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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 171/2024**

AKASH

..... Applicant

Through: Mr. Rahul Sharma, Mr.
Deepak Ghai, Mr.
Shailender Mohan Popli,
Mr. Varun Mohan Popli,
Mr. Swapnil Jain and Ms.
Abhilasha, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Utkarsh, APP for the
State with SI Ram Kishan,
PS Crime Branch.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
23.01.2024

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1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of interim bail in FIR No. 206/2021 dated 14.10.2021 under Sections 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS Act**) registered at Police Station Crime Branch, on the ground that the marriage of the applicant's brother is to be held on 25.01.2024.

2. The learned counsel for the applicant relies upon various orders passed by this Court, where this Court has granted interim bail for various reasons, as mentioned in the applications filed by the applicants therein, even when the applicants were in custody in relation to offences punishable under the NDPS Act.



3. The learned Additional Public Prosecutor for the State relies upon the judgment passed by the Division Bench of this Court in the case of ***Athar Pervez v. State* : 2016 SCC OnLine Del 6662**, to contend that while considering the application for grant of “interim” bail in respect of the offences punishable under the NDPS Act, the Court has to keep in mind the strict provisions of Section 37 / 32A of the NDPS Act.

4. He submits that the interim bail cannot be sought for as a substitute or an alternative for regular bail. He submits that the applicant is not entitled for any relief or bail in view of the strict provisions of Section 37 of the NDPS Act.

5. The Division Bench of this Court in ***Athar Pervez v. State*** (*supra*) while disposing of the criminal reference on whether the Courts can grant interim bail when the conditions for grant of bail under Section 37 of the NDPS Act are not satisfied, held as under:

“23. Having considered the case law on the subject, we are inclined to answer the reference in the following manner:

[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.”

6. It is apparent that the Division Bench of this Court had not held that there is a complete bar on the grant of interim bail to the accused charged for offences under the NDPS Act. The Division Bench had held that the power is to be sparingly exercised, and only when the given facts justify temporary release. It was held that the Courts will have to keep in mind the strict provisions of Section 37 of the NDPS Act, and only when there are compelling reasons which would justify and necessitate the grant of “interim” bail, should the application be allowed.

7. The Courts must also take into account whether or not the accused or convict is likely to commit or indulge in similar violations.

8. The present application is filed on the ground that the brother of the applicant is getting married on 25.01.2024 at MaaJagdamba Tent, Ranibagh Delhi-110034. The said fact has been verified by the State, and the same is not disputed. It is also not disputed that the applicant was granted interim bail earlier also on three occasions, that is, on 04.05.2022, 29.05.2023 and 05.09.2023 respectively.

9. It is not denied that the liberty was not misused during the period of interim bail and the applicant was not found to indulging in similar violations, as alleged in the present case.

10. In the opinion of this Court, marriage of the brother of the applicant is a compelling reason which would justify the grant of interim bail to the applicant, and looking at the past conduct of
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the applicant while released on interim bail, it is not likely that he would commit or indulge in similar violations.

11. In view of the above, the present bail application is allowed. The applicant is directed to be released on interim bail for a period of three days on his furnishing a personal bond for a sum of ₹50,000/-, with one surety of the like amount to the satisfaction of the Jail Superintendent, subject to the following conditions:

- a. The applicant shall not leave NCT of Delhi during the period of his release on interim bail;
- b. The applicant shall provide his mobile number to the concerned Investigating Officer, which shall be kept switched on at all times; and,
- c. The applicant shall not try to contact or influence any of the witnesses.

12. The applicant is directed to surrender before the concerned Jail Authorities, positively on or before 27.01.2024.

13. The present bail application is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

JANUARY 23, 2024

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