

(2014) 09 DEL CK 0069**Delhi High Court****Case No:** Bail Application 1271/2014

Gopal Krishan Aggarwal

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Sept. 2, 2014**Acts Referred:**

- Arms Act, 1959 - Section 27
- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 437(1)(i)
- Penal Code, 1860 (IPC) - Section 120B, 302, 307, 34

Hon'ble Judges: Pratibha Rani, J**Bench:** Single Bench**Advocate:** Karan Pal Singh, Advocate for the Appellant; Neeraj Kumar Singh, APP, Advocate for the Respondent**Final Decision:** Dismissed**Judgement**

Pratibha Rani, J.

The Petitioner is facing trial in case FIR No.356/2007 u/s 120B read with Section 302 IPC, PS Hauz Qazi pending before the Court of Learned Addl. Session Judge-02 (Central), Tis Hazari Court, Delhi.

2. After dismissal of the bail application by learned Addl. Session Judge, Delhi vide order dated 19.05.2014, the Petitioner has again approached this Court for seeking bail in the above noted case on the ground that the Petitioner had been in custody for the last about seven years and material witnesses in the case have already been examined. Learned counsel for the Petitioner has submitted that the testimony of material witnesses placed on record would reveal that the Petitioner, who had been booked for conspiracy to commit murder, cannot be convicted on the basis of said material. Learned counsel for the Petitioner has further submitted that initially the bail granted to the Petitioner by this Court was cancelled by Supreme Court but that

was before the stage of framing of charge. Now the material witnesses have been examined. The health condition of the Petitioner is not good and he requires continuous medical treatment. Further, the co-accused Ashok Jain and Rishi Pal have already been enlarged on bail on 30.04.2013 and on parity, the Petitioner also deserves to be released on bail. It has been further submitted by learned counsel for the Petitioner that the Petitioner has deep roots in the society and he has never abused the liberty whenever he was released on interim bail. Learned counsel has further submitted that despite directions by this Court for speedy trial, as on date twenty-three witnesses are yet to be examined, which is likely to take long time and this in itself is a ground to enlarge the Petitioner on bail. Learned counsel for the Petitioner has placed reliance on Dr.Mrs.Nupur Talwar v. CBI in Special Leave to Appeal (Cri). No. 4738/2012 decided on 13.08.2012, Nand Lal v. State of Delhi 1994 (2) RCR (Cri) 345, Pankaj v. State of Haryana 1998 (3) RCR (Cri) 219, and Manoj Kumar v. CBI 2005 (1) RCR (Cri) 265 in support of his contentions.

3. On behalf of State, the plea of the Petitioner to be released on bail is strongly opposed. Learned APP for the State has submitted that the Petitioner is involved in a heinous crime and he cannot claim parity with co-accused Ashok Jain and Rishi Pal for the reason that while granting bail to them, prayer of the Petitioner for release on bail was declined. Rather the direction was given to expedite the trial within three months. It is further submitted by learned APP for the State that the trial has not been completed within specified period as one of the accused Desraj had jumped the bail. Learned APP for the State has further submitted that every effort is being made to conclude the trial at the earliest and there is every possibility that the prosecution evidence would be concluded within four months. Regarding the health condition of the Petitioner, it has been submitted that he is being regularly taken to the hospital and is being provided the necessary medical treatment, hence on this ground also, the Petitioner cannot be enlarged on bail.

4. I have considered the rival contentions made by learned counsel for the Petitioner and learned APP for the State and also perused the reported decisions cited by learned counsel for the Petitioner.

5. First of all, it is necessary to refer to the order dated 19.05.2014 passed by learned Addl. Session Judge, Delhi whereby the prayer of the Petitioner has been rejected. The grounds taken by the Petitioner to seek bail before learned Addl. Session Judge, Delhi, were :

- (i) The allegations against the Petitioner are merely of conspirator;
- (ii) He is in judicial custody for last many years; and
- (iii) There are inconsistencies in the statement of the witnesses.

6. While dismissing the bail application, learned Trial Court gave the following reasons:

(i) The last bail application of the Applicant was dismissed on 04.09.2013 and prior to that on 10.05.2013;

(ii) There are no change in circumstances warranting fresh appraisal of the case of the Applicant when all the pleas raised in the bail application had already been discarded by learned Addl. Session Judge; (iii) The Applicant is involved in a serious crime and severity of the punishment is another reason which has repeatedly been given the consideration for rejection of bail by the Court;

(iv) While considering the prayer for bail, the Court is not required to minutely appreciate the statement of Complainant and other witnesses which may also prejudice the case of the prosecution.

(v) Though the Applicant is in J/C for considerable time but out of 80 (as per list 91) witnesses cited by the prosecution, 49 witnesses have already been examined and State has assured that witnesses of repetitive nature would not be examined and the remaining witnesses infact left to be examined were about 10-12 in number and trial is nearing its conclusion.

(vi) So far as release of the Petitioner on bail on health ground is concerned, that itself is no ground to release him on bail as prayer for interim bail to take appropriate medical assistance can be made, which has already been availed by the Applicant.

7. The submission made by learned counsel for the Petitioner is mainly that the Petitioner has been charged for conspiracy and there cannot be any direct evidence for conspiracy. He further submitted that the evidence adduced by the prosecution so far is not sufficient to prove the guilt of the Petitioner, hence not only on merits but also for the reason that the two co-accused persons have been granted bail and the medical condition of the Petitioner is not good, the Petitioner is entitled to be released on bail. Learned counsel for the Petitioner has also submitted that long period of incarceration and further time likely to be taken in the matter are other reasons which entitle the Petitioner to be released on bail.

8. The bail application of the Petitioner is running into two volumes (550 pages). Apart from that, the Petitioner has relied upon Dr.Mrs.Nupur Talwar v. CBI in Special Leave to Appeal (Cri). No. 4738/2012 decided on 13.08.2012, Nand Lal v. State of Delhi 1994 (2) RCR (Cri) 345, Pankaj v. State of Haryana 1998 (3) RCR (Cri) 219, and Manoj Kumar v. CBI 2005 (1) RCR (Cri) 265. Learned counsel for the Petitioner has also relied upon [Sanjay Chandra Vs. CBI](#), [Sanghian Pandian Rajkumar Vs. Central Bureau of Investigation and Another](#), [Chenna Boyanna Krishna Yadav Vs. State of Maharashtra and Another](#), Babba alias Shankar Raghuman Rohida vs. State of Maharashtra (2005) II SCC 569, [H.B. Chaturvedi Vs. C.B.I.](#), [Ram Kumar Tyagi Vs. The State and another](#), [Sharad Kumar Vs. CBI](#), [Aman Gaur Vs. State](#), [Suresh Kalmadi Vs. CBI](#), [R. Vasudevan Vs. CBI](#), Saleem @ Safiq @ Guchhan vs. State 2005 Law Suit (Del) 1335, [Sidharth Vashisth @ Manu Sharma Vs. State of Delhi](#), Raj Kumar @ Raju

vs. State of NCT of Delhi 109 (2004) DLT 944, Ravi @ Raju vs. State 2005 (2) JCC 951, [Lokesh Kumar Vs. State of NCT of Delhi, , Lakhbir Singh Vs. State \(NCT of Delhi\), ,](#) [Pritam Singh @ Pappu Vs. State \(Govt. of N.C.T. of Delhi\), ,](#) Chitra Kant Kosley vs. State of Chhattisgarh I (2008) CCR 231, [Ravi Vas Vs. State of Uttarakhand, , Yunis and Another Vs. State of U.P., , Karamvir @ Karambir Vs. State of Haryana, ,](#) Bhura Singh and anr v. State of Punjab in Criminal Misc. No. 2638 M of 1998, Nandlal v. State Criminal Misc. no. 423/94, Pankaj v. State of Haryana Criminal Misc. no. 4793-M, Manoj Kumar v. CBI 2004 Law Suit (P and H) 1078, during the hearing of the bail application in support of his contentions which are mainly on the ground of delay in lodging the FIR, long period of incarceration, refusal of bail only on the apprehension of fleeing or tampering with evidence, examination of material witnesses already completed etc.

9. At the outset, it is necessary to note that on 20.06.2008 while disposing of the bail application bearing No.1317/2008 moved by the Petitioner, this Court ordered the Petitioner to be released on bail on the following grounds :

- (i) Investigation is complete and the case has been committed to the Court of Session and only the Petitioner could not be committed for trial because of his medical condition at that time;
- (ii) The Petitioner has roots in the society, he is an income tax assess and there was no apprehension of his fleeing from justice. (iii) The Petitioner is already in custody for last about more than seven months;
- (iv) The Petitioner was ordered to be released on bail on his furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount with direction to surrender his passport and not to leave the country without the prior permission of the Court.

10. The order passed in Bail Application No. 1317/2008 was challenged before the Hon"ble Supreme Court by filing Special Leave to Appeal (Crl) No. 891/2009. While setting aside the order dated 20.06.2008 granting bail to the Petition, the Hon"ble Supreme Court passed the following order:-

"Heard learned counsel for the parties.

Leave granted,

This appeal arises out of the judgement and order dated 20.06.2008 passed by the High Court of Delhi in Bail Application No. 1317 of 2008. The respondent herein is an accused in a case FIR No. 356/2007 registered at Police Station Hauz Qazi, Delhi u/s 302 read with Section 120B of the Indian Penal Code, 1860. The High Court, after hearing the learned counsel for the NCT of Delhi Petitioner herein and the learned senior counsel for the respondent released the petitioner before the High Court respondent herein, mainly on bail on the following ground:

".....The petitioner is a permanent resident of Delhi and is stated to has roots in the Society. He is stated to be an assessee under the income Tax Act, 1961. There is no apprehension of his fleeing from the justice. The petitioner is already in custody for last more than seven months."

It is no disputed before us that in this case eight accused persons are presently in jail. Mr.Sushil Kumar, learned senior counsel contended that the respondent is entitled for grant of bail even on the merits of the case as from the evidence recorded by the Investigating officer during the investigation of the case, no *prima facie* case is made out against the respondent for his involvement in the crime. He also submitted that the respondent is entitled for bail on the medical ground for which, additional documents alongwith amended application were filed by him before the High Court on 17th June, 2008 which were taken into consideration by the High Court on 18th June, 2008. He submitted that the High Court ordered the release of the respondent on bail after examining the entire material on record. We are afraid to agree with the aforesaid reasoning recorded by the High Court in its order, as the ground on which the bail was granted to the respondent in a heinous crime, can under no circumstances be held as tangible and valid ground in the eyes of law. However, without embarking upon the merits of the case, since the charge sheet has been filed against the respondent and other accused persons before the competent Court of law, we do not wish to express any opinion on the evidence collected by the police during investigation of the case. The High Court has already dealt with medical ground in detail in the impugned order, no further reasons are required to be recorded by this Court thereon. In the result, this appeal is allowed and the impugned order of the High Court is set aside. However, we make it clear that any observation made in this order by this Court or by the High Court in its impugned order shall not be construed as an expression of opinion on the merits of the case which shall be dealt with and decided by the trial Court in accordance with law."

11. The case laws relied upon by learned counsel for the Petitioner in support of his contentions is of no help to him for the reason that nature of accusation against the Petitioner had already been considered by Hon"ble Supreme Court in Special Leave to Appeal (Crl) No. 891/2009 and the reason for which bail was granted to the Petitioner by this Court in Bail Application No. 1317/2008 were held to be not tangible and valid grounds in the eyes of law.

12. Since each case has to be considered on its own facts, learned Counsel for the Petitioner is unable to draw any support to seek bail for the Petitioner in this case.

13. It may be noted that the Petitioner is claiming bail mainly on the following grounds:

(i) The Petitioner is in custody for the last about seven years and trial is likely to take long time;

(ii) Prayer to peruse the testimony of the witnesses already recorded by learned Trial Court and appreciate the alleged inconsistencies and to form an opinion in the matter; (iii) The order rejecting the bail by the Supreme Court was before the stage of framing of charge but now the situation has changed as all material witnesses have been examined;

(iv) Two co-accused namely Ashok Jain and Rishi Pal have already been enlarged on bail;

(v) The Petitioner has deep roots in the society and there is no apprehension of his being fleeing from justice; and

(vi) The health condition of the Petitioner requires him to be on bail and get the proper treatment.

14. Although, this Court while disposing of Bail Application No. 1317/2008 has considered the prayer of the Petitioner and passed the order to enlarge the Petitioner on bail almost on similar grounds except that by that time, the Petitioner was in custody for a period of seven months, which is now seven years but that itself is not sufficient to undermine the gravity of the offence. All the issues raised by the Petitioner herein, have been considered by Hon'ble Supreme Court in the case of Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Anr. AIR 2005 SC 921 . In the above report, the detailed history of successive bail applications and their fate has been incorporated in paras 3 to 11, as under :

"3. These are two criminal appeals challenging an order dated 21-9-2004 made by the High Court of Judicature at Patna in Criminal Miscellaneous No. 9220 of 2004 which was an application filed by respondent No. 1 (hereinafter referred to as the respondent) seeking the grant of bail in Sessions Trial No. 976 of 1999 pending before the CBI court. In the said case the said respondent is charged for offences punishable under Sections 302 read with 34, 307 read with 34, 120B, 302/307 IPC and Section 27 of the Arms Act. This application before the High Court for grant of bail was the 9th application in the series of applications filed by the said respondent for grant of bail. His earlier applications were either rejected by the High Court or when granted by the High Court were set aside by this Court. As a matter of fact, this court in two earlier appeals had set aside the orders of the High Court dated 6-9-2000 and 23-5-2003 granting bail to the said respondent. The said orders of this Court are since reported in the case of Union of India and Anr. v. Rajesh Ranjan Alias Pappu Yadav 2004 7 SCC 539 (I) and in Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, . It is also relevant to note that when his earlier applications were rejected by the High Court the appeals filed by the respondent were dismissed by this Court confirming the refusal of the bail.

4. On 19-8-2000 charges were framed against the respondent and others under Sections 302 read with 34, 307 read with 34, 120B, 302/307 IPC and Section 27 of the Arms Act which is not challenged.

5. After rejection of four bail applications earlier, the respondent filed a 5th application Crl. Miscellaneous 24068 of 2002 which came to be allowed by the High Court on the sole ground that since the respondent accused was under detention for more than one year, he should be released on bail without going into any other aspect of the case. On 6th of September, 2000 an appeal filed against the said grant of bail came to be allowed by this Court on 25th of July, 2001 on the ground that High Court while granting the bail did not keep in mind the requirement of Section 437(1)(i) of Cr. P.C., however, by the said order this Court held if any fresh application is made by the accused same shall be decided in accordance with law. This case is since reported in the case of Union of India and Anr. v. Rajesh Ranjan Alias Pappu Yadav (supra I).

6. Taking advantage of the said observations of this Court the respondent-accused herein made another application for grant of bail on 5-11-2001 which was the sixth application for bail, said application came to be dismissed by the High Court. On 5-11-2001 a SLP filed against the said order of dismissal came to be dismissed by this Court on 7-12-2001.

7. The 7th bail application next filed by the accused-respondent also came to be dismissed by the High Court. A SLP filed against the said dismissal was also dismissed by this Court as per its order in SLP (Crl) No. 1645/2002 on 20-3-2002.

8. On 23-9-2002 the accused-respondent moved the 8th bail application which came to be allowed by the High Court by its order dated 23-5-2003 solely on the ground that the accused-respondent had undergone incarceration for a period of 3 years and that there was no likelihood of the trial being concluded in the near future and appeal filed against the said grant of bail came to be allowed on the ground that the High Court could not have allowed the bail application on the sole ground of delay in the conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of the *prima facie* case, gravity of offence, and the allegation of tempering with the witness by threat and inducement when on bail. This Court held since the above factors go to the root of the right of the accused to seek bail, non consideration of the same and grant of bail solely on the ground of long incarceration vitiated the order of the High Court granting bail. This Court also observed that though an accused had a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has duty to consider the reasons and grounds on which the earlier bail applications were rejected and in such cases the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications. This Court in that order also found fault with the High Court for not recording any fresh grounds while granting bail and for not taking into consideration the basis on which earlier bail applications were rejected. The court also emphasised in the said order that ignoring the earlier orders of this Court is violative of the principle of binding nature of the judgments of the superior

court rendered in a lis between the same parties, and noted that such approach of the High Court in effect amounts to ignoring or over-ruling and thus rendering ineffective the principles enunciated in the earlier orders especially of the superior courts. On that basis, the appeal of the complainant challenging the grant of bail came to be allowed canceling the bail granted to the respondent. This order of this Court is since reported in the case of *Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav and Anr.* (supra II)

9. Barely 11 days after the said order of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav and Anr.* (II) (supra) i.e. on 23rd March, 2004 a fresh 9th bail application was filed by the respondent without there being any change in the factual situation which came to be allowed by the High Court by its order dated 21st September, 2004 which is the subject matter of the above noted two Criminal Appeals.

10. When first of these appeals namely Cri. Appeal No. 1129 of 2004 came up for preliminary hearing on 24th of September, 2004, this Court issued notice in the SLP as well as in the application for suspending the bail granted by the High Court. After service of notice the respondent put in appearance in that appeal and this Court on 1st of October, 2004, after hearing the parties granted leave and stayed the impugned order granting bail by the High Court with a direction that the respondent should surrender and he should be taken into custody forthwith, consequently the respondent is in custody now.

11. During the pendency of the above criminal appeal filed by the complainant, the Investigating Agency namely the (CBI) has also filed another SLP challenging the order of the High Court granting bail to the respondent in which we have granted leave today."

15. The Hon"ble Supreme Court also dealt with the right of personal liberty guaranteed under Article 21 of the Constitution of India as well as the application of the principles of Res Judicata and binding force of the decisions of Hon"ble Supreme Court, on the subordinate Courts in paras 18 to 20 of the report, as under:

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However. Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a *prima facie* case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of *prima facie*

case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so.

19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate for a on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country."

16. In the same case, the Hon"ble Supreme Court also observed that there was no fresh material which persuaded the High Court to consider the bail application on the same facts and observed that the reconsideration and recording of a new finding was without there being any fresh factual or legal basis.

17. Reverting to the present case, the contention of learned counsel for the Petitioner is that this Court should look into the statement of witnesses examined by the prosecution to find out whether the same is sufficient to prove the guilt of the Petitioner or not. Suffice it to note that it is for the Trial Court to consider the testimony of the prosecution witnesses and reading one or two sentences in isolation from the statement of witnesses is neither desirable nor legally permissible at this stage by this Court while dealing with the bail application.

18. In view of the above discussion, I do not find it to be a fit case to enlarge the Petitioner on bail at this stage when the trial is on the verge of conclusion. Accordingly, the bail application is hereby dismissed.

19. Any observations made hereinabove for the purpose of dealing with the contentions of counsel for the parties shall not be deemed to be an expression on merits of the case.

Crl.M.A.No. 12910/2014

Since the writ petition has been dismissed, the present application has become infructuous and the same is accordingly dismissed.