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

+ BAIL APPLN. 655/2017

ATHAR PERVEZ

..... Petitioner

Through Mr. Aditya Vikram, Advocate

Versus

NCB

..... Respondent

Through Mr. Rajesh Manchanda, SPP, with
Mr. Rajat Manchanda, Advocates

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **15.05.2017**

The applicant is charged for the offence under Sections 8, 9A, 25A, 22 & 29 of the NDPS Act.

By the application, the applicant seeks interim bail on two grounds. One, for the admission of the son, who is aged about 3-1/2 years, in a school. Secondly, on the ground of ailments of his wife, who is allegedly suffering from the life threatening diseases. As of today, the admission session in schools is over, even if, it is the applicant, who is to do the needful. As for the ailment of the wife, learned counsel for the applicant has adverted to be medical papers running at page 19 to 23 of the application. The first document at page 19 is the MRI report dated 4.5.2016, which, on MRI, records for the impression of disc degeneration at L4-5 levels and diffuse posterior disc herniation and right paracentral protrusion at L4-5

levels. Other document at page 21 is the certificate dated 12.5.2016 issued by a hospital at Ghaziabad, which records for the backache etc. referring to the MRI report and advising complete bed rest. The third document at page 22 is the medical prescription suggesting surgery for 26.10.2016. The last document is another medical prescription dated 28.1.2017 advising bed rest for 3-4 months, besides physiotherapy etc. and consulting Doctor for Neurosurgery. Pressing the relief, learned counsel for the applicant has placed reliance upon a judgment passed by the Division Bench on 26.2.2016 in Crl. Ref. No. 1/2015 titled **Athar Pervez vs. State**.

Learned counsel for APP on his part has opposed the prayer made. He states that by the said judgment (supra), the Division bench of this Court had only dealt with the aspect of jurisdiction to grant of interim bail, when there were conflicting views on the subject.

The judgment (supra) was on a reference made as to whether any interim bail can be granted in view of the bar under Section 37 of the NDPS Act and its operative portion reads, as under:-

[1] The trial or the appellate Courts after conviction are entitled to grant “interim” bail to the accused/convict when exceptional and extra-ordinary circumstances would justify this indulgence. The power is to be sparingly used, when intolerable grief and suffering in the given facts may justify temporary release.

[2] While rejecting or accepting an application for grant of “interim” bail, the trial/appellate Courts will keep in mind the strict provisions of Section 37/32A of the NDPS Act and only when there are compelling reasons which would justify and require the grant of “interim” bail, should the application be allowed. The

Court must take into account whether or not the accused/convict is likely to commit or indulge in similar violations.

[3] While examining the question of grant of “interim” bail, the Court would consider whether sending accused/convict in police custody would be suffice and meets the ends of justice, keeping in view the nature of the offence with which the accused is charged or/and the past conduct of the accused.

[4] Where “interim” bail should be given, it would be granted for minimal time deservedly necessary and can be subject to certain conditions. Interim bail is interim or for a short duration.”

A bare reading of the judgment (supra) not only dealt with the aspect of jurisdiction of the court in entertaining an application for interim bail, but, also laid down the principles to be followed for grant of such bail. It lays down that the interim bail is to be granted only when there are compelling reasons, which would justify the grant of interim bail. In the light of the ratio of the judgment (supra), I consider, the bald assertion for the admission of the child and that too, when the admission session is over, cannot be said to be a compelling circumstance, to entertain such application. As for the medical prescriptions/certificates/report adverted to by learned counsel for the applicant, a bare perusal of the said medical prescriptions/documents/reports would show that they relate to a much earlier period. Significantly, it may be noted, on the report called for vide order dated 17.4.2017, the only diagnosis of the applicant’s wife is of mild depression. Be that as it may, there is no

material on record to even suggest that the wife of the applicant requires immediate surgery or any surgery is scheduled in near future.

Dismissed.

ANIL KUMAR CHAWLA, J

MAY 15, 2017/mw