

18.01.2023

Case file is taken up today upon the bail application filed on behalf of accused Sonu u/s 439 of Cr.P.C for grant of interim bail for a period of two months.

Present: Sh. Pradeep Kumar, Ld. Substitute PP for the State.

Sh. Deepak Ghai, Ld. Counsel for the accused.

IO/ASI Ramesh Kumar is present in person.

Reply/report is filed. Copy be supplied.

I. It has been submitted on behalf of applicant/accused that accused is in JC since 05.10.2019. It has been further submitted that applicant/accused is an innocent person and he has been falsely implicated in this present case. It has been further submitted that accused/applicant has clean antecedents. It has been further submitted that wife of the applicant/accused is suffering from severe lower back pain, radiation of pain to both LL (R>L) and numbness and she is undergoing treatment from Dr.Vikrant Katiyar (Neurosurgery-Brain and Spine). It has been further submitted that doctor has advised the wife of the applicant/accused to under-go MRI Ls Spine, other tests, and advised her to avoid forward bending and weight lifting and complete bed rest. It has been further submitted that the report of the wife of the applicant/accused reveals L5-S disc bulge with neural foraminal stenosis (R>L) with Canal Stenosis and Facetal hypertrophy. It has been further submitted that doctor has advised the wife of the applicant/accused for L5-S1, Microdisectomy fixation surgery and for that she is advised to get admitted in the hospital on

21.01.2023. It has been further submitted that wife of the applicant/accused needs close attendant besides her to support her in emergency/odd hours to look after her & infant child and to arrange the required funds for surgery. It has been further submitted that there is no one in the family to take care of wife of the applicant/accused and to arrange funds for the treatment of wife of the applicant/accused. It has been further submitted that accused is ready to abide by all the terms and conditions. Thus, it has been prayed that the accused may kindly be released on interim bail for the period of 2 month on account of surgery of his wife.

II. On the other hand, the bail application is opposed on behalf of the State vehemently. It has been submitted that medical documents were verified. It was found that the wife of the accused is suffering from chronic low back pain and radicular pain in both lower limbs (R>L) since last one year. It is also found that she is diagnosed with L5-S₁ disc prolapse/PIVD for which she is advised for surgery. It has been further submitted that the charges has been framed in the present case for possession of Heroin for the commercial quantity against the present accused and thus there is bar under Sec 37 of NDPS Act. The trial is at initial stage and witnesses are yet to be examined. It has been further submitted that there is likelihood that accused may flee away from the jurisdiction of this Court or may tamper with the evidence or may repeat the similar kind of offence. Thus, it has been prayed that the bail application filed by the applicant/accused may kindly be dismissed.

III. Heard the rival submission and perused the records.

IV. In the present, case, charges have already been framed. The total recovery is of 1 Kg of Heroin which is of commercial quantity and therefore, bar u/s 37 of NDPS Act is applicable. Accused Sonu disclosed

that he procured the recovered contraband from accused Suraj. Both the accused were stated to be in regular touch with each other, as per prosecution story they had criminal conspiracy with each other for the illicit trafficking of the Heroin.

V. It is trite principle of law that while granting bail the court has to keep in mind (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (b) the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of cognizable offence; (c) the possibility of the applicant to flee from justice; (d) the possibility of the accused's likelihood to repeat similar or other offences; (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (f) Impact of grant of bail particularly in cases of large magnitude affecting a very large number of people; (g) The court should consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant and any other aspects of the case should be taken into consideration while granting bail.

VI. It has been held by the Hon'ble High Court of Delhi in "Athar Pervez Vs State" (Crl. Ref.1/2015, decided on 26.01.2016) that the power to grant interim bail is to be sparingly used, when intolerable grief and suffering in the given facts may justify temporary release. It has been further held that while rejecting or accepting an application for grant of "interim" bail, the trial court 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 the application should be allowed. It was further held that the Court must take into account whether or not the accused/convict is likely to commit or indulge in similar violations.

VII. In view of the aforesaid settled principle of law and having heard the rival submissions on behalf of the parties and perusal of the record and report of the I.O and that the present case is the case of commercial quantity and thus bar u/s 37 of NDPS Act is applicable. However, as per medical record the operation of the wife of the accused has been fixed for 21.01.2023. There is no male member in the family to look after the wife of the accused.

VIII. Therefore, in the light of aforesaid discussion and in view of the verification report, without going into the merits of the case, this Court is of the opinion that in the totality of the facts and circumstances of the present case, the bail application is hereby allowed and accused be released for 10 days on furnishing of personal bond in a sum of Rs. 50,000/- and a surety of like amount with the direction that he will surrender after the expiry of ten days from the date of his release at 10.00 am before the concerned Jail Superintendent and subject to following conditions:

1. That accused shall not come in contact with or try to influence any of the witnesses connected with the case either directly or indirectly.
2. That accused shall not directly or indirectly make any inducement, threat or promise to any person so as to dissuade him/her from disclosing the facts before the court and accused shall not tamper with the evidence in any manner;
3. That accused shall not visit in the radius of 3 kms from the house of complainant/victim.
4. That the accused shall furnish his mobile number to the IO/SHO.
5. That the accused shall furnish the certificate/medical documents of the operation of his wife during his release alongwith the payment receipt made towards the medical expenses.

It is hereby made clear that in the event of breach of any of the afore said terms and conditions of bail on the part of accused person, it

shall be open for complainant/I.O./SHO/State to seek cancellation of the bail being granted to the accused. With these directions, the bail application stands disposed of.

Nothing discussed hereinabove shall tantamount to be an expression upon the merits of the case.

Copy of the order be given dasti to the parties including I.O.

Copy of the order be sent to the concerned Jail Superintendent for perusal and due compliance.

Main case file be put up on date already fixed i.e. **24.03.2023**.

(Devendra Kumar Sharma)
ASJ/Special Judge (NDPS)(West)
THC/Delhi/18.01.2023