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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL.)-URGENT 10/2020

DR. SHIVENDER MOHAN SINGH (IN J.C.) Petitioner

Represented by: Mr.Hariharan, Sr. Adv. with
Mr.Vivek Jain, Adv.

Versus

STATE OF NCT OF DELHI & ORS. Respondent

Represented by: Mr.Rahul Mehra, Standing
Counsel (Crl.), GNCTD with Mr.Chaitanya
Gosain, Adv. & Mr.Sandeep Goel, D.G., Prisons,
Mr.Prashant Verma, OIC Legal

Mr.Mohit Mathur, Sr. Adv. with Mr.Sandeep Das,
Adv. for complainant

Mr.Amit Mahajan, Adv. for Directorate of
Enforcement with Inspector Sanjeev Dodhi, EOW

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA A W

ORDER
06.04.2020

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1. The petitioner has filed the present petition praying as under:-

"A. Issue a writ of mandamus or any other appropriate writ, order or direction the Superintendent of Jail, Tihar Jail to release the Petitioner on interim bail for a period of 60 days/eight weeks due to the outbreak of Coronavirus (COVID-19) in cases bearing (i) FIR No. 50 of 2019 dated 27.03.2019 registered at Police Station Economic Offences Wing ("PS EOW") New Delhi under Sections 409, 420 and 120-B IPC

(hereinafter referred to as “FIR No. 50”), (ii) FIR no. 189 of 2019 dated 23.09.2019 registered at PS EOW, New Delhi under Sections 409 and 120-B IPC (hereinafter referred to as “FIR No. 189”) and (iii) Case ECIR ECIR/05/DLZO-II/2019 dated 24.07.2019 registered by the Directorate of Enforcement (“ED”) which are currently pending trial;

B. Pass any other order (s) as deemed fit in the interests of justice”.

2. Case of the petitioner is that the petitioner after completing his Graduation from St. Stephen College, University of Delhi completed his MBA in Healthcare Administration from Duke University, U.S.A. and thereafter launched Fortis Hospital. Fortis Healthcare became the second largest Corporate group of hospitals in India and catered to 4000 beds over 45 hospitals all over the India. By virtue of developing these hospitals, the petitioner acquired expertise in Healthcare sector and also initiated several social measures. Pursuant to FIR No. 50/2019 registered on 27th March, 2019 under Sections 409/420 IPC and 120B IPC at P.S. EOW, Delhi Police, the petitioner was called for investigation which the petitioner joined. Subsequently, on 24th July, 2019, the Enforcement Directorate also recorded ECIR/05/DLZO-II/2019 against the petitioner and other accused. On 23rd September, 2019, another FIR being FIR No. 189/2019 was registered at P.S. EOW on the basis of another complaint filed by RFL. On 10th December, 2019, the petitioner was arrested by EOW and subsequently, on 12th December, 2019, the petitioner was taken into custody by the Enforcement Directorate for investigation and thereafter remanded to judicial custody with effect from 26th December, 2019. The EOW and the Enforcement Directorate has since filed the charge sheet and the complaint respectively before the concerned Court, however, no charge has been framed against the petitioner as yet.

3. On 16th March, 2020 and 23rd March, 2020, the Hon'ble Supreme Court took up suo moto cognizance of the issue relating to health arising of the Covid-19 pandemic with regard to the inmates in prisons and remand homes vide Suo Moto Writ Petition (C) 1/2020 titled in Re: Contagion of Covid 19 in prisons. Pursuant to the directions of the Supreme Court dated 23rd March, 2020, a High Powered Committee of Delhi High Court issued criteria for release of under-trial prisoners in its meeting dated 28th March, 2020, which the petitioner claims to be completely discriminatory and arbitrary. On 26th March, 2020, the petitioner while in custody, prepared guidelines and Standard Operating Procedures (SOP) for managing health sector resources to deal with Covid-19 pandemic in the country on the basis of expertise possessed by him and shared the same with Hon'ble Prime Minister of India's Office. On 29th March, 2020, the petitioner applied to the Delhi State Legal Services Authority for his release for eight weeks in view of the Covid-19, however, till the filing of the present petition, no response was received either from the Delhi State Legal Services Authority or High Powered Committee. On 31st March, 2020, the petitioner approached the Hon'ble Supreme Court by filing a writ petition (vide Diary No. 10809/2020) seeking interim bail due to the outbreak of Covid-19 pandemic which came up before the Hon'ble Supreme Court on 3rd April, 2020, when it was allowed to be withdrawn to approach this Court. The Hon'ble Supreme Court also directed that the suggestion made by the petitioner shall be considered by the concerned authorities. Thus, the petitioner by the present writ petition, seeks interim bail in the two FIRs and ECIR resulting in filing of the charge sheet and complaint.

4. At the outset, learned counsel for the respondents raised a challenge to the maintainability of the present petition seeking interim bail by filing a writ petition on which, learned counsel for the petitioner states that since he was challenging the

criteria of classification by the High Powered Committee as discriminatory and arbitrary, the present petition was maintainable, however, ultimately stated that he was only seeking interim bail and whatever be the nomenclature, the present petition be treated as one for interim bail.

5. Learned counsel for the petitioner seeks interim bail not on merits but on the ground, firstly, that with the over-crowding in the jails, no social distancing can be maintained and thus, there is every likelihood of the petitioner being infected with Covid-19 and secondly, that with the kind of experience the petitioner has in the health sector, particularly, his experience after having worked when the Uttarakhand was flooded, the petitioner be given an opportunity to do community service by grant of interim bail so that his efforts can result in an all India outreach and he will be able to initiate utilization of available infrastructures with the Government and the Public Sector Undertakings (PSUs) after interacting with officers of the various Ministries and hospitals including private hospitals. Learned counsel for the petitioner further states that even on merits, the investigation against the petitioner is complete in all the three cases, the evidence is primarily documentary in nature and the petitioner already having been released on interim bail for a period of one week at the time of death of his relative whereafter the petitioner surrendered, the petitioner be granted interim bail.

6. Learned Standing Counsel for the State opposing the interim bail application contends that the present petition is not maintainable as it has been filed as a writ petition and though there is no prayer challenging the criteria of the High Powered Committee, however, the petitioner still urges that as a ground for grant of interim bail. Learned Standing Counsel for the State refers to the decision of the Hon'ble Supreme Court dated 23rd March, 2020 and emphasizes that after constituting the High Powered Committees in all the States, the Hon'ble Supreme Court left it to

the discretion of the High Powered Committees to form a criteria for release of the prisoners. The present petition is not in the nature of a PIL and there is no challenge to the Minutes of the Meeting of the High Powered Committee in the prayer. As per the guidelines of the High Powered Committee, the petitioner is not entitled to interim bail for de-congesting the prisons as he does not fulfil the three criterias, firstly, the petitioner is facing trial for offences punishable under Section 409 IPC which are punishable upto Life Imprisonment or ten years imprisonment; secondly, the petitioner is facing trial in more than one case and in all the three cases, he is not on bail and thirdly, the petitioner is facing trial in offences relating to the Prevention of Corruption Act and the Prevention of Money Laundering Act. It is further contended that in any case, the petitioner has been lodged in a Cell where the petitioner is alone and hence, as far as social distancing is concerned, the same is adequately taken care of in case of the petitioner.

7. Learned counsel for the Enforcement Directorate contends that the main ground on which the petitioner seeks interim bail is that he is an Expert in the Healthcare sector and will contribute in the solutions for fighting with Covid-19 pandemic, however, as noted in the order of the Hon'ble Supreme Court dated 3rd April, 2020, suggestions given by the petitioner have been directed to be taken care of by the concerned authorities and thus, no further directions can be granted. Further, it will be for the concerned authorities to implement the suggestions given by the petitioner if found fit. The petitioner has already filed an application seeking bail in ECIR recorded by the Enforcement Directorate before the Special Court and if any interim bail is to be sought, the same should be before the Special Judge and not before this Court. Hence, the present petition be dismissed.

8. Learned counsel for the complainant contends that in FIR No. 50/2019 registered at EOW, Delhi Police, the bail application of the petitioner was rejected

on 11th December, 2019, whereafter, the petitioner has not filed any bail application either before this Court or before learned Special Judge, hence, the present petition seeking interim bail be not entertained. The allegations against the petitioner are serious in nature and as per the charge sheet, a sum of approximately Rs.2400 Crores has been siphoned off by the petitioner and the co-accused in the Shell companies and to themselves. Thus, by this prayer of interim bail, petitioner is trying to seek relief indirectly, which directly has been denied to him.

9. Rebutting the arguments of the learned counsel for the respondents, learned counsel for the petitioner states that the petitioner is confining the present petition seeking interim bail on the grounds that there should be no over-crowding in jail and to tide over this pandemic of Covid-19 in which case, the petitioner on coming out will be useful to the society and shall duly contribute therein. Thus, by this writ petition, the petitioner only seeks interim bail as stated in the prayer clause. Due to over-crowding in the jail, no social distancing is maintained, thus, there is risk not only to the petitioner but to the other prisoners as well.

10. As regards likelihood of the petitioner being affected by Covid-19, a status report has been filed by the Superintendent, Prisons (Headquarters), indicating the steps taken for reducing the over-crowding in the jail and the further steps which are likely to be taken. Be that as it may, petitioner in his Cell is in isolation and thus, is maintaining social distancing. Even if the petitioner has to use common facilities like rest room and taking food, the distancing can still be maintained besides maintaining hygiene by use of adequate measure including washing hands etc. to which the petitioner does not state that there is any inadequacy. The second ground urged by the petitioner is that in case, interim bail is granted to him, he would be of help to the society in view of his expertise in the Healthcare sector. As noted above, before filing the present petition, the petitioner has filed writ

12. As noted above, petitioner is allegedly involved in offence punishable with more than 7 years of sentence and in more than one case and that too under PMLA and hence does not qualify to be released pursuant to directions of the High Powered Committee.

13. In view of the facts noted, this Court finds no ground to grant interim bail to the petitioner. Petition is dismissed.

MUKTA GUPTA, J.

APRIL 06, 2020/akb

