

IN THE COURT OF SH. AMITABH RAWAT, ADDITIONAL
SESSIONS JUDGE-03, SHAHDARA DISTRICT, KARKARDOOMA
COURT, DELHI

I.A. No. 28-2020 (Ishrat Jahan)

FIR No. 59/2020

PS : Crime Branch (being investigated by Special Cell)

U/S. 13/16/17/18 UA (P)Act, 120B read with Section
109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/353/39
5/420/427/435/436/452/454/468/471/34 IPC & Section 3 & 4 Prevention
of Damage to Public Property Act,1984 and Section 25/27 Arms Act

State vs. Tahir Hussain & Ors.

26.11.2020

ORDER

1. This order shall dispose off the application under Section 439 Code of Criminal Procedure for grant of interim bail to the applicant/accused Ishrat Jahan.

2. Arguments on bail application were heard at length on behalf of applicant/accused Ishrat Jahan by Sh. Ramesh Gupta, Ld. Senior Advocate with Sh. Pradeep Teotia, Ld. Counsel for accused and for prosecution by Sh. Amit Prasad, Ld. Special Public Prosecutor. The record alongwith judgments relied upon has also been perused.

3. (a) Sh. Ramesh Gupta, Ld. Senior Advocate for the applicant had strongly argued that the applicant Ishrat Jahan is a practicing advocate since 2006 and is a law abiding citizen of India. The applicant has also served as a former Municipal Councilor (2012-2017) from Ward No. 231, Ghondli, Delhi.

(b) It was further argued that applicant has been falsely implicated in two cases (including the present case) involving anti CAA protests. She has already been enlarged on regular bail in other case FIR No. 44/20 by Ld. Predecessor on 21.03.2020 and on the same day, applicant was arrested in present case FIR No. 59/20, P.S. Crime Branch. The said development clearly point towards the misuse of the judicial process for political vendetta.

(c) It was further submitted that earlier the applicant was granted interim bail for a period of 10 days i.e. from 10.06.2020 to 19.06.2020 as her marriage was scheduled for 12.06.2020. Thereafter, as per directions of the Hon'ble Court, the applicant duly surrendered before the authorities on 19.06.2020 and never misused the occasion, either directly or indirectly, to influence evidence and/or witnesses in either of the cases pending against her and always abide by all such conditions as was imposed by the court.

(d) It was argued that applicant had a history of Cervical, Spine injury (Lower Back Pain) and Migraine prior to her arrest and she had been under continuous medication in the past for the said illnesses. However, post her arrest on 26.02.2020, her treatment for the said medical illnesses had been discontinued.

(e) It was submitted that around 15 days back, the applicant fell inside the bathroom while she was in Jail due to slippery floor and has suffered spine injuries. The applicant had been taking treatment from

Apollo Hospital for her spine related injuries in the past and no proper treatment is being given to applicant inside the Jail for her Back Pain, Migraine and Spine Injuries. The applicant has also been diagnosed with High Blood Pressure after she had been put inside Jail and she had been put on medication for the same inside the Jail.

Moreover, the Covid-19 situation inside the Jail is precarious and the applicant has anxiety issues.

(f) It was vociferously argued that she is from a respectable family and has never violated any conditions imposed by the court.

It was, thus, prayed that the present application be allowed and applicant Ishrat Jahan be enlarged on interim bail for a period of 02 months.

Ld. Counsel for accused has relied upon one judgment of Hon'ble Supreme Court of India passed in Dataram Singh vs. State of Uttar Pradesh and Ors., MANU/SC/0085/2018.

4. (a) Sh. Amit Prasad, Ld. Special Public Prosecutor had argued that the applicant has been charge-sheet in the case under Section 13/16/17/18 of the Unlawful Activities Prevention Act, 1967 read with Section 120-B/147/148/149/124-A/153-/109/114/212/353/395/427/435/436/307/302/341/186/452/454/201/420/468/471/34 IPC, Section 3 & 4 of Prevention of Damage to Public Property Act and Section 25/27 Arms Act, P.S

Crime Branch (Investigation with Special Cell). The cognizance has already been taken and the case is at the stage of compliance under Section 207 Cr.P.C.

(b) It was argued that the investigation of the case is continuing as contemplated under Section 173 (8) of the Code of Criminal Procedure, 1973 and therefore, there is every possibility that the triple test or tripod test as laid down by the Hon'ble Supreme Court is not satisfied at the time of consideration of bail.

(c) It was further argued that Section 43D of the Unlawful Activities (Prevention) Act, 1967 put an embargo at the stage of consideration of bail. Sub-clause 5 of Section 43D of the UA(P) Act reads as follows:-

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release;

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(d) A Division Bench of the Hon'ble High Court of Delhi in Mohd. Hussain Molani versus National Investigation Agency, Crl. Appel No. 370/2020 dated 23.10.2020 has declined the interim bail of the accused

(Petitioner therein) on the ground of surgery of his wife after taking into consideration the judgment passed by the Hon'ble Apex Court in titled National Investigation Agency vs. Zahoor Ahmad Shah Watali, (2009)5 SCC 1. It was held that “ Thus, in view of above law laid down by the Hon'ble Apex Court, this Court has to form a prima facie view. As discussed earlier, there is prima facie sufficient material on record to show the involvement of the appellant in a serious offence i.e. transfer or aiding to transfer of funds to terrorist organization.

(e) It was further argued that the latest medical prescription dated 14.06.2020 of Cribs Hospital relating to applicant also got verified from the hospital and report has been obtained wherein it is mentioned “ *this is certify that patients come in OPD on dated 14/06/2020, 2:28 (night) in emergency unit with complain Headache and abdominal heaviness. She was managing with injectibles on advice oral medicines and discharge. And no advice any investigation*”. Thus, there is no urgent medical requirement of applicant.

(f) Ld. Special Public Prosecutor had also argued that in terms of the Full Bench judgment of Hon'ble High Court of Delhi in "Court on its own Motion vs. State & Anr." WP (C) 3037/2020, the interim bail once granted shall be extended automatically.

It was contended that the situation got changed after the Full Bench of Hon'ble High Court of Delhi had withdrawn the automatic extension in Court On “Its Own Motion vs. State & Ors.”, W.P.(C)

3037/2020 vide order dated 20.10.2020. However, the Hon'ble Supreme Court of India in "National Forum on Prison Reforms vs. Government of NCT of Delhi & Ors." SLP (Civil) Diary No(s). 23367/2020 vide order dated 29.10.2020, has stayed the said order of Hon'ble High Court of Delhi.

Thus, even grant of a few days interim bail will culminate into an order short of regular bail without examining the merit of the matter qua the present applicant. In other words, any interim bail granted by this court shall result in automatic extension and thus, what could not be granted in view of the bar of Section 43D of UAPA would be obtained through this route.

Ld. Special Public Prosecutor has also filed two orders dated 17.07.2020 and 30.07.2020 i.e. CrI. A 1157/16 , titled as Irshad Ali vs. State to highlight this point.

It was, thus, prayed that the present interim bail application be dismissed.

6. (a) A report was called and filed by the Jail Superintendent stating that the Jail Administration is taking all the necessary precautionary measures related to Covid-19.

(b) 09 inmates who tested Covid-19 in the jail are admitted in GTB Hospital and their medical condition is stable. Three inmates including

01 child who were tested Covid-19 positive are kept in isolation in jail. All are stable. Therefore, as per record total 104 tests for Covid-19 have been done till date and situation is totally under control. As per protocol of Covid-19, any inmate coming from outside i.e. OPD/Court/new admission/surrender/PC remand, etc., has to be quarantined for 14 days. Also the particular barrack where any Covid positive case is found, is quarantined for 4 days for safety measures.

(c) The applicant has been tested twice for Covid-19 and was found negative and even the inmates who tested Covid-19 positive are kept in isolation in Jail. The situation is totally under control in this regard. Sanitization in the jail is being done twice a day. Applicant is stable and she has been receiving proper treatment from Jail for her minor health issues. For her orthopedic issues, she received treatment by Jail Ortho, SR and she never complaint of slip on floor in OPD in her previous visits to Dispensary.

7. (a) The applicant/accused Ishrat Jahan is in custody in the present case under various provisions of law including Unlawful Activities (Prevention) Act, 1967. The cognizance has already been taken by the court and the case is at the stage of compliance under Section 207 of Cr.P.C.

(b) In a case under Unlawful Activities (Prevention) Act, 1967, in terms of Section 43D of the said Act, there is a embargo at the stage of the consideration of the bail. If the court is of the opinion that there are

reasonable grounds for believing that the accusation against such person is prima facie true, then the accused shall not be released on bail.

In a recent Division Bench judgment of the Hon'ble High Court of Delhi in "Mohd. Hussain Molani versus National Investigation Agency", Crl. Appeal No. 370/2020 dated 23.10.2020, where the interim bail of the accused (Petitioner therein) on the ground of surgery of his wife was agitated, after taking into consideration the judgment passed by the Hon'ble Apex Court in titled National Investigation Agency vs. Zahoor Ahmad Shah Watali, (2009)5 SCC 1, it was held that “ Thus, in view of above law laid down by the Hon'ble Apex Court, this Court has to form a prima facie view. As discussed earlier, there is prima facie sufficient material on record to show the involvement of the appellant in a serious offence i.e. transfer or aiding to transfer of funds to terrorist organization. Thus, the interim bail application of the said accused/petitioner was dismissed.

Thus, in a case like the present one, gravity of the offence and material on record is a pertinent aspect to be considered for grant of even interim bail.

(c) Ld. Special Public Prosecutor has also contended that interim bail once granted even for a short or specific period will entail into almost regular bail, due to automatic extensions in terms of the orders passed in "Court On Its Own Motion vs. State & Ors" by Full Bench of Hon'ble High Court of Delhi. Though, the Full Bench order dated

20.10.2020 in the said case has withdrawn the automatic extension of interim bail, yet the same has been stayed by the Hon'ble Supreme Court of India vide order dated 29.10.2020. Accordingly, interim bail granted even for a specific period will culminate into an order short of regular bail without examining the merit of the matter. The said contention of the Ld. Special Prosecutor is correct in as much as in terms of law, interim bails are to be automatically extended.

(d) Moreover, the applicant is complaining of cervical, spine injury/lower back pain, migraine and high blood pressure. There is no medical emergency shown by the applicant. Moreover, as per the report of the Jail Superintendent, Tihar Jail, Delhi, all the necessary protocols regarding the Covid-19 related precautions are being taken and the situation is totally under control. There is no Covid scare inside the jail. The applicant is also being given proper treatment for her minor health issues and her condition is stable. In fact, she was tested twice for Covid-19 and was found negative.

Thus, in terms of the medical ailments agitated by the applicant and the report of the Jail Superintendent, the court does not find any cogent reason for enlarging the applicant on interim bail.

8. Considering the gravity of the offences including Unlawful Activities (Prevention) Act, 1967 with which the applicant is charged, the discussion in the preceding paragraphs and the Jail Report, I do not deem it a fit case to grant interim bail to accused Ishrat Jahan.

Hence, the present application seeking grant of interim bail of accused Ishrat Jahan stands dismissed.

Application is disposed off accordingly.

However, the Jail Superintendent is directed to do the regular follow up of the medical issues flagged by the applicant.

Copy of this order be mailed to Ld. Counsel for applicant, Ld. Special Public Prosecutor and the Investigating Officer.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 26.11.2020