

\$~33 & 34

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **BAIL APPLN. 2112/2021**

MANISH KUMAR @ MANNY ..... Petitioner

Through Mr. Kamal Pal, Advocate

versus

THE STATE ..... Respondent

Through Mr. Amit Chadha, APP for the State

+ **BAIL APPLN. 2709/2021**

AJIT ..... Petitioner

Through Mr. Somnath Chakraborty, Advocate

versus

THE STATE OF NCT OF DELHI ..... Respondent

Through Ms. Meenakshi Chauhan, APP for the  
State with SI Satish Kumar and SI  
Ramchander Singh, PS Kotwali

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

% **24.08.2021**

**HEARD THROUGH VIDEO CONFERENCING**

1. BAIL APPLN. 2112/2021 filed under Section 439 Cr.P.C is for grant of interim bail to the petitioner in FIR No. 28/2018, dated 31.01.2018, registered at Moti Nagar, for offences under Sections 392/394/395/397/34 IPC, on the ground that he is squarely covered under the High Powered Committee (hereinafter referred to as 'the HPC') guidelines.

2. BAIL APPLN. 2709/2021 filed under Section 439 Cr.P.C is for grant of interim bail to the petitioner in FIR No.415/2015, dated 11.05.2015, registered at Police Station Kotwali for offences under Sections 395/397/365/412/120B IPC on the ground that he is squarely covered under the HPC guidelines.

3. The common question which arises for consideration in both the cases is whether a person who is accused of an offence under Sections 392/394/395/397/412 IPC is entitled to the benefit of the HPC guidelines or not.

4. At the outset, it is made clear that both the cases arise out of different facts. However, in both the petitions the accused are seeking bail under the HPC guidelines.

5. It is worth mentioning that in both cases the co-accused have been granted interim bail by this Court.

6. The learned counsels for the petitioners state that the Minutes of Meeting dated 11.5.2021 provides that a person facing trial for an offence under Section 302 IPC is entitled to be released on interim bail under the HPC guidelines. The learned counsel draws attention of this Court to a resolution in the HPC guidelines dated 11.05.2021 which reads as under:

*“If, the Under Trial Prisoner falling in one of the Eleven criteria laid down by this Committee in the Minutes of Meeting dated 4th May, 2021 and/or in any of the Two criteria laid down today hereinabove, has three or more criminal cases pending against him, then his case shall not be considered for grant of interim bail.”*

7. The learned counsels for the petitioners, therefore, contend that if an Under Trial Prisoner who is accused in two cases involving an offence under

Section 302 IPC, where the punishment is death or imprisonment for life, is entitled to the benefit of the HPC guidelines and is to be released on interim bail, then an Under Trial Prisoner who is facing trial in a case involving offences under Sections 392/394/395/397/412 IPC where the maximum punishment is life, should surely should be extended the same benefit.

8. The learned counsels for the petitioners have also drawn the attention of this Court to the orders passed in the respective cases by this Court while granting bail to the co-accused.

9. On the other hand, the learned APPs appearing for the State have drawn the attention of this Court to the Minutes of Meeting dated 20.06.2020, which reads as under:

**“(B) CLARIFICATION REGARDING MINUTES  
DATED 18.05.2020 QUA BAIL APPLICATION  
NO.291/2019 VIDE ORDERS DATED 17.06.2020 OF  
HON’BLE HIGH COURT;**

*With Permission of the Chair, D.G.(Prisons) has brought to the notice of the Committee orders dated 17.06.2020 passed by Hon’ble High Court in bail application no.291/2019 titled “Satnam @ Raju vs. State”.*

*Members of the Committee have perused the said order passed by Hon’ble High Court with respect to the petitioner who is an under trial prisoner in FIR No.491/2017 under section 364A/506/342/323/34 IPC PS Paschim Vihar. A submission was raised on behalf of the petitioner that as High Powered Committee in meeting dated 18.05.2020 had resolved that UTPs facing trial under section 302 IPC and in Jail, for more than 2 years and not involved in any other case, may be released on “Interim Bail” therefore, petitioner who is involved for offence under section 364A IPC entailing*

*same punishment should also be released on Bail.*

*Members of the committee have perused the orders dated 17.06.2020 passed by Hon'ble High Court and as required, it is hereby clarified that while categorizing the class / category of offences, this Committee in its last meeting had intentionally omitted such like offences i.e. kidnapping for ransom and dacoity etc. The said class/ category of cases and sections of IPC therefore, have not been mentioned in the Minutes while laying down the criteria in the Meeting dated 18.05.2020.” (emphasis supplied)*

10. The learned APPs appearing for the State have also drawn the attention of this Court to the Minutes of the Meeting dated 31.07.2021, which reads as under:

**“(A) REPRESENTATION DATED 22.05.2020 OF DEEPAK KHERWAL, INMATE LODGED IN JAIL NO.3, TIHAR SEEKING HIS RELEASE ON INTERIM BAIL AS PER RESOLUTION OF COMMITTEE DATED 18.05.2020**

*Member Secretary, DSLSA brought to the notice of the Committee, a representation though dated 22.05.2020 but received through post only in the second week of July, 2020.*

*Members of the Committee perused the representation and have gone through the Minutes of Meeting dated 18.05.2020 relied upon by the applicant. It is apparent that the applicant Deepak Kherwal is an Under Trial Prisoner, lodged in Jail No.3, Tihar for 8 years being accused in FIR No.8/2012 U/s 302/397 IPC, P.S. Swaroop Nagar.*

*It is pertinent to mention here that this Committee in its meeting dated 18.05.2020 had recommended*

*release of, "Under trial prisoners (UTPs) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case", for grant of interim bail for a period of 45 days. It is apparent that the applicant in the present FIR is facing trial for an additional offence U/s 397 IPC besides offence U/s 302 IPC. **Members of the Committee while laying down the criteria on 18.05.2020 had intentionally omitted such like offences i.e. dacoity, robbery, kidnapping for ransome etc., The said class/category of cases and sections of IPC, therefore, were not mentioned in the minutes while laying down criteria in meeting dated 18.05.2020.***

*Thus, the case of present applicant is 'not covered' under the criteria laid down by the High Powered Committee in its Meeting dated 18.05.2020. Further, the applicant has made a prayer seeking his release on interim bail before this Committee which apparently is 'not maintainable' as this Committee is not "Court" as prescribed under the Code of Criminal Procedure."*

(emphasis supplied)

11. Therefore, it is contended that the High Powered Committee had intentionally omitted the offences like *dacoity*, robbery, kidnapping for ransom etc., and the Members of the HPC did not intend to extend the benefit of HPC guidelines to the persons accused of these offences.

12. Heard Mr.Kamal Pal and Mr. Somnath Charaborty, learned counsel appearing for the petitioners, and Mr.Amit Chadha and Ms.Meenakshi Chauhan, learned APPs appearing for the State, and perused the material on record.

13. With the outbreak of COVID-19 pandemic, in compliance of the directions of the Supreme Court in Suo Moto W.P.(C).1/2020, the High

Courts constituted HPCs to frame guidelines to decongest prisons in order to prevent the outbreak of COVID-19 pandemic inside the prisons.

14. A High Powered Committee of this Court was constituted to lay down the guidelines for the release of Under Trial Prisoners who were to be released to decongest jails. The relevant portion of the Minutes of Meeting dated 18.05.2020 reads as under:-

*"The Members of the Committee discussed the report submitted by DG (Prisons) vide his letter dated 16.05.2020 and resolved that prisoners falling in following criteria may now be considered for grant of interim bail for 45 days in view of the circumstances in which we are in, preferably on 'Personal Bond' :*

*(i) Under trial prisoners (UTPs) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case;*

*(ii) Under trial prisoners (UTPs) facing trial for offence under Section 304 IPC and are in jail for more than one year with no involvement in any other case;*

*(iii) Under trial prisoners (UTPs) facing trial in a case under Section 307 or 308 IPC and are in jail for more than six months with no involvement in any other case;*

*(iv) Under trial prisoners (UTPs) facing trial/remand prisoners in Theft cases and are in jail for more than 15 days;*

*(v) Male Under trial prisoners (above 65 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;*

*(vi) Female Under trial prisoners (above 60 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;"*

15. It is pertinent to mention here that in the Minutes of Meeting dated 18.05.2020, Under Trial Prisoners who have committed offences like rape etc., had been specifically excluded from the ambit of HPC guidelines. The relevant portion of the HPC guidelines dated 18.05.2020 reads as under:

“It has further been resolved that following category of UTPs, even if falling in the above criterion or the criteria adopted in the earlier Meetings, should not be considered

*:-*

- (i) Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act;*
- (ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;*
- (iii) Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;*
- (iv) Those UTPs who are foreign nationals ;*
- (v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ;*

*and*

- (vi) Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc”*

16. Representations were received from various Under Trial Prisoners who had committed offences under Sections 364A/392/394/395/397/412 IPC, i.e. offences of dacoity, robbery, kidnapping for ransom to be released on interim bail. Members of the HPC clarified the position that the benefit of the HPC guidelines should not be extended to the persons who are facing trial for offences of dacoity, robbery and kidnapping for ransom etc.

17. While considering representation of one Deepak Kherwal, who was facing trial for offence under Section 397 IPC, the High-Powered Committee in its Minutes of Meeting dated 31.07.2020 has observed as under:-

**"ITEM NO.6:- CONSIDERATION OF THE REPRESENTATIONS RECEIVED:**

**(A) REPRESENTATION DATED 22.05.2020 OF DEEPAK KHERWAL, INMATE LODGED IN JAIL NO.3, TIHAR SEEKING HIS RELEASE ON INTERIM BAIL AS PER RESOLUTION OF COMMITTEE DATED 18.05.2020".**

\*\*\*\*\*

*"It is pertinent to mention here that this Committee in its meeting dated 18.05.2020 had recommended release of "Under trial prisoners (UTPs) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case", for grant of interim bail for a period of 45 days. It is apparent that the applicant in the present FIR is facing trial for an additional offence Under Section 397 IPC besides offence Under Section 302 IPC. Members of the Committee while laying down the criteria on 18.05.2020 had intentionally omitted such like offences i.e. dacoity, robbery, kidnapping for ransom etc., The said class/category of cases and sections of IPC, therefore, were not mentioned in the minutes while laying down criteria in meeting dated 18.05.2020."*

Similarly, while considering as to whether an under-trial prisoner is entitled to the benefit of HPC guidelines for an offence under Section 364A IPC, the High Powered Committee in its Minutes of Meeting dated 20.06.2020 had observed as under:-

*"(B) CLARIFICATION REGARDING MINUTES DATED 18.05.2020 QUA BAIL APPLICATION NO.291/2019 VIDE ORDERS DATED 17.06.2020 OF HON'BLE HIGH COURT; With Permission of the Chair, D.G.(Prisons) has brought to the notice of the Committee orders dated 17.06.2020 passed by*

*Hon'ble High Court in bail application no.291/2019 titled "Satnam @ Raju vs. State".*

*Members of the Committee have perused the order passed by Hon'ble High Court with respect to the petitioner who is an under trial prisoner in FIR No.491/2017 under section 364A/506/342/323/34 IPC PS Paschim Vihar. A submission was raised on behalf of the petitioner that as High Powered Committee in meeting dated 18.05.2020 had resolved that UTPs facing trial under section 302 IPC and in Jail, for more than 2 years and not involved in any other case, may be released on "Interim Bail" therefore, petitioner who is involved for offence under section 364A IPC entailing same punishment should also be released on Bail.*

*Members of the committee have perused the orders dated 17.06.2020 passed by Hon'ble High Court and as required, it is hereby clarified that while categorizing the class / category of offences, this Committee in its last meeting had intentionally omitted such like offences i.e. kidnapping for ransom and dacoity etc. The said class/ category of cases and sections of IPC therefore, have not been mentioned in the Minutes while laying down the criteria in the Meeting dated 18.05.2020."*

18. During the second wave of COVID-19 which broke out in the Capital in the months of April and May 2021, once again the High Powered Committee laid down the parameters for de-congesting the prisons. The meeting held on 04.05.2021 laid down the category of prisoners who should be granted interim bail for a period of 90 days. The categories laid down were as follows:

*“(i) Inmates undergoing Civil Imprisonment;*

*(ii) Under trial prisoners (UTPs) who are facing trial in a case which prescribes a maximum sentence of 7 years or less wherein he/she is in custody for a period of 15 days or more;*

*(iii) Under trial prisoners (UTPs)/Remand Prisoners (with respect to whom, Charge sheets are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of 7 years or less ;*

*(iv) Under trial prisoners (UTPs), who are senior citizens more than 60 years of age and are in custody for three months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less;*

*(v) Under trial prisoners (UTPs), who are less than 60 years of age and are in custody for six months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less; subject to the condition that he should not be involved in any other case which prescribes punishment of more than 7 years;*

*(vi) Under trial prisoners (UTPs), who are suffering from HIV, Cancer, Chronic Kidney Dysfunction(UTPs requiring Dialysis), Hepatitis B or C, Asthma, and TB and are in custody, facing trial in a case which prescribes a maximum sentence of 10 years or less and are not involved in multiple cases;*

*(vii) Under trial prisoners (UTPs) who are suffering from HIV, Cancer, Chronic Kidney Dysfunction (UTPs requiring Dialysis), Hepatitis B or C, Asthma, and TB and are in custody for a period of three months or more and facing trial in a case which prescribes punishment of 10 years upto life imprisonment and are not involved in multiple cases.*

*(viii) Under trial prisoners (UTPs) facing trial for offence under Section 304 IPC and are in jail for more than six months with no involvement in any other case;*

*(ix) Under trial prisoners (UTPs) facing trial in a case*

*under Section 307 IPC and are in jail for more than six months; subject to the condition that he should not be involved in any other case which prescribes punishment of more than 7 years;*

*(x) Under trial prisoners (UTPs) (who are related as spouse of the deceased) facing trial for a case under 304B IPC and are in jail for more than one year with no involvement in any other case;*

*(xi) Under trial prisoners (UTPs) (who are related as father-in-law, mother-in-law, brothers-in-law, sisters-in-law of the deceased) facing trial for offence under Section 304B IPC and are in jail for more than six years with no involvement in any other case;”*

19. In the Minutes of Meeting dated 11.05.2021, apart from the above mentioned eleven categories two more categories were included, which are as under:

*(xii) Under trial prisoners (UTPs) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case;*

*(xiii) All female Under trial prisoners (UTPs), who are pregnant and female Under Trial Prisoners, who are having their minor child/children with them in Jail.*

20. It was also resolved in the meeting of the HPC dated 11.05.2021 that, if the Under Trial Prisoner falling in one of the eleven criteria laid down by this Committee in the Minutes of Meeting dated 04.05. 2021 and/or in any of the two criteria laid down in the Minutes of Meeting dated 11.05.2021, has three or more criminal cases pending against him, then his case shall not be considered for grant of interim bail.

21. The Minutes of Meeting dated 04.05.2021 also laid down the category of UTPs who should not be considered for the benefit of the HPC guidelines, even if they fall in the above mentioned 13 criteria laid down by the High Powered Committee. The relevant portion of the HPC guidelines dated 04.05.2021 reads as under:

*“It has further been resolved that following category of UTPs, even if falling in the above criterion should not be considered :-*

- (i) Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act;*
- (ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;*
- (iii) Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;*
- (iv) Those UTPs who are foreign nationals ;*
- (v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ;*

*and*

- (vi) Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc”*

22. A perusal of the above would show that those Under Trial Prisoners

who are facing trial for offences like dacoity, robbery, kidnapping for ransom have not been specifically included in the Exclusion Clause in the Minutes of Meeting dated 11.05.2021. In the High Powered Committee meetings of 2020, clarification had to be sought from the High-Powered Committee, and while deciding the representations, the HPC clarified that offences like dacoity, robbery, kidnapping for ransom were not covered by the HPC guidelines 2020. However, even in 2021, the exclusion clause does not include the offences under Section 364A, 394 and 397 IPC and there is nothing to indicate that decisions taken by the High Powered Committee in the year 2021 are in continuation of the decisions taken by the High-Powered Committee in the year 2020. If that be so, the issue which arises for consideration is that, do guidelines issued in 2021 extend the benefit to Under Trial Prisoners who are facing trial for offences under Section 364A, 394, 397 IPC etc. especially when these offences do not figure in the Exclusion Clause.

23. This Court by an order dated 05.07.2021 in **BAIL APPLN.2031/2021**, titled as Arshad v. State of NCT of Delhi, denied interim bail to the petitioner therein on the ground that the offence under Section 394 IPC is excluded from the ambit of the HPC guidelines issued in the year 2020.

24. On the other hand, this Court by another order dated 04.06.2021 in **BAIL APPLN. 1773/2021**, titled as Mohit Sharma v. State, has extended the benefit of the HPC guidelines to an accused undergoing trial for offences under Sections 302/392/397/411/120B/34 IPC.

25. In order to avoid further conflicting orders, this Court deems it appropriate to place the matter before the High Powered Committee to issue

appropriate clarifications for the guidance of Benches dealing with application for grant of interim bail to Under Trials facing trial for offences under Section 364A, 394, 397 IPC etc.

**SUBRAMONIUM PRASAD, J**

**AUGUST 24, 2021**

*Rahul*