

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 03.08.2015

BAIL APPLN. 1407/2015

ASHIQUE ILAHI

..... Petitioner

Through: Ms Chitra Gera, Advocate for
Mr Sanjay Srivastava, Advocate.

versus

THE STATE(NCT OF DELHI)

..... Respondent

Through: Mr Rajat Katyal, APP.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is an application under Section 439 CrPC, 1973 praying for grant of interim bail in FIR No.54/2014 under Sections 29/61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS

Act”) at Police Station- Special Cell, Rohini, pending in the court of the Special Judge, NDPS, Patiala House Courts, New Delhi.

2. Counsel appearing on behalf of the applicant states that the latter's wife namely, Ruhida suffers from acute Spondylolisthesis for which she was operated upon in the year 2007. At the time of the surgery, implants were inserted into her spine in the L5 region. Counsel for the applicant further states that Ruhida is currently suffering very acute pain and has been recommended surgery for removal of implants from the spine by the Regional Institute of Medical Sciences Hospital, Lamphel, Imphal. Counsel for the applicant also invites my attention to the circumstance that there is no other adult male member in the family and that the applicant has three minor children. It is, therefore, urged that since Ruhida will not be able to take care of the minor children and get operated in hospital at the same time and as Ruhida is a Muslim lady and, therefore, not in a position to permit the brothers of the applicant to attend to her, the applicant be released on interim bail. In any event, it has been urged that the brothers of the applicant are not inclined to look after Ruhida or her children at the time of the surgery.

3. The status report filed on behalf of the respondent does not belie the facts and circumstances as afore-stated. However, it is urged by Mr Katyal,

learned APP appearing on behalf of the State that Manipur where the family of the applicant resides is a disturbed area and, consequently, it would be difficult to locate the applicant in the event he absconds while on interim bail. It is also pointed out by Mr Katyal that the rest of the family of the applicant resides in the vicinity.

4. A perusal of the record in the subject FIR reveals that no contraband was recovered from the applicant. It is also a matter of record that the applicant has clean antecedents and is not wanted in any other case. The gist of the prosecution's case is that the applicant has been supplying contraband to the co-accused in the subject FIR for the last many years. The applicant was arrested on a disclosure statement made on behalf of his co-accused Ganpat, who in turn was arrested on a disclosure statement made by one Pankaj Upadhyay.

5. The trial court by way of its order dated 10.07.2015 rejected the application for interim bail filed on behalf of the applicant inter alia for the reason that in view of the mandate of Section 37 of the NDPS Act it was for the applicant to satisfy the court that he is not guilty of the offence for which he is facing trial and that he would not commit the offence if enlarged on

bail. The trial court also took into consideration the circumstance that two accused persons were absconding and have not been arrested yet.

6. In *Atik Ansari v. The State, NCT Delhi, 2006 IV AD(Cri.) (DHC) 303*, my esteemed brother Badar Durrez Ahmed, J. was considering an application for grant of interim bail on similar grounds. In that case it was alleged that 2.5 kilograms of heroin were recovered from the applicant who was seeking interim bail on the medical grounds of his wife. After considering the decision of the Supreme Court in *Dadu @ Tulsidas etc. v. State of Maharashtra etc., (2000) 8 SCC 437* and the decision of a Division Bench of this court in *Hori Lal v. State, 1997 CrL.J. 821*, the court held that the applicant was entitled to the grant of interim bail under the special circumstances. It is observed that similar circumstances arise in the present case as well, inasmuch, as there is nobody to look after the applicant's wife and their minor children in the absence of the applicant. The impending surgery to be performed on Ruhida has also been verified. It is also an admitted position that the applicant has no other involvements. In fact the present applicant is on a better footing than the applicant in *Atik Ansari (supra)* inasmuch as in that case the applicant was arrested with contraband in his possession, whereas in the present case the applicant was arrested on a

disclosure statement made by a co-accused who in turn was arrested on a disclosure statement made by an accused allegedly arrested with the contraband.

7. It is also observed that the Division Bench of this court in *Hori Lal (supra)* observed as under:-

“...Section 32A of the Act does not in any manner affect or curtail the power of this Court to grant interim bail or suspend sentence of a convict.”

8. In the present case if the applicant's prayer is not granted it would amount to the deprivation of his wife's right of being looked after and taken care of by her husband at this critical juncture. Therefore, I see no impediment in allowing the present application. The applicant is entitled to the grant of interim bail under the special circumstances indicated above.

9. The applicant is directed to be released on interim bail for a period of four weeks from the date of his release on his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned trial court. The applicant shall report to the SHO of the concerned police station once a week on every Friday during the period of interim bail. The applicant shall not leave the jurisdiction of the concerned

police station in Manipur without the prior permission of the concerned SHO. The applicant shall surrender before the jail authorities at expiry of the period of interim bail. The jail authorities are directed to furnish this court with the surrender report qua the applicant.

10. The application is disposed of accordingly.

11. A copy of this order be given *dasti* under signature of Court Master to counsel for the applicant.

AUGUST 03, 2015

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SIDDHARTH MRIDUL, J