
(2020) 08 DEL CK 0109

Delhi High Court

Case No: Civil Writ Petition No. 3037 Of 2020

Court On Its Own
Motion

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision: Aug. 24, 2020

Acts Referred:

- Code Of Civil Procedure, 1908 - Section 151

Citation: (2020) 08 DEL CK 0109

Hon'ble Judges: Dhirubhai Naranbhai Patel, CJ; Siddharth Mridul , J; Talwant Singh, J

Bench: Full Bench

Advocate: Maninder Singh, Aekta Vats, Rahul Mehra

Judgement

CM APPL.16289/2020 & CM APPL.16292/2020 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

CM APPL.16290/2020 & CM APPL.16293/2020 (Exemption)

The present applications under Section 151 of the Code of Civil Procedure, 1908 have been filed on behalf of the applicant/intervener seeking

exemption from filing duly signed and affirmed affidavits in support of the accompanying applications and to pay the requisite court fees.

For the reasons stated in the applications and in view of the present prevailing situation, the same are allowed. The applicant/intervener is allowed to

file the duly signed and affirmed affidavits within a period of one week from the date of resumption of regular functioning of the Court. Further, the

applicant/intervener is allowed to file the requisite court fee within a period of 72 hours from the date of resumption of regular functioning of the

Court.

With the above directions, the present applications are disposed of. CM APPL.16287/2020 (Impleadment & Clarification)

By way of the present application Irshad Ali, son of Shaid Ahmed, seeks to be impleaded in Writ Petition (Civil) No.3037/2020, titled as "Court on

its own motion vs. State and Others", limited to the purpose of seeking impleadment and clarification of the order dated 13.07.2020 rendered by

this Full Bench.

Notice.

Mr. Rahul Mehra, learned Standing Counsel (Criminal) accepts notice on behalf of the official respondent.

Having heard learned counsel appearing on behalf of the parties and in view of the circumstance that, it is considered necessary to clarify the scope

and ambit of this Full Bench's order dated 13.07.2020, in view of the conflicting interpretations stated to be given to the said order by different

Single Benches of this Court, the present application is allowed only for the limited purpose of clarifying the said order dated 13.07.2020, passed by

this Full Bench.

This Full Bench by way of its order dated 13.07.2020 directed in paragraph 7 thereof, as follows:-

"7. In this regard, we make it clear that all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi.

So far as the criminal matters are concerned, these directions have been issued keeping in view the fact that the jail authorities have limited space to

keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to maintain physical distancing amongst jail

inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by

this Court or the Courts subordinate to this Court, to other inmates of the jail on their return to the jail, the decision of extension of interim

bail/bail/parole has been taken from time to time. It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all

undertrials/convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole

before or after 16th March, 2020.

The above directions were in continuation of our orders dated 25.03.2020, 15.05.2020 and 15.06.2020.

By way of order of even date viz. 13.07.2020, in Criminal Appeal No.193/2020, titled as *Harpreet Singh vs. State*, the Full Bench also

answered the following queries, referred to it by the Hon'ble Single Judge vide his order dated 01.07.2020, seeking clarification and guidance from

the Hon'ble Full Bench of the orders passed in the said Writ Petition (Civil) No.3037/2020, titled as *Court on its motion vs. State & Ors.*:-

“7. The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

a. Whether the orders made by the Hon'ble Full Bench in W.P. (C) No.3037/2020, including last order dated 15.06.2020, apply to all interim orders,

whether made in civil or criminal matters, and regardless of whether such orders were made on or before 16.03.2020 or thereafter?

b. Where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts

and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C)

No.3037/2020?

8. While deciding the issue, the Hon'ble Full Bench may consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C)

No.3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020

appear not to be covered thereby.

The Full Bench observed as follows in this behalf:-

A plain reading of the order of reference dated 01.7.2020 and in particular paragraph 11 thereof, clearly reflects that the implementation of the

directions contained in the orders dated 25.03.2020, 15.05.2020 and 15.06.2020, rendered by the Full Bench are stated to have created conflicting

situations between the interpretation given thereto by different Single Judges that need to be resolved.

In this behalf, at the very outset it is observed that this Court was pleased to pass certain directions, whilst taking suo motu cognizance of the

extraordinary circumstances, that arose on account of the Covid-19 pandemic.

In this behalf, it is further observed that the functioning of this Court had been restricted only to urgent matters, on account of the outbreak of Covid-

19 w.e.f. 16.03.2020.

On the 24.03.2020, the Government of India issued orders whereunder strong measures were enforced to prevent the spread of Covid-19 and a

nationwide lockdown was declared, initially for a period of 21 days w.e.f. 25.03.2020, which was thereafter extended from time to time.

In view of the foregoing, and in order to maintain parity, between orders granted on or before 16.03.2020, and those issued thereafter; and further

taking note that insofar as, criminal matters are concerned, those enlarged on interim bail/parole may spread the infection amongst the inmates of the

respective jails, where they may be required to surrender; and also in the backdrop of the circumstance, that the jails are overcrowded and have an

inherent vulnerability to assist the unchecked spread of Covid-19, owing to space constrains and over congestion, we make it clear that all the

directions issued by the Full Bench from time to time in the suo motu proceedings in W.P.(C) 3037/20 have been rendered with a view to check the

ongoing spread of the pandemic in Delhi as also the spread of the disease in prisons resultantly, persons who are enlarged on interim bail/parole,

granted by this Court or the Courts subordinate to this Court either before or after the 16.03.2020, upto date, shall stand automatically extended till the

31.08.2020 or until further orders, except there any orders to the contrary have been passed by the Hon'ble Supreme Court of India, in any

particular matter, during the intervening period.

It is relevant to observe that, no clarification of the above order/orders of the Full Bench have been sought, either on behalf of the Government of

NCT of Delhi or the Director General of Prisons.

From a plain reading of the foregoing directions, it is axiomatic that, the Full Bench while taking suo motu cognizance of the extraordinary

circumstances, arising out of the Covid-19 pandemic, had made it clear that insofar as, criminal matters are concerned, in view of the serious threat

posed by the possibility of the unchecked spread of the coronavirus pandemic, by those who have been enlarged on interim bail/parole; and who may

carry back with them the Covid-19 infection, so as to infect other inmates of the jail, if they are required to surrender, to the already congested and

over-crowded jails, which may not be in a position to strictly maintain physical distancing amongst jail inmates; and considering the inherent

vulnerability of the jails, owing to serious space constraints, to effectively control, check and prevent the spread of Covid-19; it was directed that, the

interim bail/parole granted to such persons by this Court or the Courts subordinate to this Court, either before or after the 16.03.2020, upto date, shall

stand automatically extended till the 31.08.2020 or until further orders, except where there are any orders to the contrary, passed by the Hon'ble

Supreme Court of India in any particular matter, during the intervening period. It is further clarified that this order of extension of interim bail/parole

shall be applicable to all under trials/convicts, who have been enlarged on interim bail or parole, as on date, irrespective of the fact that they were so

released on interim bail/parole, before or after 16.03.2020.

With the above clarification, the present application is disposed of.

CM APPL.16288/2020 (Stay) & CM APPL.16291/2020 (Exemption to Surrender)

In view of the clarification issued hereinabove, as well as, the circumstance that, this Full Bench was neither seized off nor considered individual

applications, that may have been instituted, praying for grant of interim bail/parole, on their merits in these proceedings, the present applications are not

maintainable before this Bench.

The applications are accordingly dismissed, whilst reserving liberty to the applicant to institute appropriate proceedings, in accordance with law.