



HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR

S.B. Criminal Miscellaneous Second Bail Application No.

17767/2019

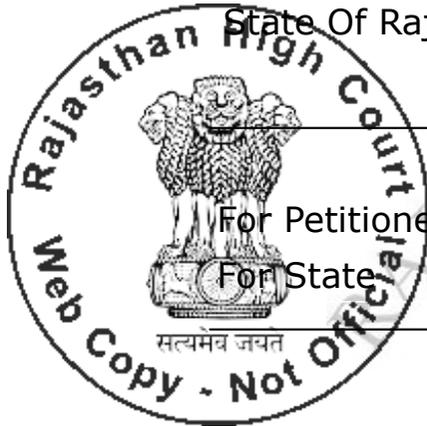
Shahrukh S/o Juharu Khan

----Petitioner

Versus

State Of Rajasthan

----Respondent



For Petitioner(s)

: None present.

For State

: Mr. S.S. Mahala, PP.

HON'BLE MR. JUSTICE PANKAJ BHANDARI

Order

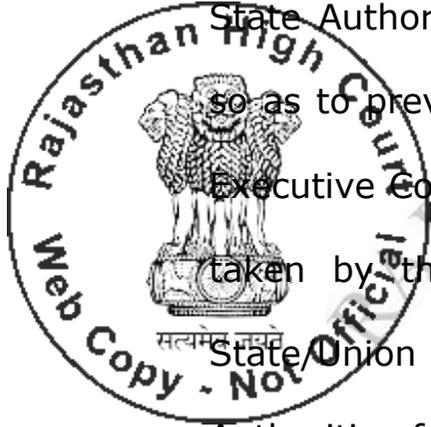
31/03/2020

1. Preeminence is always given by the Courts to Bail applications, applications for suspension of sentence in Appeals and Revisions but as to whether the same fall within the category of "extremely urgent matters" and should be taken up at a time when the entire Country, except essential services, is under lockdown is the moot question.

2. Bail Applications, Appeals under SC/ST Act, Revisions and Appeals with applications for suspension of sentence are listed in the category of urgent matters. When the entire Country except essential services is under closure, whether the above would fall within the category of extremely urgent matters is the moot question.



3. It is known fact that WHO has declared COVID-19 as a pandemic. National Disaster Management Authority Government of India in exercise of the powers under section 6 (2)(i) of the Disaster Management Act, 2005 (hereinafter referred to as 'the Act') has issued order dated 24.3.2020 directing Ministries/ Departments of Government of India, State Governments and State Authorities to take measures for ensuring social distancing so as to prevent the spread of COVID-19 in the Country. National Executive Committee has issued guidelines on the measures to be taken by the Ministries/Departments of Government of India, State/Union Territory. Government and State/Union Territory Authorities for containment of COVID-19 epidemic in the Country.



4. The guidelines annexed to Order No. 40-3/2020 DM-1(A) is reproduced hereunder:-

“Whereas, the National Disaster Management Authority (NDMA), is satisfied that the country is threatened with the spread of COVID-19 epidemic, which has already been declared as a pandemic by the World Health Organisation, and has considered it necessary to take effective measures to prevent its spread across the country and that there is a need for consistency in the application and implementation of various measures across the country while ensuring maintenance of essential services and supplies, including health infrastructure;

Whereas in exercise of the powers under Section 6(2)(i) of the Disaster Management Act, 2005, the National Disaster Management Authority (NDMA), has issued an Order no.1-29/2020-PP (Pt.II) dated 24.03.2020 directing the Ministries/ Departments of Government of India, State/Union Territory Governments and State/Union Territory Authorities to take effective measures so as to prevent the spread of COVID-19 in the country;

Whereas under directions of the aforesaid Order of NDMA, and in exercise of the powers, conferred under Section 10(2)(I) of the Disaster Management Act, the undersigned, in his capacity as Chairperson, National



Executive Committee, hereby issues guidelines, as per the Annexure, to Ministries/Departments of Government of India, State Union Territory Governments and State/ Union Territory Authorities with the directions for their strict implementation. This Order shall remain in force, in all parts of the country for a period of 21 days with effect from 25.03.2020."

5. Rajasthan High Court in Suo moto versus State DB Civil Writ

Petition No. 4990/2020 has issued directions whereby Government Machinery is required to strictly take all effective measures to ensure compliance of lockdown. Sec.188 of IPC deals with the offence of "Disobedience to order duly promulgated by a public servant."



6. Rajasthan High Court has issued notification No. PA/RG/Misc/2020 dated 24-3-2020 directing listing of only matters of extreme urgency.

Clause 1 (xiii) of the notification reads as under:-

"It is made clear that on consideration of written mentioning and written submissions, if any, the relief as prayed for in urgent matters will be considered and/or the matter shall be suitably adjourned without passing any adverse orders" this has resulted in filing of applications.

7. In the extremely urgent category, even second, third and fourth bail applications are being filed as the Advocates/Litigants are aware that no adverse orders would be passed. Assistance from the Prosecution side and case diary is required to ascertain the stage and outcome of the investigation and criminal antecedents of the accused.



8. In Criminal Appeals under the SC/ST Act pertaining to bails effecting service on the complainant before passing any order in favour of the accused is the mandate of the SC/ST Act. In the present lockdown condition even sending notice through Police personnel may pose risk of spreading of COVID-19 as even Police personnels have been quarantined. Further there is complete closure of public transport hence it can not and should not be expected from the Police Personnel that they would leave the emergent task given under "the Act" to effect service on the complainant and travel hundreds of kilometers in their private vehicles to produce the case diaries thereby posing threat of COVID-19 to community at large and themselves.

9. The Notification issued by the High Court has given an impression to the public at large that either the relief prayed for will be considered or the matter shall be adjourned and that no adverse order would be passed.

10. It would not be out of context to observe that any order passed in favour of the petitioner or appellant would be an order adverse to the Complainant/State and presently when Lawyers are abstaining from work on account of call given by the Bar Council of Rajasthan, Complainant would be deprived of his right to engage a Lawyer and oppose the bail application/ application for suspension of sentence. Notification issued by the High Court on administrative side cannot limit the powers of the Court to pass judicial orders. If the direction is to be adhered to than the Court is to either allow or adjourn the matter. If the bail application/appeal under ST/ST is allowed, the order is to be sent



to the court below, sureties have to appear before the court below and advocates presence is required to identify the sureties. Release order has to be sent to the jail with the court staff.

11. If application for suspension of sentence is allowed the order is to be produced before the Trial Court which has passed the sentence. Presently in each District limited number of Courts for limited time are functional to deal with exceptional urgent matters, in that situation for attesting the bail bonds staff of the concerned Trial Court is to be requisitioned for tracing out the file as surety bonds have to be furnished in the concerned Court file. Thus release of one accused or convict shall risk the life of many and would adversely affect the measures taken by the State for complete lockdown.

12. It is true that Right of liberty is a fundamental right and Citizens are free to move anywhere in the country but reasonable restrictions have been imposed due to the emergent situation to prevent the spreading of COVID-19 virus. The entire country is under lockdown.

13. Release of an accused or convict at the cost of breaching the order of lockdown and at the cost of risking lives of many cannot be considered to fall within the category of "extreme urgent matter." It is also relevant to note that Rajasthan High Court has Holi, Dasherā, Diwali and Winter vacations ranging from few days to few weeks during which period also Bail applications and applications for suspension of sentence are not taken up by the Court.

14. It is pertinent to mention that a report was sought from DG





Prisons who has reported that there is no overcrowding in Prisons, there is regular medical check up of inmates and all new inmates are subject to medical check up and wherever space is available are kept separately before putting them with the inmates.

15. In view of the discussions made herein above, this Court is of the considered view that at the time when there is complete lockdown the bail applications, Appeals under SC/ST Act, applications for suspension of sentence can not be considered to be of extreme urgency.

16. Registrar Judicial is directed not to list Bails, appeals applications for suspension of sentence in Appeals and Revisions in the category of "extreme urgent matters".

17. All such matters and the present applications be listed after the withdrawal of order of complete lockdown by the Government of India.

(PANKAJ BHANDARI),J

CHANDAN /1

सत्यमेव जयते