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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3191/2019

MUMTAZ ALI ALIAS ANAS ALIAS SAHILPetitioner

Through: Mr Bahar-U-Barqui, Advocate.

versus

STATE

..... Respondent

Through: Mr G.M. Farooqui, APP for State.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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13.08.2020

The hearing was conducted through video conferencing.

BAIL APPLN. 3191/2019

1. The petitioner was earlier granted interim bail by this Court on 01.06.2020, wherein this Court *inter alia* observed as under:

“2. On the previous date, the following order was passed:”
The applicant seeks interim bail. He has been behind bars since 02.02.2019 in FIR No. 20/2019 under sections 15/25/29 NDPS Act, 1985 registered at PS Crime Branch for possession of contraband. The othertwo co-accused are stated to have already been released on bail. The petitioner’s wife is stated to be having a serious medical condition for the last 8-10 months; she has an ailment in her spine and the pain extends to her legs. The doctor’s report in this regard is annexed to the petition (Annexure X). It shows her blood pressure at 170/100 mm hg and pulse rate at 68 bpm. There are other related ailments as well. There is no one else to take care of the petitioner’s wife and mother. Their problems are all-the-more compounded because of the nationwide pandemic lockdown for the past over nine weeks. In the circumstance, the petitioner seeks bail to attend to their medical and other needs.

3. The police has verified the condition of the petitioner’s

wife who has been advised bed-rest as a consequence of her medical condition. The medical document has been found to be genuine. The petitioner has a brother who lives in Delhi but at a separate place.

4. The alleged recovery was made from the petitioner, however, there are two other co-accused, namely, Ramesh Kumar @ Happy, Rajesh @ Mukesh @ Noni. 5. According to the Status Report, the accused Ramesh Kumar @ Happy, who is an ASI in the Special Branch of Delhi Police, was arrested on 01.02.2019, he disclosed that his friend Rajesh @ Mukesh @ Noni had arranged this consignment and delivered on his instructions. Accused Rajesh @ Mukesh @ Noni was arrested at a later stage on 06.06.2019. The Status Report reads as under:

“...Main Charge sheet against Mumtaz Ali @ Anas @ Sahil and Ramesh @ Happy and supplementary charge sheet against Rajesh @ Noni is already filed in the Hon’ble Court for Judicial verdict alongwith the FSL result. That cognizance of the case has been taken and last date of hearing is fixed for 05.02.2020 for arguments on charge...”

6. Ramesh Kumar @ Happy and Rajesh @ Mukesh @ Noni have been granted bail. The learned counsel for the petitioner submits that most of the witnesses are police officials over whom the petitioner can have no sway. Furthermore, he relies upon the dicta of the Supreme Court in Arif Khan @ Agha Khan vs. State of Uttarakhand, (2018) 18 SCC 380, which has held that the recovery of a contraband should be made in the presence of a gazetted officer. The petitioner, however, is not involved in any other criminal case.

7. In the aforesaid circumstances, the petitioner is granted interim bail for a period of 45 days, on his furnishing a personal bond in the sum of Rs.25,000/-, to the satisfaction of the Jail Superintendent concerned. The petitioner shall furnish a surety of like amount to the satisfaction of the learned Trial Court/learned Sessions Court on resumption of normal functioning of the Courts. The Investigating Officer/SHO concerned shall duly intimate the petitioner

about such requirement when the regular functioning of Courts resume. The interim bail is granted on the following conditions:

(i) The petitioner shall keep the SHO/IO concerned informed of his whereabouts every Friday through SMS or telephone call or by 'dropping-a-pin' on location app (eg. Google Maps). The IO/SHO's telephone number shall be furnished to him directly as well as to his counsel.

(ii) The petitioner shall ensure that the telephone number provided by him to the police is reachable at all times.

(iii) The petitioner shall not do anything which may cause prejudice to the case of the prosecution against him....”

2. Today also, the position remains the same. The witnesses which remain to be examined are police officials, over whom the petitioner can have no sway. Additionally, the other two co-accused, one of whom is a police official, have already been granted regular bail.
3. In view of the above, the petitioner is granted bail on the same terms and conditions contained in the order dated 01.06.2020, on account of which he is presently on interim bail.
4. Nothing stated in this order shall be deemed to be an adjudication on the merits of the case. The Registry is directed to send a copy of this order to the Jail Superintendent concerned for duecompliance.
5. The bail application stands disposed-off accordingly.

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6. The application is dismissed as having become infructuous.
7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

AUGUST 13, 2020/rd