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

+ **BAIL APPLN. 1860/2017**

DHARAMRAJ @ DHARMA

... Petitioner

Through: Mr.Prakash Priyadarshini, Advocate.

versus

STATE OF NCT OF DELHI

... Respondent

Through: Ms.Kusum Dhalla, APP for the State
with SI Surender Singh, PS Special
Cell/NR.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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26.09.2017

1. This application has been filed by the petitioner under Section 439 Cr.P.C. seeking interim bail in case FIR No.54/2014 registered under Section 21/29/61/85 NDPS Act at PS Special Cell (SB), Delhi.
2. The prayer for release on interim bail has been rejected by the learned ASJ, vide order dated 12th September, 2017, for the following reasons:

“As per the verification report however, father of the applicant/accused is found suffering from pulmonary tuberculosis and was also advised hospitalization by Rajan Babu T.B. Hospital on 07.09.2017 however the patient did not visit the hospital on 07.09.2017. It is further report by the IO that there are two other brothers of the applicant and their wives alongwith one sister of the applicant who is living in the same house who can easily look after the ailing father.”

Ld.APP for the State has strongly opposed the present application. It is submitted that there are serious allegations against the accused as commercial quantity of contraband was recovered from the possession.

It is relevant to mention here that the Hon'ble High Court of Delhi in Athar Parvez Vs. State Crl. Ref.1/2015 vide order dated 26.02.2016 has held that the Court can grant interim bail to the accused when exceptional and extraordinary circumstances would justify this indulgence and this power is to be sparingly used, when intolerable grief and suffering in the given facts may justify temporary release. The Court has to keep in mind strict provisions of Section 37 NDPS Act and it is only when there are compelling reasons which would justify and require the grant of interim bail, should the application be allowed. The Court has further to consider whether sending accused in police custody would suffice and meet the ends of justice, keeping in view the nature of the offence with which the accused is charged.

In my view, the allegations against the applicant/accused are serious in nature as it is a case of commercial quantity of contraband. The application cannot be considered divorced from the facts of the case as the Court has to keep in mind the strict provisions of section 37 NDPS Act as mentioned in Athar Parvez (supra). ”

3. Perusal of the record shows that vide order dated 5th October, 2016 passed in Bail Appln. No.1754/2016 the petitioner was ordered to be released on interim bail for a period of four weeks for his own treatment as he was suffering from “haemorrhoids”.

4. Thereafter interim bail was sought on the ground that his father is suffering from TB. The report from the Medical Superintendent, Dr.S.P.M. Chest Clinic & Hospital, Patparganj, New Delhi was obtained on the specific points which is annexed with the status report. It is mentioned therein that OPD treatment was provided to the patient Hari Kishan, father of the petitioner and he was referred to Rajan Babu TB Hospital for admission on 7th September, 2017. The relevant part of the report reads as under:

“xxxxxxxxxxxx

Patient visited to OPD on 07/09/2017 and in view of his weak general condition and breathlessness, patient was referred for admission to Rajan Babu TB Hospital (R.B.T.B. Hospital).

Same as above on point 7.

Dot provider visited the address provided for sputum AFB namely 32/180, Trilokpuri. But patient was not available at the address mentioned and he is not living on that address. This address belongs to his relatives. As per the address mentioned on CBNAAT report and the visit done by dot provider to the given address at Trilokpuri, patient Hari Kishan is living on address R-590, Mangolpuri. This address does not come under the purview of Dr.S.P.M. Chest Hospital, Patparganj. Subsequently after 7.9.17, the patient Shri Hari Kishan did not visit our hospital.”

5. Since the petitioner is involved in a case of alleged recovery of commercial quantity i.e. 1.5 kg. of heroin and his father can be taken care of by his other two brothers who are living separately with their families, petitioner cannot be granted interim bail on the ground that he has to get his father admitted in Rajan Babu TB Hospital.

6. The bail application is dismissed.

PRATIBHA RANI, J.

SEPTEMBER 26, 2017

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