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

% *Date of decision: 02nd April, 2024*

+ CRL.A. 184/2024

ABDUL WAHID SAIT Appellant

Through: Mr. Adit S Pujari, Advocate.

versus

NATIONAL INVESTIGATION AGENCY Respondent

Through: Mr. Rahul Tyagi, APP.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The present appeal under Section 21(4) of the National Investigation Agency Act, 2008 (in short NIA) read with Section 439 of the Code of Criminal Procedure, 1973 has been filed by the appellant seeking setting aside of order dated 13.04.2022 passed by the learned Special Court (NIA), New Delhi whereby his application seeking release on 'interim bail' has been rejected.

2. The appellant, in the present case, has averred that he has been made an accused in FIR No. RC – 14/2022/NIA/DLI under sections 120B/121A/122/153A of the Indian Penal Code, 1860 ("IPC") and Sections



13/17/18/18A/18B/22C of the Unlawful Activities (Prevention) Act, 1967 (in short UAPA) registered at PS NIA, New Delhi. He was arrested on 12.09.2022 and since then he is in custody.

3. The chargesheet in the present case was filed on 18.03.2023 wherein he has been arrayed as accused No. 9.

4. Further averred that in July, 2023, his wife - Farnaz Wahid was affected by severe recurrent episodes of acute abdominal pain and vomiting and doctor suggested her to undergo certain tests. Thereafter she was advised to undergo laparoscopic cholecystectomy surgery. Upon assessing her medical condition, she has been advised to get herself admitted in hospital for surgery, monitoring and initial recovery of 5-7 days.

5. Due to aforesaid reason, the appellant, on 05.12.2023, filed an application for his release on interim bail to provide assistance to his wife to which respondent-NIA filed objections.

6. The learned Trial Court *vide* impugned order dated 01.02.2024 dismissed his application inter-alia holding as under:

8. *The first thing to be considered is that the interim bail is to be granted in 'exceptional and extraordinary circumstances which would justify this indulgence. It is also held that this power is to be sparingly used when intolerable grief and suffering in the given facts may justify temporarily release. No doubt, any medial condition of a family member will cause pain to a person and it cannot be said that if the said person is an accused in a case, the pain so suffered would be less in any measure. However, this painful situation is to be tested on the anvil of established position of law on this aspect. The pain or suffering should be intolerable and the circumstances should be exceptional and extraordinary. The ground on which interim bail of applicant/accused is sought is that laparoscopic cholecystectomy wife of accused/applicant is to be conducted. As per the copy of medical certificate placed on record*



by accused, the date fixed for surgery was 05.1.2024 which, admittedly, now stands postponed. It implies that surgery in question is elective and the medical condition of the spouse of accused is not that she is suffering from any life threatening disease nor the disease is such where any live saving surgery/treatment is immediately required. Hence, the condition of circumstances being extraordinary and exceptional cannot be said to have been met. It was also argued on behalf applicant/accused that he is seeking bail being the primary care giver. Admittedly, there are four sons of applicant/accused and his wife. It is not the case of applicant/accused that all the sons are minor and it is fairly conceded only two sons are minor. It is also not the case of applicant/accused that the major sons are not taking care of their mother (wife of applicant/accused). It is also not the case of applicant/accused that those major sons are in any way incapacitated from taking care of their mother (wife of applicant/accused). Besides this arguments of being the primary care giver, applicant/accused could not substantiate the same as it was not explained that as to how without presence of applicant/accused, no care of wife of accused could be taken of. Therefore, above discussion shows that applicant/accused falls sort of meeting the parameters laid down in the above said judgment. Hence, Application is stands disposed of being not allowed. Copy dasti.

7. The appellant in the present appeal has challenged dismissal of his application on the ground that the learned Special Court failed to consider that his wife required his assistance during the surgery as well as during the period of her recovery and that his sons, of which two are major but unmarried, would not be able to take care of her as a husband would do.

8. The appellant has averred that even though laparoscopic cholecystectomy surgery is considered a safe procedure, however, the period of recovery and risk of complications differs from person-to-person and



further that learned Special Judge has erred in holding that the surgery is an elective surgery whereas it was deemed necessary by the doctor in the present case.

9. The present appeal is vehemently opposed by learned Additional Public Prosecutor appearing on behalf of the State contending that the appellant was a member of Karnataka Forum for Dignity (KFD), a precursor Organisation to PFI and subsequently became member of PFI. As a senior leader of PFI, the appellant alongwith his co-accused was involved in the conspiracy of overthrowing the democratically elected Indian Government through armed struggle by radicalizing the innocent Muslim youth, causing disaffection amongst them against the Government and entire State machinery and raising an army of physically and mentally trained cadres who could be used for committing unlawful and terrorist activities including the murders of leaders of organisations who do not believe in the establishment of Islamic State of India. The appellant was also involved in creating communal disharmony and disrupting the sovereignty and integrity of India.

10. It is averred that allegations levelled against the appellant are of serious nature and the learned Trial Court has passed the impugned order after following the due process of law. It is averred that the appellant's wife is not suffering from any life-threatening disease and in such circumstances, benefit of 'interim bail' cannot be extended to the appellant.

11. Upon hearing learned counsel representing both sides, and on perusal of impugned order and other material placed on record, we find that the appellant's wife has been advised to undergo laparoscopic cholecystectomy surgery, which was earlier fixed for 05.01.2024. However, the date was



extended at the request of appellant's family. It is not in dispute that as of today, no date for surgery has been fixed.

12. Keeping in mind the overall facts of the case and the fact that the wife of the appellant is required to undergo surgery and at the time of surgery, the presence of the appellant would be required, while holding that no case for interim bail is made out on account of any compelling medical exigencies, in the interest of justice, we dispose of the present appeal, by directing that if the wife of the appellant undergoes surgery and a date of surgery is fixed, the appellant would be allowed custody parole for six hours (excluding the time of journey from Delhi to Bangalore) on the date of such surgery so that he is in a position to meet her and be with her at the time of such surgery.

13. Since the surgery is yet to be scheduled and a new date is yet to be given, the learned Trial Court, on so informed by the parties concerned, would verify the date of surgery and thereafter, the appellant would be granted custody parole for six hours.

14. The expenses towards the said journey of the appellant and the escorting officials would be borne by the appellant in terms of the Delhi Prison Rules.

15. The appeal is disposed of in aforesaid terms.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

APRIL 2, 2024/uk