

via Videoconferencing

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

+ BAIL APPL. 986/2020

GAUTAM NAVLAKHA

..... Applicant

Through: Ms. Nitya Ramakrishnan, Adv. with
Ms. Warisha Farasat and Ms. Shruti
Narayan, Advs.

versus

NATIONAL INVESTIGATION AGENCY & ANR.

..... Respondents

Through: Mr. Tushar Mehta, Solicitor General
with Mr. Amit Mahajan, CGSC for
respondent No. 1/NIA.
Mr. Tarang Srivastava, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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27.05.2020

At 10:30 am

The present application was moved seeking interim bail on medical grounds in view of the prevailing public health emergency. It is the applicant's contention that in view of the precarious state of his health and advanced age, it was unsafe to keep the applicant in prison during the pandemic. The applicant had also urged that his plea was in line with the policy being followed by courts in the present times. Notice was issued in the application ; the NIA had sought time to file status report ; and the

applicant's medical status report was requisitioned from the Jail Superintendent. The matter was posted to today i.e. 27.05.2020.

2. An affidavit has been filed by the applicant's *paikar* setting-out certain subsequent developments in the matter.
3. The NIA has also filed a lengthy reply affidavit dated 26.05.2020 in response to the pending bail application, opposing grant of bail.
4. Ms. Nitya Ramakrishnan, learned counsel for the applicant informs the court that, while the present proceedings are pending, a hearing for extension of the applicant's judicial remand was conducted on 23.05.2020 before the Special Judge (NIA), Delhi; and at the NIA's request, the applicant's judicial remand was extended upto 22.06.2020.
5. Ms. Ramakrishnan further informs that on 24.05.2020, although a *Sunday*, an application was moved by the NIA before the Special Judge (NIA), Mumbai seeking production warrants for the applicant before that court; which was allowed and warrants were issued for production of the applicant before the Special Judge (NIA), Mumbai on 26.05.2020 at 11 am.
6. Ms. Ramakrishnan submits that based upon the production warrants so issued, an application was moved by the concerned Jail Superintendent, Tihar Jail, Delhi on 25.05.2020, being a *Gazetted holiday* on the occasion of *Eid-ul-Fitr*, seeking a transfer/transit order to transfer the applicant from Delhi to Mumbai. It appears that by an order given on e-mail, the Special Judge (NIA), Delhi allowed this request ; whereupon the applicant was put on a train on 26.05.2020 and taken away to Mumbai. The applicant is presently stated to be lodged in Taloja Jail in Mumbai.

7. Counsel states that the applicant verily believes that in none of the proceedings before the Special Judge (NIA), Mumbai or the Special Judge (NIA), Delhi did the NIA disclose the pendency of the present bail application.
8. Ms. Ramakrishnan contends that the only purpose for which the NIA has taken such hasty actions is to render the present proceedings infructuous and to take the applicant out of the jurisdiction of this court. She submits that by moving the applicant to Mumbai, which has suffered the highest number of infections and deaths due to COVID-19 virus, the applicant has been exposed to even more serious health risk, while he was seeking interim bail from this court to avoid that very risk.
9. While at the hearing in the present proceedings on 22.05.2020 Mr. Tushar Mehta, learned Solicitor General had informed the court that the NIA was planning to transfer the applicant to Mumbai sometime soon in view of opening-up of air travel after obtaining orders from the competent court, considering the evident haste shown by the NIA by moving applications across Mumbai and Delhi over weekends and Gazetted holidays and obtaining orders by e-mail, and 'whisking away' the applicant to Mumbai as it were, and thereby rendering the present proceedings infructuous, it is deemed necessary to call for the presence of the Investigating Officer of the case from NIA, Mumbai by video-conferencing to answer certain factual queries that arise in the mind of this court in view of the submissions made on behalf of the applicant, before proceeding further in the matter.

10. Mr. Tushar Mehta, learned Solicitor General appearing for NIA says that the appearance of the Investigating Officer by video-conferencing may be taken-up tomorrow. Mr. Mehta also states that he would also want to file an additional affidavit answering the doubts in the court's mind.
11. While ordinarily this court would not see too much cause for hurry in this case, in view of the inexplicable, frantic hurry shown by the NIA in moving the applicant from Delhi to Mumbai while this matter was pending and the NIA had itself sought time to file status report, this court does get a sense that all proceedings in this jurisdiction would be rendered utterly infructuous if an element of of urgency is not brought to bear on the present proceedings. *Prima-facie* it appears that while on the last date, this court had granted adequate time to the NIA to file its status report in response to the interim bail plea ; and while the NIA has filed an affidavit opposing that plea, the NIA has acted in unseemly haste to instead remove the applicant out of the very jurisdiction of this court ; and, *if* the applicant is right, without even informing the Special Judge (NIA), Mumbai or the Special Judge (NIA), Delhi of the pendency of the present proceedings.
12. For the above purpose, let a web-link of the present video-conference hearing be sent to the Investigating Officer, NIA, Mumbai (whose e-mail ID and phone number will be furnished by Mr. Amit Mahajan, learned CGSC appearing for the NIA) to join the hearing today by 12 noon.
13. Let the matter be passed-over until 12 noon today.

14. The purpose of the court is to have certain factual answers from the I.O., which will be readily available from the record, and many of which may obviate the necessity of requiring any written response by way of an affidavit from the NIA. It may be added here that this court would want to keep written affidavits etc. to a minimum lest it should interfere with the prosecution of the matter subsequently.
15. At this point, Mr. Mehta requests that instead of 12 noon, the matter be taken-up at 1 pm as he is likely to be pre-occupied in another matter before that hour.
16. At request of Mr. Mehta, the matter will be taken-up at 1 p.m. today for the I.O. to join the hearing.

ANUP JAIRAM BHAMBHANI, J.

At 1:00 p.m.

17. Instead of the learned Solicitor General, Mr. Aman Lekhi learned Additional Solicitor General has appeared for the NIA when the matter is taken-up at 1:00 p.m. Superintendent of Police Vikram Khalate, the I.O. for NIA, has also joined the hearing.
18. Upon being queried, SP Vikram Khalate has clarified the following :
 - a. Mr. Khalate confirms that there is no date fixed before the Trial Court for further proceedings in the main matter, although he says, on 28.05.2020 and on certain earlier dates bail applications were filed by various accused persons, which

were taken-up by the Special Judge (NIA), Mumbai from time-to-time.

b. Mr. Khalate states that after the applicant surrendered in Delhi, he was interrogated by other officers of the NIA at Delhi but not by Mr. Khalate himself.

c. As an explanation for the hurry for issuance of production warrants, Mr. Khalate states that he had moved an application before the Principal District Judge for issuance of production warrants on 23.05.2020 *i.e.* Saturday, which came to be listed before the Special Judge (NIA), Mumbai on 24.05.2020 *i.e.* Sunday, on which date the court issued production warrants for the applicant for 11 a.m. on 26.05.2020. Mr. Khalate explains that it was learnt that the lockdown was reopening for inter-state flights on 25.05.2020 and being unsure of the future course of events in relation to the lockdown, he moved an application on 23.05.2020 for issuance of production warrants.

d. Mr. Khalate also states that insofar as proceedings in Delhi are concerned, including the applications for extension of the applicant's judicial remand and for obtaining orders for transfer/transit of the applicant to Mumbai, these were being overseen by DSP Anil Kumar from NIA, Delhi under the instructions and supervision of Mr. Khalate ; and that DSP Anil Kumar was keeping Mr. Khalate informed of the proceedings that were underway in courts in Delhi, including the proceedings in the present application for interim bail before this court.

19. Having obtained preliminary clarifications from Mr. Khalate, he is directed to file an affidavit on the lines of the responses given. Mr. Khalate will also file a complete copy of the proceedings in the application for issuance of production warrants moved before the

Special Judge (NIA), Mumbai for the perusal of this court. The I.O. is also directed to place on record the report of the applicant's medical examination conducted once he reached Mumbai.

20. Let the record of the application moved by the NIA before the Special Judge (NIA), Delhi seeking extension of the applicant's judicial remand be requisitioned from the concerned court.
21. Let the record of the application filed by the concerned Jail Superintendent, Tihar Jail seeking permission to transfer the applicant to Mumbai be also requisitioned for the concerned court.
22. The Jail Superintendent is also directed to provide a copy of the last medical status report in respect of the applicant.
23. The above directions be compiled with before the next date. Copies of the affidavit and all documents and records requisitioned be furnished to counsel for the applicant at least one day before the next date of hearing.
24. List on 03rd June 2020.

ANUP JAIRAM BHAMBHANI, J.

MAY 27, 2020/uj