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

+ BAIL APPLN. 159/2024

SHAINU R HATWAR Applicant

Through: Mr. Aditya Agarwal, Mr.
Naveen Panwar, Mr.
Mohd. Yasir & Ms.
Jayseeka Viridi, Advs.

versus

NARCOTIC CONTROL BUREAU Respondent

Through: Mr. Utsav Bains, SPP,
NCB (through VC) with
Mr. Ravi Pandey, Adv.

+ BAIL APPLN. 169/2024

SHAINU R HATWAR Applicant

Through: Mr. Aditya Agarwal, Mr.
Naveen Panwar, Mr.
Mohd. Yasir & Ms.
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versus

NARCOTICS CONTROL BUREAU Respondent

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NCB (through VC) with
Mr. Ravi Pandey, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **20.03.2024**

CRL.M.A. 1260/2024 (for exemption) in BAIL APPLN. 159/2024

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.A. 5599/2024 (for condonation of delay) in BAIL APPLN. 159/2024

CRL.M.A. 5589/2024 (for condonation of delay) in BAIL APPLN. 169/2024



3. For the reasons mentioned in these applications, the same are allowed.

4. The delay in filing the reply stands condoned.

BAIL APPLN. 159/2024 & BAIL APPLN. 169/2024

5. The present applications have been filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of interim bail in NCB Case Nos. VIII/23/DZU/2023 and VIII/24/DZU/2023 registered at NCB, Zonal Unit, Delhi for offences punishable under Sections 8(c)/22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), for a period of three months on the ground that the applicant is suffering from various pre-existing ailments.

6. The learned counsel for the applicant submits that the applicant is suffering from Thalassemia Major, and requires blood transfusion every two to three weeks. He states that the applicant has also been declared 70% temporarily disabled by the Department of Empowerment of persons with disabilities, Ministry of Social Justice and Empowerment, Government of India. The applicant is also stated to be suffering from Osteopenia due to Thalassemia Major which has resulted into weakened bones. The application is also supported with medical documents which indicate that the blood transfusion is necessary for the applicant.

7. It is pointed out that interim bail was granted to the applicant by the learned Trial Court by order dated 30.10.2023, on the ground that the applicant had to undergo blood transfusion regularly and after that 'DESFERAL' injection was recommended, which was not given to her by the jail authorities and liberty granted by the said order was not misused by the applicant. However, the application filed by the learned counsel



for the applicant before the learned Trial Court seeking extension of the interim bail was dismissed as withdrawn by the order dated 17.11.2023, wherein the learned Trial Court noted that the injection 'DESFERAL' and infusion pump were available in the Jail Hospital.

8. The learned counsel submits that blood transfusions are being done at the jail hospital but sometimes due to non-availability of the blood at the hospital, the hospital authority is unable to do blood transfusion in proper quantity. He states that the health condition of the applicant has further worsened in the jail as she is not getting adequate treatment which is immediately warranted, given the applicant's deteriorating medical condition. He further submits that the applicant has lost about 20 kgs. of weight due to her precarious health condition.

9. The learned Special Public Prosecutor for Narcotics Control Bureau submits that the medical report dated 17.01.2024 received from the office of Senior Medical Officer, Central Jail Dispensary, Tihar, New Delhi, indicates that the applicant was counselled multiple times but she refused from taking injection, 'DESFERAL' as the infusion pump used was not of her choice.

10. The learned counsel for the applicant, in reply to the medical report, submits that the method used by the jail authorities to give the injection – 'DESFERAL' using generic/Intravenous Infusion pump is not an appropriate method. The whole process requires special care as it may lead to complications such as Hypersensitivity reactions, including anaphylaxis, flushing of the skin, urticarial, hypotension and shock. Therefore, the applicant requires a special care for the aforementioned procedure.

11. After hearing the arguments and going through the



medical report, it is not disputed that the applicant is suffering from Thalassemia Major which is a chronic disease and gets worse over time, which leads to further deterioration in the health and life expectancy of the patient.

12. It is relevant to note that the people who suffer from Thalassemia Major are immunocompromised as this disease leads to impaired immune response against various type of infections. It is not denied that the jail hospitals did not have the adequate medical infrastructure for the treatment of Thalassemia Major due to which the applicant was taken to Lady Hardinge Medical College for regular treatment. It is also pertinent to note that the said hospital, at certain occasions, also lacked requisite medical facilities for the treatment of Thalassemia Major.

13. The process of blood transfusion cannot be called 'routine' in nature and the patient requires special care and medical attention while undergoing the treatment and not providing the required care and medical attention can also result in loss of life.

14. The Hon'ble Supreme Court, while articulating that Right to Health is also recognised as an important facet of Article 21 of the Constitution of India, in the case of ***Parmanand Katara v. Union of India*** : (1989) 4 SCC 286, observed as under:

"7. There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment."

15. Considering the aforesaid circumstances and the fact that the applicant is a lady suffering from a chronic disease, this



Court considers it apposite to allow the present application. The applicant is directed to be released forthwith on interim bail for a period of one month, that is, till 20.04.2024 on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount to the satisfaction of the Jail Superintendent, on the following conditions:

- a. The applicant will deposit her passport in the court during the period of bail and if she does not have passport then to file an affidavit in this regard in the learned Trial Court;
 - b. The applicant shall under no circumstance leave NCT of Delhi, without permission of the learned Trial Court, during the period of her release on interim bail;
 - c. The applicant shall provide her mobile number to the concerned Investigating Officer, which shall be kept switched on at all times;
 - d. The applicant shall provide her address to the concerned Investigating Officer where she will be residing after her release on interim bail;
 - e. The applicant shall not try to contact or influence any of the witnesses;
 - f. The applicant shall not commit any offence during the period of her release on interim bail;
 - g. The applicant shall not use the mobile application – Wicker Me or any other application of the like nature during her release on interim bail.
16. The applicant shall duly surrender before concerned the Jail Superintendent on or before 20.04.2024.
17. The application is allowed in the aforesaid terms.
18. It is clarified that any observation made in the present order are only for the purpose of deciding the present bail



application and should not be taken as an expression of opinion by this Court on the merits of the case. The same should not influence the outcome of the regular bail application pending before the learned Trial Court.

AMIT MAHAJAN, J

MARCH 20, 2024
"SS"/UG