Court No. – 28

Case :- BAIL No. - 5037 of 2020

Applicant :- Ajay Kumar

Opposite Party :- U.O.I. Thru. Director Of Enforcement, Lucknow

Counsel for Applicant :- Mohd. Khalid,Gaurav Adlakha,Manjeet Gulliya,Pawan Kumar Yadav,Rajesh Anand

Counsel for Opposite Party :- A.S.G.,Shiv P. Shukla,Shiv.P.Shukla

Hon'ble Dinesh Kumar Singh,J.

(Crl.Misc.Application No.82446 of 2020)

1. The present application has been filed seeking modification of the order dated 18.09.2020 passed in Criminal Misc Case No.5037(B) of 2020 whereby this Court granted interim bail to the accused-applicant for a period of two months on medical grounds. The accused applicant has been involved in six thousand crores infamous Amrapali mega scam and, a case, ED Case No. ECIR/06/LKZO/2019/LD (RKM)/2305, under Section 3/4 Prevention of Money Laundering Act, 2002 Police Station ED, Lucknow Zone is pending against him and other co-accused in the Court of Special Judge/ Session Judge Lucknow.

2. The accused-applicant procured a medical report from the District Jail Hospital Mandoli, Delhi where he is lodged in relation to several criminal offences allegedly committed by him along with other co-accused. It appears that the jail administration, particularly doctor of jail and superintendent of District Jail, Mandoli are very liberal in giving medical certificates to the accused of Amrapali scam. Same doctor of the Mandoli jail had given report to the accused-applicant similar to one given to Mr. Anil Sharma, Managing Director of Amrapali Group of Companies. On the basis of aforesaid report, the accused-Anil Sharma was granted interim bail by this Court for six weeks and a direction was given to the Director, AIIMS to constitute a team of doctors to examine him in view of the report issued by Medical Superintendent of Mandoli Jail and provide treatment accordingly. Further, direction was to forward the report of examination to this Court.

3. Mr. Anil Sharma was released from jail on 08.12.2020 but he reported at AIIMS only on 15.12.2020 though the direction for him was to report at AIIMS immediately on release from the Jail on the same day. Team of doctors of AIIMS examined him on 15.12.2020 and, prescribed him some medicines. As per the report forwarded by the Director, AIIMS to this Court, the team of Doctors has not found any serious ailment with which Mr. Anil Sharma has been allegedly suffering as per medical report issued by the Mandoli Jail. Mr. Anil Sharma has neither reported back at AIIMS after 15th December, 2020 nor has surrendered till date. Mr Anil Sharma and the Doctor who had issued the report regarding various ailments of Mr Anil Sharma shall be dealt with appropriately in the case of Mr. Anil Sharma. The reference has been made only to highlight the point of procurement of medical reports from the Jail administration of Mandoli jail to get favorable orders from the Court on medical ground.

4. Be that as it may, this Court vide order dated 18.09.2020 considering the medical report issued by the Jail Hospital, Mandoli Jail granted interim bail to the applicant for a period of two months from the date of his release on furnishing bail bonds and sureties to the satisfaction of the Court concerned.

5. The accused-applicant was also directed to give due information about the hospital where he would get the treatment within the NCT of Delhi to the trial Court concerned and he would surrender immediately on the expiry of 60 days before the trial Court and file an affidavit to that effect before this Court without any delay.

6. It is important to mention here that the accused-applicant has not moved any application for regular bail under Section 45 of the P.M.L.A. read with Section 439 Cr.P.C. He moved an interim application being bail Application No.2287 of 2020 before the Special Judge/P.M.L.A./Sessions Judge, Lucknow which came to be rejected on 09.07.2020.

7. After rejection of the interim bail application by the Special Judge/P.M.L.A./Sessions Judge, Lucknow, the accused-applicant filed an

application before this Court. This Court as mentioned above vide order dated 18.09.2020 granted interim bail for two months on medical grounds with condition that he will surrender immediately on expiry of 60 days from the date of his release from the jail and file an affidavit to that effect before this Court.

8. This bail application was finally disposed of by this Court on 03.12.2020 taking note of the undertaking given at the bar by the counsel representing the accused-applicant inter alia as under :-

> "Learned counsel for the accused-applicant submits that accused-applicant has been released from jail only on 30.10.2020 and, therefore, the period of two months would expire on 30.12.2020. He further submits that on expiry of two months period, he will surrender before the trial court on 31.12.2020.
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> Sri Shiv P. Shukla, learned counsel appearing for the Enforcement Directorate has no objection to the submission of the learned counsel for the accused-applicant.
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> In view of the aforesaid submission made at the Bar that the accused-applicant will surrender before the trial court on 31.12.2020 on expiry of two months' time from the date of his release from the prison in pursuance of the order dated 18.9.2020 passed by this Court, no further order is required to be passed in this bail application.
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> Therefore, this bail application is disposed of with a direction to the accused-applicant to surrender before the trial court concerned on or before 31.12.2020 and the trial court will send the accused-applicant to the appropriate jail."

9. Thus, order dated 18.09.2020 got merged with the final order dated 03.12.2020. As per the undertaking of the accused-applicant, he should have surrendered before the trial Court concerned on or before 31.12.2020. However, the accused applicant did not surrender on or before 31.-12.2020. Strangely enough instead of surrendering before the trial Court concerned on or before 31.12.2020, the present application came to be filed for modification of the non-existent order dated 18.09.2020 without annexing the final order dated 03.12.2020 whereby the application stood finally disposed of.

10. In para 4 of the application only order has been extracted without annexing copy thereof which reads as under:-

> "The accused-applicant submits that he was released from jail on 30.12.2020. It is submitted that the hearing of this Bail Application was listed on 25.11.2020 and it was again listed on 03.12.2020 on which day it was ordered as under:-
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> Learned counsel for the accused-applicant submits that accused-applicant has been released from jail only on 30.10.2020 and, therefore, the period of two months would expire on 30.12.2020. He further submits that on expiry of two months period, he will surrender before the trial court on 31.12.2020.
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> Sri Shiv P. Shukla, learned counsel appearing for the Enforcement Directorate has no objection to the submission of the learned counsel for the accused-applicant.
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> In view of the aforesaid submission made at the Bar that the accused-applicant will surrender before the trial court on 31.12.2020 on expiry of two months' time from the date of his release from the prison in pursuance of the order dated 18.9.2020 passed by this Court, no further order is required to be passed in this bail application.
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> Therefore, this bail application is disposed of with a direction to the accused-applicant to surrender before the trial court concerned on or before 31.12.2020 and the trial court will send the accused-applicant to the appropriate jail."

11. Title of the application reads as under:-

> **"APPLICATION SEEKING MODIFICATION OF ORDER DATED 18.09.2020 PASSED IN CRIMINAL MISC. CASE NO 5037(B) OF 2020 GRANTING INTERIM BAIL FOR A PERIOD OF TWO MONTHS ON MEDICAL GROUNDS, PASSED BY HON'BLE Mr. JUSTICE ATTAU RAHMAN MASOODI."**

12. Order dated 03.12.2020 has not been annexed. However, order dated 18.09.2020 is annexed with the application. This was deliberately done to avoid the listing of the bail application before the Bench which has passed the final order dated 03.12.2020. As per design, in fact, the matter got listed before the Bench which passed order dated 18.09.2020 granting interim bail to the accused-applicant for two months on medical grounds.

13. On objection being raised by the Public Prosecutor appearing for the Enforcement Directorate regarding the maintainability of this bail application as well as its listing before the said Bench the Court on 06.01.2021 ordered as under:-

> "List alongwith record in the next week."

14. Registry after looking at the fact that final order has already been passed in the bail application on 03.12.2020 and, it got disposed of by the said order, listed the application before this Court with the record of the bail application.

15. When the case was listed on 12.01.2021, an effort was made to get it off from the list of this Bench. The counsel for the accused-applicant went to the Registry and requested the dealing clerk to generate a report that the case was wrongly listed before this Bench and, the dealing clerk did generate such a report. When it was brought to the notice of the Court, the Court asked the Section Officer of the Registry that how the report got generated regarding listing of the application wrongly before this Bench. The concerned Section Officer profusely apologized and said that he was not aware of the report and he would take appropriate action against the concerned dealing clerk. Learned counsel for the accused-applicant then requested the matter to be taken up today.

16. Heard Mr. Rajesh Anand and Mohd. Khalid, learned counsels for the applicant and Mr. Shiv P. Shukla, learned counsel appearing for Enforcement Directorate.

17. Mr. Shiv P. Shukla, learned counsel for the E.D. has raised preliminary objection regarding maintainability of this application and has submitted that once the final order dated 03.12.2020 had been passed whereby the bail application got finally disposed of and as per the undertaking by the accused, he was required to surrender on or before 31.12.2020 before the trial court, this application which has been filed for modification of the order dated 18.09.2020 which got merged with final order dated 31.12.2020 is wholly misconceived and gross abuse of the process of the Court and, therefore, liable to be dismissed with costs.

18. It has been further submitted that this bail application is cleverly drafted to see that the bail application is listed before a particular Bench to avoid the Bench which passed the final order dated 03.12.2020. The accused-applicant has misused the liberty granted by this Court vide order

dated 18.09.2020 as well as final order dated 03.12.2020 whereby he was directed to surrender before the trial Court on or before 31.12.2020 but instead of surrendering as per the undertaking, he has filed this application which is not maintainable as the interim order got merged with the final order and the order dated 18.09.2020 was not in existence when this application came to be filed on 17.12.2020.

19. Mr. Shiv P. Shukla, learned counsel has placed reliance on the judgment of the Supreme Court in the case of **Nazma Vs. Javed Alias Anjum, (2013) 1 SCC 376** wherein the Supreme Court has come down heavily on entertaining applications for further relief on disposed of matters. He has submitted that the deliberate and conscious efforts have been made by the accused-applicant to avoid the Bench which passed the final order dated 03.12.2020 and to get the matter listed before a particular Bench by cleverly not annexing the order dated 03.12.2020 but asking for modification of the order dated 18.09.2020. He further submits that this is nothing but a gross abuse of the process of the Court and this Court should deal with such a person with heavy hand who has tried to misuse the process of the Court. He has placed reliance on paras 11 and 12 of the aforesaid judgment which read as under: -

> **"11.** The practice of entertaining miscellaneous applications in disposed of writ petitions was deprecated by this Court in *Hari Singh Mann* [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] . Reference to the following paragraph of that judgment is apposite: (SCC p. 173, para 8)
> "*8.* We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7-1-1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of the Code of Criminal Procedure or the rules of the court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because Respondent 1 was an advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30-4-1999 and 21-7-1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court."
> We are sorry to note that in spite of the clear pronouncement of law by this Court, still, the High Courts are passing similar orders, which practice has to be deprecated in the strongest terms. Of late, we notice that the High Courts are

> entertaining writ petitions under Articles 226 and 227 of the Constitution, so also under Section 482 CrPC and passing and interfering with various orders granting or rejecting request for bail, which is the function of ordinary criminal court. The jurisdiction vested on the High Court under Articles 226 and 227 of the Constitution as well as Section 482 CrPC are all exceptional in nature and to be used in most exceptional cases. The jurisdiction under Section 439 CrPC is also discretionary and it is required to be exercised with great care and caution.
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> **12.** We are of the view that the High Court has committed a grave error in not only entertaining the criminal miscellaneous application in a disposed of writ petition, but also passing an order not to arrest the first respondent till the conclusion of the trial. Grant of bail or not to grant, is within the powers of the regular criminal courts and the High Court, in its inherent jurisdiction, is not justified in usurping their powers. Once the criminal writ petition has been disposed of, the High Court becomes functus officio and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors. In the instant case, the High Court has entertained a petition in a disposed of criminal writ petition and granted reliefs, which is impermissible in law."

20. He has further placed reliance on the judgment of this Court delivered on 12.05.2014 in the case of **Pradeep Shukla Vs. Central Bureau of Investigation, EOUIV/EO-II, New Delhi** passed in **Criminal Misc. Extension Application No.156299 of 2014** in re:- **Criminal Misc. IInd Bail Application No.22648 of 2013**.

21. This Court in the aforesaid judgment has categorically held that after dismissal of the interim bail application on medical grounds, no subsequent application would be maintainable for extension of time of interim bail by placing reliance on the judgment of the Supreme Court in the cases of **Nazma Vs. Javed Alias Anjum (supra)** and **Rakesh Kumar Pandey Vs. Udai Bhan Singh, (2008) 17 SCC 764.**

Relevant paras of the aforesaid judgment are reproduced hereinbelow: -

> "The issue of consideration of merits of the ailment would arise only if the present application is found to be maintainable. The reason is simple, namely the application would be maintainable if the Bail Application itself is treated to be pending as urged by the learned counsel for the applicant. Learned Counsel had been apprised about the two decisions of the Apex Court in the case of Nazma Vs. Javed Alias Anjum, (2013) 1 SCC 376, and the case of Rakesh Kumar Pandey Vs. Udai Bhan Singh, (2008) 17 SCC 764, where the observations indicate clearly to the effect that a misc. application in a disposed of matter in a criminal case would not be maintainable as per the statutory law prescribed. It is this objection that had been raised by the Bench itself on the previous occasion that the learned Counsel had been called upon to answer.
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> ……

Having heard learned counsel for the parties and having considered the aforesaid submissions, it is clear that the first bail application of the applicant before the High Court was considered on merits and rejected on 31.5.2013. The applicant filed a Special Leave to Appeal that was dismissed as withdrawn in terms as contained in the order of the Apex Court dated 5.7.2013 where after the second bail application was filed. The second bail Application was considered by the learned single Judge without touching the merits of the case purely on medical grounds and on the footing that the C.B.I. has not challenged the deteriorating medical condition of the applicant. Not only this, the Court proceeded on a presumption that the applicant can be enlarged for a short-term on bail on medical grounds. As canvassed by Sri Basant and as understood by the law of the land, the Criminal Procedure Code or any law for the time being in force does not acknowledge the existence of a concept of a short-term bail. The issue, therefore, is as to whether the order dated 31.10.2013 is an interim order of bail or not?

In my considered opinion, even if it is a bail for an interim period, the entire tenor of the order would leave no room for doubt that the applicant was let off for 6 months only on medical grounds. The tenor of the language employed reflects an unhesitant disposal with conditions without any direction to place the matter again for further reconsideration by the Court. As suggested, the order is not a perpetual retention of any discretion to be exercised on an interval of six months in the same application as a festive announcement.

There is nothing like a renewal in the same application as it would amount to restoring the same application and reanimate the same. This resumption is not permissible after a pause or a rest. On the facts as discussed above, the application cannot be revived by reinforcements of subsequent facts relating to medical grounds after the order dated 30.10.2013 through an extension application. The fresh grounds of continuing ailment can be made a ground for a fresh bail but such facts which were not available before cannot be pressed into service for a reopening and reconsideration in the same application as it would set up a perpetual precedent to file an application in the same bail application that would go contrary to the correct procedure of law.

The order dated 31.10.2013 disposing off the second bail application does not offer more than what it recites, and this Court is not required to read more than what is written therein. To read between the lines to find out an intention would be adding more than what is transcribed. The order is not benevolent to the extent as suggested by the learned Counsel. The language of the order brooks no mystery for any further interpretation, nor can one suspect or doubt the clarity of it which is as clear as a windowpane.

To my mind, the learned Judge had not left anything to be decided in future and the application stood disposed of on 31.10.2013 finally. There is yet another reason to conclude the above, namely, the prayer made by the applicant was not of either a short-term bail or an interim bail and, therefore, it was not the case of either of the parties before the learned Judge to consider the grant of an interim or a short-term bail. The learned Judge, who disposed of the matter on 31.10.2013, exercised his judicious discretion to grant a bail for 6 months especially on medical grounds. The description of the bail either as interim or short-term, in my opinion, is absolutely immaterial for the purpose of status of the bail application. The application had been considered after the counter-affidavit had been filed by the C.B.I. and after full scale arguments. The learned Judge, therefore, in my opinion, had disposed of the application finally and nothing remained pending to be reconsidered by the High Court in the same.

> The argument, which has been raised on the strength of the information given by the computer section, is unacceptable inasmuch as the entire order-sheet of the bail application as maintained by the High Court and the endorsements made, do not indicate the status of this application to be pending. Sri Basant submits that the order-sheet even otherwise does not make even an endorsement of a final disposal. I am unable to accept this contention inasmuch as on 2.10.2013, the entire bail application was heard after Affidavits were exchanged and orders were reserved. The learned single Judge has not issued any direction to the office so as to presume that the bail application shall again be listed for orders after 6 months. In the absence of any such indication in the order dated 31.10.2013, the raising of any such presumption would be incorrect and against the records.
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> It is not understood as to how the computer section was showing the status of the case to be pending but it goes without saying that the case status report which is issued by the computer section clearly contains a disclaimer that it is not authentic or certified copy of the order regarding the status of a case. To remove any doubts, it was open to the learned counsel for the applicant to have filed a question-answer, the provisions whereof are available under the Allahabad High Court Rules, 1952, and the applicant would have been informed about the correct legal status of the disposal of the application. Thus, to argue that the applicant could draw a legitimate inference from such information of the computer section of the High Court does not appear to hold water. The clear intention of the learned Judge, while passing the order on 31.10.2013, was to bail out the applicant only for a period of 6 months and nothing further. There is, therefore, no occasion to brook any doubt about the same or extend the benefit thereof to the applicant.
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> Having recorded so, I find the present application to be not maintainable and, therefore, this Court does not have the jurisdiction to entertain this application as per the ratio of the judicial pronouncement of the Apex Court in the case of Nazma Vs. Javed Alias Anjum, (2013) 1 SCC 376, and the case of Rakesh Kumar Pandey Vs. Udai Bhan Singh, (2008) 17 SCC 764.
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> The application, therefore, being not maintainable, is accordingly rejected without prejudice to the rights of the applicant to move a proper regular fresh bail application if so advised in accordance with law.
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> The Registrar General is directed to instruct the office not to furnish any information without verifying the correct status of any proceeding before this Court as the information given by the computer section in the present case has raised a confusion even though the same is legally unfounded as indicated above. The Registrar General may, therefore, take steps for issuing appropriate instructions to the computer section and to the office in this regard."

22. In reply to the aforesaid preliminary submissions, counsel for the accused-applicant, Mr. Rajesh Anand has not been able to place any law or cite any judgment to the contrary. However, he has placed reliance of the judgments of Madras High Court in **Crl. O.P.(MD) No.9323 of 2020: D.Pugalenthi and Anr vs State**, Gurajat High Court in **Crl. Misc. Application No.8622 of 2020 Amit Suresh Bhatnagar** vs **Central Bureau of Investigation** and Bombay High Court in **C.P. Nangia, Assistant**

Collector vs **Omprakash Aggarwal** and **Anr.,1994 CriLJ 2160** which have no bearing with respect to issue raised by Mr. Shiv P. Shukla, Advocate regarding maintainability of the present application after disposal of the bail application.

23. I have considered the submissions advanced by Mr. Rajesh Anand, learned counsel for the accused-applicant as well as Mr. Shiv P. Shukla, learned counsel for the E.D.

24. Once Bail Application No.5037 of 2020 got finally disposed of on the undertaking of the accused-applicant that he would surrender on or before 31.12.2020, the life of the said application came to an end and, it could not be survived by moving an application in the disposed of matter. Further, the interim order dated 18.9.2020 got merged with the final order dated 13.12.2020, therefore, there was no occasion for the accused-applicant to file the present application for modification of the non-existent order dated 18.09.2020 inasmuch as any student of law would know that every interim order gets merged with the final order. However, this application came to be filed for modification of the order dated 18.09.2020, a clever move by the accused-applicant to avoid the Bench which passed the order dated 03.12.2020 and get the matter listed before the Bench which passed the order dated 18.09.2020.

25. This Court is of the view that the whole effort of the accused-applicant has been to avoid a particular Bench and get the matter listed before the Bench which passed the order dated 18.09.2020 by cleverly drafting of the application without annexing the final order dated 03.12.2020. First time when the matter got listed before this Bench on 12.01.2021, an effort was made to get the matter delisted and an office report was engineered from a dealing clerk to the effect that the matter was wrongly listed before this Bench.

26. Considering the aforesaid, this Court is of the view that the accused-applicant instead of surrendering before the Court on or before 31.12.2020

has tried to subvert and misuse the process of the Court and has filed a non-maintainable application before this Court.

27. The present application being non maintainable, in view of the law laid down by the Supreme Court in two cases **Nazma Vs. Javed Alias Anjum (supra) and Rakesh Kumar Pandey Vs. Udai Bhan Singh, (supra)** as well as judgment of this Court in the case of **Pradeep Shukla Vs. Central Bureau of Investigation, EOUIV/EO-II, New Delhi (supra)**, is hereby ***rejected***.

28. Since the accused-applicant has tried to subvert and misuse the process of the Court and interfered with the course of justice, it would be appropriate to impose a cost of Rs.50,000/- to be deposited by the applicant with Oudh Bar Association within a period of two weeks from today.

Order Date :- 13.1.2021
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