

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

Date of decision: 29th September, 2021

IN THE MATTER OF:

+ **BAIL APPLN. 3433/2021**

BALI KHAN

..... Petitioner

Through Mr. Kamal J S Mann, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through Ms. Kusum Dhalla, APP for the State

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

CRL.M.A.14742/2021(Exemption)

Allowed, subject to all just exceptions.

BAIL APPLN. 3433/2021

1. This application under Section 439 Cr.P.C. is for grant of interim bail to the petitioner in FIR No.54/2020 dated 24.02.2020, registered at Police Station Crime Branch, New Delhi for offence punishable under Section 20 of the NDPS Act, 1985.
2. The petitioner is in custody since 24.02.2020.
3. The learned Additional Sessions Judge/Special Judge, NDPS (Central), Tis Hazari Courts, Delhi, had granted interim bail to the petitioner vide order dated 04.05.2021 on the ground that the petitioner's wife had tested positive for COVID-19. The interim bail granted to the petitioner was

purely on humanitarian ground. The interim bail of the petitioner was extended from time to time till 21.06.2021 by the learned Trial Court. The petitioner had surrendered on 21.06.2021, and since then he is in judicial custody.

4. The petitioner approached the learned Trial Court by filing an application for grant of interim bail on the ground that he is entitled to the benefit of the orders dated 09.07.2021 and 13.08.2021, passed by the Bench of three Judges of the Hon'ble High Court of Delhi in W.P.(C) 4921/2021 titled Courts on its own motion vs. State (Govt. of NCT of Delhi). However, the said bail application of the petitioner was dismissed by the learned Additional Sessions Judge/Special Judge, NDPS (Central), Tis Hazari Courts, Delhi vide order dated 09.09.2021.

5. The petitioner has approached this Court by filing the instant bail application purely on the ground that the Bench of three Judges of this Court in W.P.(C) 4921/2021 dated 20.04.2021, had ordered that in all the matters pending before this Court and Courts subordinate to this Court in which interim orders have been issued and were subsisting as on 19.04.2021 would shall automatically be extended till 16.07.2021 or until further orders. It is contended that the said order dated 20.04.2021 was also made applicable in favour of those persons, in whose favour interim orders/bail orders were passed between 20.04.2021 and 16.07.2021. The petitioner, therefore, claimed that if he had known about the said order, he would not have surrendered. It is stated that the petitioner should also be given the benefit of the order dated 09.07.2021, passed by the Bench of three Judges of the Hon'ble High Court of Delhi in W.P.(C) 4921/2021.

6. The Supreme Court in *Suo Motu* Petition (Civil) No.01/2020 had

directed the High Courts to constitute a High Powered Committee to frame guidelines to de-congest the prisons. The High Court of Delhi constituted a High Powered Committee. In the HPC guidelines dated 04.05.2021 the HPC had identified several categories of under trial prisoners, who could be granted the benefit of HPC guidelines who could be released on interim bail under the HPC guidelines in order to de-congest the prisons so that COVID-19 does not spread in prisons. The HPC guidelines dated 04.05.2021 also laid down the specific categories of under trial prisoners, who were not entitled to the benefit of the HPC guidelines. The said categories read as under:

- "(i) Those inmates who are undergoing trial for intermediary/large quantity recovery under NDPS Act;*
- (ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;*
- (iii) Those under trial prisoners who are facing trial for offences under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, and 376E and Acid Attack;*
- (iv) Those UTPs who are foreign nationals;*
- (v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA and;*
- (vi) Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc."*

"Apart from the above six categories, Committee resolved to exclude those UTPs who after having availed the benefit of the criteria adopted in the earlier meetings, had committed fresh crimes while on interim bail.

Thus, following seventh and eighth category is also included in the exclusion clause.

(vii) Those Under Trial Prisoners who are now in custody for an offence committed by him during the period of interim bail granted to him on the basis of criteria adopted by High Powered Committee in its earlier meetings;

(viii) Those Under Trial Prisoners who were granted interim bail on the basis of criteria adopted by High Powered Committee in its earlier meetings but failed to surrender in terms of the surrender order and are now in custody, only on execution of non-bailable warrant against him/them." (emphasis supplied)

8. The petitioner is an accused of an offence under the NDPS Act and therefore, falls under the exclusion category. A person, who is an accused of committing an offence under the NDPS Act, is not entitled to be given the benefit of the HPC guidelines. The petitioner was granted interim bail by the learned Trial Court *vide* order dated 04.05.2021 only on the ground that his wife had contracted COVID-19 and he had two small children to be taken care of. But for these reasons, the petitioner would not have been granted interim bail.

9. The question which has arisen before this Court is that as to whether the order dated 09.07.2021 and 13.08.2021 would inure to the petitioner herein or not. Once the High Powered Committee of the High Court has laid down that the persons who are accused of offence under the NDPS Act not to be given the benefit of the HPC guidelines, the petitioner could not have taken the benefit of the HPC guidelines. The interim bail granted in favour of an accused is purely on sympathetic grounds. He cannot be given the benefit of the orders dated 09.07.2021 and 13.08.2021 passed by this Court.

If such benefit is given, then this will lead to a anomaly where, on the one hand, a person accused of an offence under the NDPS Act cannot take the benefit of the HPC guidelines and could not be released on interim bail, but a person, whose case was considered sympathetically and is granted interim bail to look after his wife, children or on account of certain contingencies like on account of illness in the family or death, will keep getting the benefit of the interim orders of this Court. This will create an artificial discrimination between the under trial prisoners, who otherwise are not entitled to the benefit of the HPC guidelines and the petitioner herein. This Court is of the opinion that this could not have been the intention of the Bench of three Judges of this Court while passing the orders dated 09.07.2021 and 13.08.2021.

10. Therefore, this Court does not find any anomaly in the order dated 09.09.2021 dismissing the bail of the petitioner by the learned Additional Sessions Judge/Special Judge, NDPS (Central), Tis Hazari Courts, Delhi.

11. Accordingly, the application stands dismissed.

SEPTEMBER 29, 2021

S. Zakir

SUBRAMONIUM PRASAD, J