

## **Struggles of Getting an Anticipatory Bail Application Listed Before The District Court in Delhi During Lockdown**

### **Introduction**

The Government of India vide Notification dated 24.03.2020 directed a nationwide lockdown in order to contain the spread of the Coronavirus outbreak (COVID-19); commencing with effect from 25.03.2020.

Though this move was anticipated; however, the imposition of lockdown was sudden (as the situation was getting grave by the day). The notification, if read by itself, required the other bearers of responsibility, to take action immediately; including those at the helms of the legal and judicial system to ensure that access to justice remains available. This led the Apex Court to take steps towards enforcing implementation of video conferencing for the purpose of access of justice, in these times when social distancing is a necessity.

It was during these fast changing times that our office received instructions for filing an application seeking anticipatory bail for a 20-year boy on 24.03.2020. It was an unprecedented situation for us as well as for the litigant, as there was no clarity about the functioning of the district courts in Delhi with effect from 25.03.2020. However, the predicament of the applicant and his family was such that they were being harassed on a daily basis and due to the lock-down there were further difficulties being faced by them. Thus, we initiated the process for the filing of the application seeking anticipatory bail. The relevant documents were handed over at our office after numerous hurdles on 25.03.2020 (late in the night).

Meanwhile, we kept inquiring about the procedure for filing and listing of matters before the District Courts in Delhi. We learned that for facilitating the “urgent” matters before the Learned District Courts, 10 Administrative Officers had been appointed by the competent authorities. Fortunately, we obtained the contact number of one of the Administrative Officer appointed.

On 26.03.2020, we contacted the Administrative Officer appointed for the concerned District Court. We were redirected to another Administrative Officer and by the time we contacted him, we were informed that the time for mentioning urgent matters was already over. On 27.03.2020 we were yet again redirected to another Administrative Officer. Finally, around 11:30 AM, we got through the relevant Administrative Officer. Following were the steps involved in the listing of our matter:

### **Phase 1 (Filing and Mentioning):**

We telephonically explained the urgency in the matter and requested for an urgent hearing. As advised by the Administrative Officer, we shared the scan copy of the application with the said Administrative Officer along with an urgency note through WhatsApp. We again

telephonically explained the matter in context to the application filed. Upon hearing our detailed submissions, the Administrative Officer telephonically confirmed that he will post the application before the Learned Judge on duty on 28.03.2020 (Saturday).

### **Phase 2 (1<sup>st</sup> Hearing):**

On 28.03.2020 (Saturday) around 10:00 A.M, we called up the Administrative Officer again to know the process of hearing. However, the Administrative Officer was still not aware about the procedure to be followed. Thereafter, the reader of the Learned Judge on duty contacted us telephonically and sought certain clarifications in respect of facts and submissions in the application listed and the same were duly provided telephonically. At around 2:00 PM, the reader telephonically informed us that the Learned Judge upon the perusal of the application had issued notice and had called for the report of the Investigating Officer and had posted the matter for hearing on 30.03.2020. We had no other option but to telephonically request for interim protection being granted till 30.03.2020. However, we were informed that the same can only be considered on Monday, once the Investing Officer's Report is

In the meanwhile, a Notification dated 29.03.2020 was issued for commencing the hearing of urgent matters through video conferencing.

### **Phase 3 (2<sup>nd</sup> Hearing):**

We contacted the reader on 30.03.2020 at 10.00 AM. We informed the reader about the Notification; however, he explained that the Learned Public Prosecutor was not available as of then and thus, the hearing could not be completed.

**Telephonic Hearing:** At this juncture, we stated that as our application is listed the matter ought to be heard and then, the reader took the Learned Judge on duty on the conference call. We explained the Applicant's anxiety and predicament. After hearing our submissions and upon perusing the scan of the application, the Learned Judge made inquiries with respect to the report of the Investigating Officer. It transpired that the same had not been received yet. Then yet again we made submissions in respect of the urgency. Finally, we were informed that we will be informed about the further course of action at 01.00 PM.

Around 01:00 PM, we received a call from the reader that the hearing of the application will take place in court at 2:00PM. We immediately got an extra copy of the application and left for the

**Status of the Court premises:** The court complex was empty and there was no staff apart from the police officials. We reached the court of the Learned Judge on duty. As we entered the court room, the court staff (reader and stenographer) called upon us to sanitise our palm. Apparently, two other bail applications were also listed (one was for verification of the bail bond).

**Court Hearing:** Eventually, our matter was heard at length by the Learned Judge and it was normal hearing (attended by the Investigating Officer and the counsel for the Complainant) except that the Learned Public Prosecutor participated through a whatsapp video conferencing (as due to sealing of borders, he could not come to Court). The applicant was

granted conditional interim protection by passing a detailed speaking order (considering submissions of all the parties) and we were given dasti copy of the

Our experience described above itself highlights the number of variables that still require attention and stipulation in respect of the procedure required to be followed.

#### **A. Dispensation of Information and a Single Portal for placing on record all relevant Notifications**

In our limited interaction, we had to struggle and took 2 working days, to be able to mention before the correct Administrative Officer. While, the said grievance has already been taken care of, as the names of the Administrative Officers and their contact numbers have been provided. Though, if the police stations which they had jurisdiction over was also provided; then the information would be wholesome.

During the hearing on 30.03.2020, there were three other lawyers travelling from different part of the city (including Narela) to file bail applications. However, their requests were not entertained as they had not followed the procedure and/ or their mentioning was not allowed by the Administrative Officer. There was thus clearly a situation of lack of information leading to confusion.

Thus, a means for sharing regular update with all stakeholders including court staff, judicial officers, members of the bar, could be devised. A single officer could be put in charge for the relevant stakeholder to contact and seek clarification from. The officer in charge would have direct access to the competent authority and hence, this would enable the competent authorities to efficaciously and timely improve the system by having a direct connect with the ground realities.

This issue could also be resolved if all the notices pertaining to the District Courts are uploaded on one web portal; which could be accessed by the officers of the court and the members of the bar and the litigants unifiedly.

#### **(B) Procedure for confirmation of filing and formal issuance of communication for allowing/ disallowing of mentioning**

At this stage, there appears to be no mechanism for a litigant/ his counsel to know if a particular request for mentioning has been accepted/ rejected by the Administrative Officer except for receipt of telephonic information in that regard from the relevant officer of the court. There is no means for verification of this information. Steps could be taken for devising a procedure explaining the manner of (i) acknowledgment of receipt of the application, (ii) conducting the mentioning including providing the time schedule for such hearing, (iii) informing the counsel for the litigant about the acceptance / rejection of the mentioning and (iv) remedies available to the litigants in case of rejection of mentioning. Also, the procedure could prescribe for publishing a causelist as well.

#### **(C) Sensitisation of all stakeholders in accessing video conferencing and ensuring adequate infrastructure**

Steps towards providing infrastructure, in order to ensure that the hearings can be held efficaciously and without the need for anyone to leave their premises, for one and for all. The Apex Court has led the path in this aspect and the Notification dated 29.03.2020 prescribes for video conferencing for hearing before the District Courts. However, in respect of the logistics involved including the dictation by the Learned Judge of the arguments of the parties, printing the order passed by the Learned Judge and signing of the same and handing over of the same to the counsel involved; arrangements may have to be made. Also, arrangement for making available counsels willing to provide legal aid, should also be made.

#### **(D) Permission to lawyers to be permitted to move for urgent hearings in Court**

It was very difficult for our client to send the documents to us and equally difficult for us to reach the office to organise the filing of the application. On our way to the court on 30.03.2020, we were stopped a few times by the police officials on duty and queried whether we had a curfew pass. We explained that we were going to the court, as we had a hearing at 2:00PM and had no time to obtain a pass. Only upon the verification (by seeing our bar id cards and the original application), we were permitted to proceed. Thus, if an exemption or provision for carrying a self attested declaration in case of professionals like the lawyers who have to step out for urgent purposes, could be provided accompanied with requirement for reporting the movement to relevant authorities.

As we are proceeding further into the lockdown, it has become essential that a transparent and rampantly evolving procedure be envisaged in order to ensure that doors of the temples of justice are not closed for those in need. It is essential that as the wheels of investigation continue to run, the essential part of the judicial machinery also remains active in an efficacious manner. Our Constitution vests in every person the right to have access to remedies for enforcement of its rights and the right to seek bail is a facet of the fundamental right to the personal liberty of an individual. The health professionals and doctors are performing their duties by risking their lives. Being a part of the society, it is time that we, as legal professionals, are enabled to pitch in our best efforts and to perform our professional duties.

We would like to take this moment to commend all the officers involved in our hearing. They ensured that a hearing happened and went out of their way in accommodating our anxious calls seeking further information. However, it is our earnest request to the competent authorities that ground realities be also assessed on a regular basis in light of the daily changing circumstances. As Supreme Court noted in its order dated 06.04.2020 that access to justice is fundamental to preserve the rule of law in a democracy envisaged by the Constitution of India. This access to justice has to be more sure-footed. However, the experience of having been able to file and prosecute an anticipatory bail application even during early times of Covid-19 gives us immense hope that one can only expect a better robust system to be in place in times to come.