

W.P.(C) 10689/2017

Ajay Verma v. Govt. (NCT of Delhi)

2018 SCC OnLine Del 7960

In the High Court of Delhi at New Delhi  
(BEFORE GITA MITTAL, A.C.J. AND C. HARI SHANKAR, J.)

Ajay Verma ..... Petitioner

Petitioner (Adv.) in person with Ms. Katyani, Adv.

v.

Govt. of NCT of Delhi ..... Respondent

Mr. Rahul Mehra, Standing Counsel (Crl.) with Mr. Gautam Narayan, ASC, GNCTD,  
Mr. Tushar, Mr. Prashant Singh, Mr. Chaitanya Gosain and Mr. R.A. Iyer, Adv.

Mr. S.K. Sethi, Adv. for DSLSA.

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Decided on March 8, 2018

ORDER

1. A status report dated 7<sup>th</sup> March, 2018 has been filed by the Delhi State Legal Services Authority (DSLSA) which is taken on record.

2. This writ petition was filed in public interest by Mr. Ajay Verma, Advocate, who appears in person, and is working extensively with the Delhi High Court Legal Services Committee. The petitioner had flagged critical issues in this writ petition relating to inability of the prisoners to furnish bail bonds in terms of the orders granting bail to them and were, therefore, languishing in prisons for a long period of time despite orders of bail in their favour.

3. A detailed order was recorded by us on 15<sup>th</sup> December, 2017 noting the judicial precedents on the subject and finding that the directions of the Supreme Court as well as this court, regarding release of prisoners who were unable to furnish bail bond on account of financial penury or non-availability of persons who are willing to stand surety on their behalf were not being complied with.

4. After examining the list of the prisoners placed before us by Mr. Rahul Mehra, learned Standing Counsel (Criminal), GNCTD, reports were called from the District Judges. It was directed to undertake a case by case assessment regarding the under-trial prisoners who have been unable to secure release from the prison despite orders of bail in their favour. Risk assessment with regard to such persons was also directed to be undertaken.

5. Directions were also made to the Directorate of Prosecution, Tis Hazari Courts, Delhi to ensure that a copy of the order was brought to the notice of prosecutors and a sensitization programme taken thereon.

6. A copy of the order dated 15<sup>th</sup> December, 2017 was also directed to be sent to the Delhi Judicial Academy to ensure that a proper sensitization programme was undertaken.

7. On the 31<sup>st</sup> of January 2018, we had found that the reports received from the District Judges were hopelessly incomplete and fresh reports were called for. Pursuant to the said order, status reports have been received from all the District Judges placing outcome of the exercise undertaken on an examination of under-trial prisoners district-wise who had been unable to secure release from prison on account of inability to comply with the conditions thereof.

8. It appears that the matter has been considered with some earnestness and there is a positive outcome of such assessment.

9. This exercise however, cannot end with the assessment undertaken so far and the matter has to be continuously reviewed.

10. We are of the view that the solemn duty of every court does not come to an end with mere passing of an order, more so, when it is relatable to the rights under Article 21 of the Constitution of India affecting the life and liberty of any person. This is more so, when the court is concerned with any person lodged in prison. Therefore, the responsibility and duty of every court passing an order of bail and to ensure that the same is complied with, has to be kept on the highest pedestal and undertaken in right earnestness.

11. In para 23 of our order dated 15<sup>th</sup> December, 2017, we had noted as follows :

*"23. Inasmuch as we are concerned with inability of an under-trial prisoner to comply with the conditions of the bail, we see no reason as to why the trial courts do not suo motu examine the cases of such persons and to conduct an inquiry into the reasons thereof. The trial courts should be not only sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof. In case of inability of a prisoner to seek release despite an order of bail, in our view it is the judicial duty of all trial courts to undertake a review for the reasons thereof. We specifically direct that every bail order shall be marked on the file. It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement. In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution. This shall be reported in the Statements sent by the judges."*

*(Emphasis by us)*

12. In a pronouncement of the Supreme Court reported at (2014) 8 SCC 273 : AIR 2014 SC 2756, *Arnesh Kumar v. State of Bihar*, in para 11.8, the court observed as follows :

*"11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."*

13. This is the seriousness with which failure of a Magistrate to comport to the requirements of law while authorising detention has to be treated. We see no reason as to why similar action should not be taken in respect of courts in ensuring that an order of bail was complied with.

14. The other issue which was noted by us in our order dated 15<sup>th</sup> December, 2017 related to the development of a system by which information regarding prisoners; bail orders, compliance thereof and release of prisoners was virtually shared between the jail authorities and the trial courts. In view thereof, we had issued directions to the Director General (Prisons) to consider the possibility of creation of a software which would raise a notification or an alarm in cases where under trial prisoners, in whose favour a bail order stood passed, were still lodged in custody. This would have enabled from action thereon.

15. On the 31<sup>st</sup> January, 2018, Mr. Rahul Mehra, Id. Standing Counsel (Criminal) for the GNCTD informed us that efforts were being made in the Prison Headquarters in this regard and that the System Analyst, PHQ had been requested to develop a software. A status report dated 7<sup>th</sup> March, 2018 (*pages 425-426*), which has been placed before us informs as follows :

*"3. That as far with regard to developing a software to notifying the Trial Courts as well as the DSLSA, a request has been forwarded to the NIC so as to create a*

*programme for developing the alerts for the inmates with complete details who have granted bail but are in judicial custody for want of surety conditions. It is pertinent to mention herein that the NIC works under MHA, Government of India, has developed an e-prison portal, it is therefore requested that appropriate direction may also be issued to NIC for taking immediate action in this regard. Copy of the e-mail correspondence from System Analyst, PHQ with Sh. Shashi Kant, HOD, e-prisons of NIC, New Delhi is annexed for perusal as Annexure - R2.*

*4. That with regard to receiving of orders of bail granted by Trial Court(s) in Prison is concerned, it is submitted that as per the minutes of the meeting dated 10.01.2018 held in the conference Hall, Tis Hazari Courts under the chairman ship of Ld. District and Sessions Judge (HQ), it was decided that a mechanism will be developed by the computer team of the Delhi District Courts to share the bail orders and the release warrant with Delhi Police and Jail Authorities. In this regard it may also be mentioned here that the Jail authorities cannot state at this stage about receiving of all bail orders from the concerned courts unless having knowledge of day to day courts case proceedings in respect of Prisoners. At present we are receiving true hard copies of bail orders in respect of prisoners from the Courts. Copy of the minutes of meeting dated 10.01.2018 is annexed as Annexure - R3."*

16. In order to make the system completely effective, we had suggested creation of a modality whereby communication between all the stakeholders, i.e., the trial courts; the prison authorities; Director of Prosecution office and the concerned legal services authority was on a common platform.

17. Mr. Rahul Mehra draws our attention to the minutes of the meeting dated 10<sup>th</sup> January, 2018 held in the Conference Hall, Tis Hazari Courts under the chairmanship of District and Sessions Judge (Headquarters) in this regard. A perusal of the minutes would show that the aspect of joining the Delhi State Legal Services Authorities has been overlooked. This is absolutely imperative inasmuch as most of the poor prisoners who have been unable to secure release may be persons who have sought legal aid.

18. The minutes dated 10<sup>th</sup> January, 2018 record that detailed administration of PMS as well as NC-CIS 2.0 of the system was to be arranged.

19. In our previous order, we had also noted imperative need of training and sensitization of the judges on the aspects which have been flagged by the writ petitioner. This sensitization cannot be a onetime measure and has to be continuous and periodic.

20. In view of the above, it is directed that it shall be the responsibility of prison authorities to promptly bring any instance of a prisoner being unable to secure release from prison despite an order of bail having been passed in his favour to the notice of the trial courts as well as the concerned Secretary of the District Legal Services Authority.

21. All trial courts passing order of bail shall maintain a record of the following :

- (i) date of the order and conditions imposed therein.*
- (ii) date on which the conditions were satisfied.*
- (iii) date of release of the prisoner from the jail.*
- (iv) if conditions not satisfied, the date on which the review and risk assessment were taken upon an interview of the prisoner concerned.*
- (v) date and terms of the order passed upon the review.*
- (vi) date of ultimate release of the prisoner.*

22. A monthly statement in this regard shall be sent to the concerned District Judges, who would undertake an exercise of verification of the information furnished by the court concerned.

23. This information shall also be sent to the District Judge as well as Director

General (Prisons) who would undertake an exercise of verification on a quarterly basis.

24. A report regarding the orders of bail and the release of prisoners shall be sent on quarterly basis by the District Judge as well as Director General (Prisons) to the Registrar General of this Court.

25. The guidelines to be followed by all stakeholders so far as ensuring that conditions of bail are met with can be stated in the following terms:

*Guidelines for ensuring that conditions of bail are met:*

- i. The trial courts should be not only sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof.*
- ii. When bail is granted, an endorsement shall be made on the custody warrant of the prisoner, indicating that bail has been granted, alongwith the date of the order of bail.*
- iii. In case of inability of a prisoner to seek release despite an order of bail, it is the judicial duty of all trial courts to undertake a review for the reasons thereof.*
- iv. Every bail order shall be marked on the file.*
- v. It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement.*
- vi. In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution.*
- vii. It shall be the responsibility of prison authorities to promptly bring any instance of a prisoner being unable to secure release from prison despite an order of bail having been passed in his favour to the notice of the trial courts as well as the concerned Secretary of the District Legal Services Authority.*
- viii. All trial courts passing order of bail shall maintain a record of the following :*
  - (i) date of the order and conditions imposed therein.*
  - (ii) date on which the conditions were satisfied.*
  - (iii) date of release of the prisoner from the jail.*
  - (iv) if conditions not satisfied, the date on which the review and risk assessment were taken upon an interview of the prisoner concerned.*
  - (v) date and terms of the order passed upon the review. (vi) date of ultimate release of the prisoner.*
- ix. A monthly statement on these aspects shall be sent to the concerned District Judges, who would undertake an exercise of verification of the information furnished by the court concerned.*
- x. This information shall also be sent to the District Judge as well as Director General (Prisons) who would undertake an exercise of verification on a quarterly basis.*
- xi. A report regarding the orders of bail and the release of prisoners shall be sent on quarterly basis by the District Judge as well as Director General (Prisons) to the Registrar General of this Court.*
- xii. The panel advocates deputed by the Legal Services Authority in the respective criminal courts would be responsible to keep themselves updated, inter alia, on the basis of above-mentioned record and report and move appropriate application in concerned Case qua concerned accused respecting whose release further orders are required to be passed to secure release from custody pursuant to the bail order.*
- xiii. The training and sensitization of judges on these aspects shall be taken expeditiously by the District Judges in conjunction with the Delhi Judicial Academy.*

26. It is made clear that the above directions as well as the directions made by us

on 15<sup>th</sup> December, 2017 shall be strictly complied with.

27. The concerned District Judge shall place before this court a status report regarding the steps which were required to be taken in terms of the minutes dated 10<sup>th</sup> January, 2018, as noted above, within two weeks from today.

28. The Director (Academics) of the Delhi Judicial Academy shall design a training module and schedule of trainings relating to matters of bail and release of prisoners for the trial court judges. The training shall be organized by the District Judges under supervision of the Delhi Judicial Academy.

29. Copy of the program and schedule be placed before us.

30. It shall be the responsibility of the District Judges to ensure the trainings in terms of the module suggested by the Director (Academics) of the Delhi Judicial Academy.

31. Let a compliance report be placed by all District Judges; the Director (Academics), Delhi Judicial Academy; Member-Secretary, DSLSA and the Director General, Prisons, Delhi.

32. Let a copy of this order be sent to the District Judge (Hqrs.) to ensure that copies are circulated amongst all judicial officers in Delhi so as to ensure strict compliance of this order.

33. List on 1<sup>st</sup> May, 2018.

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