

**#31**

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

**Date of decision: 11.08.2015**

**BAIL APPLN. 1597/2015**

**JITENDER**

..... Petitioner

Through: Mr. Sunil Mehta, Advocate

Versus

**STATE (NCT OF DELHI)**

..... Respondent

Through: Ms. Radhika Kolluru, APP

**CORAM:**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

**SIDDHARTH MRIDUL, J (ORAL)**

**CRL.M.A.11295/2015 (Exemption)**

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

**BAIL APPLN.1597/2015**

1. The present is an application under section 439 Cr.P.C., 1973 for grant of bail in FIR No.70/2013, under sections 21 and 29 of the NDPS Act, registered at Police Station- Sagarpur, Delhi.

2. Notice.

3. Ms. Radhika Kolluru, learned APP accepts notice and files a status report in response. The same is taken on record.

4. With the consent of counsel appearing on behalf of the parties, the application is being heard and disposed of by this order.

5. Mr. Mehta, learned counsel appearing on behalf of the applicant states that the latter has a daughter who is mentally retarded and disabled requiring regular treatment at the Institute of Human Behaviour and Allied Sciences (IHBAS). Mr. Mehta invites my attention to the order passed by this Court on 27.11.2014 in Bail Application No.2532/2014, filed on behalf of the applicant, whereby this Court after considering the totality of the facts and circumstances of the case and arriving to a conclusion that the presence of the applicant is required from time to time to attend to his child, passed the following order:-

“This application has been moved by the petitioner Jitender under Section 482 Cr.P.C. seeking interim bail in connection with FIR No.70/2013 registered under Section 21, 29 of the N.D.P.S. Act at police station Sagarpur, Delhi, on the ground that he has got a mentally retarded and disabled daughter who is undergoing regular treatment at the Institute of Human Behaviour and Allied Sciences (IHBAS), and that his family circumstances are such that his presence is also

required from time to time to attend to his child.

It is stated that the petitioner has been enlarged on interim bail earlier also on 01.09.2014 by this Court for two weeks on the same ground, and that, immediately on the expiry of term of the bail he had duly surrendered to the Jail Authorities. A copy of the Out Patient Card (OPD) issued to the daughter of the petitioner namely, Kajal, who is aged about 14 years, has also been annexed to this petition, which, inter alia, shows that the child is suffering from mental retardation and is not able to speak and walk by herself.

Counsel further submits that the petitioner is being tried for alleged unauthorized possession of 20.4 kilogram Ganja; and that in terms of the N.D.P.S. Act, any quantity in excess of 20 kilogram is treated as commercial quantity, thereby attracting more severe penalties.

Issue notice.

Mr. O.P. Saxena, Additional Public Prosecutor for the State, enters appearance and accepts notice. He submits that the trial of the matter is nearly over in that all the prosecution witnesses have been examined and the case is now fixed for the defence evidence on 24.12.2014.

He further submits that there is nothing urgent, nor has there been any significant change in the circumstances of the petitioner, to warrant fresh interim bail to him.

Be that as it may, the fact remains that even on 01.09.2014, when the petitioner was granted interim bail initially by this Court, the condition and circumstances of the petitioner's family were the same as today and it was considered a fit case for grant of interim bail.

Further, the fact that the petitioner had duly

surrendered after being granted interim bail earlier is not controverted. There is also no allegation of the petitioner of interfering with the trial or attempting to flee. Looking to the overall circumstances, to my mind, this is a case that forms an exception to the normal rule regarding matters under the N.D.P.S. Act.

Consequently, the petitioner shall be released on interim bail for a period of two weeks from the date of his release on his furnishing a personal bond of Rs.50,000/-, along with one surety of the like amount, to the satisfaction of the Jail Authorities and he shall surrender to the Jail Authorities after the expiry of the same.

This application is disposed off.

Dasti.”

6. Mr. Mehta has further invited my attention to the order dated 03.07.2015 passed by this Court in Bail Application No.1177/2015 wherein this Court passed the following order:-

“It is an admitted position that the daughter of the applicant is mentally retarded as well as disabled and is undergoing regular treatment as aforesaid.

In view of the medical condition of the daughter of the applicant, the present application is allowed on humanitarian grounds. Consequently, the applicant shall be released on interim bail for a period of two weeks from the date of his release on his furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety of the like amount to the satisfaction of the Trial Court. The applicant shall surrender before the jail authorities at the expiry of the period of interim bail.”

7. The present application prays for grant of further interim bail to the applicant for an appropriate period so as to enable him to procure specialized medication for his mentally retarded daughter aged about 14 years and to fulfill his family obligations and responsibilities.

8. A perusal of the status report filed on behalf of the respondent reveals that Ms. Kajal, the minor daughter of the applicant is mentally retarded as well as disabled and is undergoing regular treatment.

9. The present application is allowed in view of the medical condition of the daughter of the applicant as well as on humanitarian grounds. Resultantly, the applicant shall be released on interim bail till 02.09.2015 on his furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one surety of the like amount to the satisfaction of the trial court. The applicant shall surrender before the Court concerned on 03.09.2015, at the expiry of the period of interim bail.

10. The application is disposed of accordingly.

11. *Dasti.*

**SIDDHARTH MRIDUL, J**

**AUGUST 11, 2015/dn**