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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 08.05.2024*+ **BAIL APPLN. 3358/2023**

ANKIT

..... Applicant

Through: Mr.Manmohan Singh,
Mr.Sandeep Singh, Advs.

versus

THE STATE

..... Respondent

Through: Mr.Aman Usman, APP with
Insp. Arun Kumar Chauhan.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on *interim* bail for Forty Five (45) days in FIR No.0596/2021 registered at Police Station: Jahangirpuri, North-West District, Delhi, originally under Sections 307/34 of the Indian Penal Code, 1860 (in short, 'IPC') and Sections 25/27/54/59 of the Arms Act, 1959 (in short, 'Arms Act'), later charges under Sections 302/120B/34/201 of the IPC have been added in the Charge Sheet.

2. It is the case of the applicant that the applicant was arrested on 22.06.2021 in the above FIR. At the time of the arrest, he was aged about 19 years and 10 months, and has been in custody since then. It is further stated that he is suffering from acute pain in his wrist, which has been diagnosed as '*High Radial Nerve Paralysis*' requiring a



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'*modified jones tendon transfer*'. It is stated that he would like to have this procedure conducted at St. Stephen's Hospital, Tis Hazari, Delhi.

3. On the basis of these averments, this Court has been seeking regular medical updates from the respondent.

4. The latest compliance report dated 07.05.2024 has been handed over by the learned APP which records that the consulting doctor at St. Stephen's Hospital has now fixed the date of surgery of the applicant on 14.05.2024. He has to be admitted in the hospital on 13.05.2024 or 14.05.2024 in the morning.

5. The learned counsel for the applicant has also handed over a letter/communication dated 08.05.2024 from the Medical Superintendent, St. Stephen's Hospital addressed to the mother of the applicant, stating that for the post operative care, the applicant would require plaster immobilization for a period of six weeks followed by physiotherapy at the hospital for a period of at least 4 weeks. He would also need admission in the hospital for a period of 4 days for the purpose of surgery.

6. The learned counsel for the applicant submits that the applicant be released on *interim* bail on medical ground. He submits that the applicant is seriously ill and requires medical attendance. He further submits that the applicant has been in custody for a period of more than 2 years and 10 months and has, otherwise, clean antecedents. He submits that there is a delay in the trial and the reasons for the same cannot be attributed to the applicant. He submits that the applicant is in the prime of his youth and was aged only about 19 years at the time of arrest and is now 23 years old. He submits that keeping the accused



in detention for an indefinite time just because of the heinousness of the crime does not satisfy the parameters of justice and wisdom. He submits that the wrong caused or denial of the *interim* bail to the applicant cannot later be rectified/repared. He further submits that the discretion to deprive an individual of his freedom is one of the most serious steps and such discretion has to be exercised sparingly especially where no useful purpose would be served by detaining individuals unnecessarily in jail. He submits that two co-accused were granted bail on the plea of their marriage. It is submitted that two sisters of the applicant are suffering from tuberculosis. He submits that the applicant has been falsely implicated in the case and, in fact, no recovery has been made from him.

7. Placing reliance on the judgment of the Supreme Court in *Hussain & Anr. v. Union of India*, (2017) 5 SCC 702, he submits that the delay in the conclusion of the trial itself is a ground for the applicant to be released on bail.

8. He also placed reliance on the judgment of this Court in *Suvaleen v. The State*, 2021:DHC:2725, to submits that it is the Constitutional duty of the Court to ensure that there is no arbitrary deprivation of personal liberty in the face of excess of State power. Bail is the rule and jail is the exception. He submits that in the said case, the petitioner was in custody for only 17 months but was released on bail.

9. He also relied upon the judgment of this Court in *Vijay Agarwal through Parokar v. Directorate of Enforcement* [order dated 13.12.2022 rendered in Bail Appln. 1762/2022, CRL. M. (Bail)



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713/2022] in support of his above submission.

10. On the other hand, the learned APP submits that the injury for treatment of which the applicant is seeking *interim* bail is admittedly more than 3 years old. He further submits that, in the present case, the applicant has been charged with the allegation of having killed an eye-witness to the assault on the applicant, in order to take revenge.

11. He submits that the applicant had received stab injuries in the year 2020, because of which FIR No.386/2020 was registered at Police Station: Jahangirpuri, North-West District, Delhi on 19.08.2020 under Section 307 of the IPC. Once he recovered from the same, he committed the murder of the deceased Rohit in order to take revenge. He submits that the weapon used in the offence was recovered from the possession of the applicant, which he tried to destroy by putting acid on it. The same was sent to the FSL for ballistic opinion, which has now reported that bullet shells that were recovered from the place of incident have matched with the said weapon.

12. There are eye-witnesses who have defined the role of the applicant in the offence and are yet to be examined before the learned Trial Court. Two witnesses, who have already been examined, have supported the case of the prosecution. He submits that, in case the applicant is enlarged on bail, he may threaten the witnesses who are yet to be examined. He submits that the medical procedure that the applicant has to undergo can also be performed while him being in custody.

13. I have considered the submissions made by the learned counsels for the parties.



14. At the outset, I would remind myself of the fact that this is an application seeking *interim* bail for the applicant and not for regular bail. The parameters / considerations to decide the same is, therefore, a little different.

15. The *interim* bail is being prayed for on the medical grounds for the surgery which needs to be performed on the wrist of the applicant for the injury which is stated to be 3 years old. It is not an emergency procedure but an elective procedure. The applicant is being regularly taken to the hospital for such treatment and I have no reason to doubt that he would be taken care of while being in custody. The allegations against the applicant are rather grave in nature. Two eye-witnesses are yet to be examined. It is not the case of the applicant that he needs to generate funds for his surgery or that he would face any inconvenience or threat only because the surgery is performed while he is in custody.

16. In the present case, as noted hereinabove, the applicant is confusing this application of *interim* bail with the regular bail. The principles enunciated hereinabove and argued by the learned counsel for the applicant, though cannot be doubted, however, are not applicable to the facts of the present case and for the relief that is sought.

17. This court in ***Sh.Krishan Kumar v. The State of NCT of Delhi***, 2020:DHC:2026, has held as under:

“28. In a recent verdict , vidé order dated 15.10.2020 made in Criminal Appeal No. 686/2020 titled *State of U.P. vs. Gayatri Prasad Prajapati*, a 3- Judge Bench of the Hon’ble Supreme Court has set-aside an order of interim bail granted by the Allahabad High



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Court to an accused on medical grounds, holding that there was no satisfaction recorded by the High Court that the treatment offered to the bail applicant by the prison administration was not adequate; or that the accused required any further treatment by any particular medical institution for which it was necessary to release him on interim bail. Applying the same principle to the present case, this court is also not satisfied that the applicant has made-out any valid, credible medical or other ground for interim bail.”

18. Accordingly, I find no merits in the present application. The same is dismissed.

19. The Jail Superintendent, is however, directed to take the applicant to St. Stephen’s Hospital for his admission on 13.05.2024 for conduct of his surgery and for the post operative care depending upon the advice of the doctor. Further steps shall also be taken for ensuring that the applicant does not face any inconvenience or any post operative complications.

20. Copy of this order be also sent to the Jail Superintendent for necessary compliance.

NAVIN CHAWLA, J

MAY 8, 2024/Arya/ss

[Click here to check corrigendum, if any](#)