge-02, NDPS/
ASJ, (Central), THC/Delhi
13.07.2021