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

Judgment Reserved on: 28th September, 2020
Judgment Pronounced on: 23rd October, 2020

\+ **CRL. A. 370/2020**

MOHD HUSSAIN MOLANI ….Appellant

Through: Mr.Tanveer Ahmed Mir and Mr. Prabhav Ralli, Advocates.

Versus

NATIONAL INVESTIGATION AGENCY ..... Respondent

Through: Mr. Amit Sharma, Special Public Prosecutor with Mr. Abhishek Kumar Bagaria, Senior Public Prosecutor.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA
HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J.

1. The present appeal under Section 21 (1) read with 21(4) of the National Investigation Agency Act, 2008, has been filed by the appellant against the order dated 06th July, 2020 passed by learned ASJ (Special Judge), NI Act Patiala House Courts, New Delhi in NIA Case No. RC-20/2018/NIA/DLI and for grant of interim bail for a period of one month

to the appellant because his wife has to undergo for a surgery for '*potential hysterectomy'* because of uterine fibroids.

2. Learned counsel for the appellant had earlier preferred an Appeal before this Court bearing Crl. Appeal No. 341/2020, against the order dated 11th June, 2020 passed by the court of Sh. Parveen Singh, Learned ASJ (NIA), Patiala House Courts, New Delhi, whereby the first Interim Bail Application of the appellant was rejected. The aforesaid Appeal had come up for hearing on 29th June, 2020 before this Court and vide order of the even date, this Court gave liberty to the petitioner to file a bail application afresh before the Court of Learned ASJ (NIA), Patiala House Courts, New Delhi on the ground that some medical documents pertaining to the requirement of surgery of the appellant's wife were of a date subsequent to 11th June, 2020 when the first bail application was rejected by the learned Trial Court and in that view of the matter these were required to be considered by learned Trial Court. Subsequent to the aforesaid order dated 29th June, 2020 of this Court, the appellant moved a fresh interim bail application before the Learned Trial Court. However, after going through the reply and medical/verification reports filed by the respondent and after hearing the Learned Counsel for the appellant, the

learned ASJ dismissed the application vide impugned order dated 06th July, 2020 on the ground that the surgery, the wife of the appellant is required to undergo is not a major one.

3. In this appeal, the learned counsel for the appellant has submitted that appellant's wife has been advised by gynecologist of Unique hospital located at Vaisali Nagar, Jaipur that she will have to undergo surgery for removal of fibroid/tumor in her uterus and hysterectomy might also be required to be done and the said fact is reflected from medical documents dt. 22nd June, 2020 & 27th June, 2020. It is, therefore, prayed that the impugned order dated 06.07.2020 be set aside and appellant be granted interim bail for a period of at-least 30 days in order to organize the funds, prepare his wife for surgery, accompany her at the time of surgery and to organize supply of blood and other ancillary activities related to surgery.

4. Learned Special Public Prosecutor for the NIA has opposed the appeal. It is submitted that that learned Trial Court has rightly dismissed the interim bail application of the appellant. There is no irregularity or illegality in the order dated 06th July, 2020. It is submitted that as per the directions of the Learned Trial Court, the Specialist of Gynae & Obst. at CGHS Maternity & Gynae Hospital, Tamil Sangam Marg, Sector- 5,

Rama Krishna Puram, New Delhi, was contacted and Dr. L. Shyam Singh, Consultant (Gynae & Obst) has opined that wife of the appellant does not require any urgent surgery. She needs further investigation and supplementary treatment. It was further opined that in case bleeding PV of wife of accused is not controlled by medical treatment, minor procedure of D&C (Dilation & Curettage) can be done to check the bleeding PV in case of emergency. It is further submitted that in the absence of the appellant, father, mother two brothers and two sisters of the appellant are there to take care of his wife. It is lastly submitted that appellant is involved in a serious offence. He is a Dubai based Hawala operator and has transferred funds on various occasions to his maternal uncle Mohmmad Salim @ Mama and further directed him to transfer this hawala funds to Mohd. Salman and others in India as per the instructions of Dubai based Pakistani National, Mohammad Kamran, who in turn is connected with Shahid Mehmood, Dy. Chief of Falah-i-Insaniyat Foundation (FIF), Pakistan, which is a front NGO of terror group LeT and a proscribed terrorist organization under the UA(P) Act. It is the case of NIA that Md. Salman has been receiving funds from outside the country which are sent by FIF operative Mohd. Kamran and his

associates through hawala operators. Mohd. Salman has connections with persons in various countries including Pakistan, UAE, Canada, Sweden, Croatia etc., which prima facie establishes that FIF is trying to attract group of sympathizers to its cause of creating unrest in India by collecting funds for terrorist activities in India. There is also possibility that if the accused is granted interim bail, he may flee from the territory of India with the help of the network base of terrorists and sleeper cells active in India and operating as per the instructions of the top leadership of Falah-i-lnsaniyat Foundation (FIF), a proscribed terrorist organization and a frontal organization of internationally designated and proscribed terrorist organizations Jamaat-ud-Dawah (JuD) and Lashkar-e-Taiba (LeT)., established by terrorist, Hafiz Saeed. It is submitted by the Learned Counsel for the respondent that the appellant/ accused has been arrested and charge-sheeted for serious offences of terror funding and there is every likelihood of his abusing the bail. He may abscond or influence witnesses which shall be prejudicial to the process of fair trial in this case. It is submitted that there is no infirmity in the order passed by the learned Special Judge (NIA) and the appeal be, therefore, dismissed in the interest of justice.

5. In rebuttal, learned counsel for the appellant has submitted that Trial Court has not applied its mind to the facts of the case and the impugned order deserves to be set aside by this Court. It is further submitted that the Learned Trial Court had directed that appellant's wife be examined by an independent government doctor. However, the investigating authorities did not submit the previous medical documents to Dr. L. Shyam Singh, Consultant Gynecologist at CGHS Hospital, R.K. Puram, who has submitted his opinion on 04th July, 2020. The aforesaid opinion of Dr. L. Shyam Singh was one of the relevant factors for the Learned Trial Court in coming to the conclusion that the appellant did not deserve any interim bail. It is submitted that the said opinion as a matter of fact ought not have been considered at all for the reasons that Dr. L. Shyam Singh did not physically examine the wife of the appellant and evaluated the fact whether she required surgery for the problem that she suffers from. The NIA authorities have also not shown the previous medical documents as well as prescriptions to Dr. L. Shyam Singh. It is further submitted that Dr. L. Shyam Singh's opinion itself indicates that the patient Shakeela is undergoing continuous decrease in her hemoglobin level and he has agreed that as per ultrasound report, there is

a fibroid in the uterus. Learned Counsel for the appellant has further submitted that though Dr. L. Shyam Singh is of the opinion that the patient can undergo "Dilatation and Curettage", also called as D&C procedure which is a minor procedure, however, as per gynecological manuals, D&C is a surgical procedure.

6. It is further submitted that primarily a surgery is required which the gynecologist will do after administering anesthesia, by giving an incision. The gynecologist will then take further steps to remove the fibroid from the root in the uterus which will be done by opening the cervix and if it is found by gynecologist that uterus of the wife of the appellant stands damaged, then the entire uterus may also have to be removed and which is why the gynecologist at Unique Hospital have stated that hysterectomy might be required. This entire procedure requires hospitalization, surgery, post surgery rehabilitation and post rehabilitation care. The aforesaid procedure may also involve complications. It is submitted that the Learned Trial Judge has not appreciated the matter in its proper perspective and therefore, the said order deserves to be set aside and quashed and the appellant deserves to be granted benefit of interim bail.

7. It is further submitted by the learned counsel for the appellant that though appellant has some relatives but they are not residing with his family. Only an old father of the appellant, who himself is suffering from many old age ailments, is residing with the wife of the appellant. It is further submitted that the Learned Trial Court has failed to appreciate the fact that surgery of the wife of the Appellant may lead to sterility, in which case the consent and physical presence of the Appellant, being her husband, before conducting surgery is a pre-requisite in terms of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Guidelines, 2002.

8. It is further submitted that the Learned Trial Court has failed to appreciate the fact that the appellant is the only earning hand in his family and is, therefore, the only person who can take the appropriate steps and organize the funds for surgery for his wife. It is further submitted that the Learned Trial Court also erred in holding that there was no shortage of funds. As a matter of fact, the appellant's wife had sought a discharge from the hospital as she required the assistance of her husband for giving the consent in case of sterility as well as for arranging funds for

conducting the surgery and doctors has advised her that the surgery is imminent.

9. Learned counsel for the appellant further submitted that Learned Trial Court has also failed to appreciate the fact that investigation qua the appellant already stands completed. The entire evidence is in the nature of documents or digital evidences, for example - mobile phones, their extracts, devices, messages exchanged on various platforms and these can neither be tampered with nor can any witness could be influenced in as much as most of the witnesses are police officers of the National Investigation Agency and, thus, the benefit of interim bail would not prejudice or hamper the investigation or trial of the case in any manner whatsoever.

10. It is lastly submitted by the learned counsel that learned Trial Court has erred in rejecting the Bail Application of the appellant on the ground of nature of illness, reports of doctors and the nature of offences and the impugned order is, therefore, liable to be set aside.

11. On queries by the Court regarding travel of the appellant as well as his family, his financial status and bank transactions of appellant as well as that of his family to Dubai, the learned Special Public Prosecutor has

filed written submissions, submitting that after due verification a report, has been filed by Senior Superintendent of Police, Nagaur, Rajasthan. As per the report, Ms. Shakeela Bano has a passport bearing number M5331341 in her name which was issued on 08.01.2015. The appellant was residing in Dubai. Even after the arrest of the appellant, her wife had travelled on two occasions to Dubai i.e. 14.05.2019 and 01.11.2019 for a period of five and ten days respectively.

12. It is further submitted that as per the bank statement, the SBI Account of Mrs. Shakila Bano bearing No. 3115463287 was credited with Rs. 19 lakhs 70 thousands and debited with Rs. 23 Lakhs 12 thousand approximately during the period from 31.01.2017 to 25.06.2020. Even after the arrest of the appellant, this account was been credited with amounts ranging from Rs. 1.5. Lakh to Rs. 2 Lakhs 25 thousand on various occasions which shows that the appellant's family members are not facing any financial hardship. As per the report, the bank account bearing no. 3427670583 of Central Bank of India of Ms. Shakila Bano was credited with an amount of approx. Rs. 4,91,000/-, and debited with approx. Rs.5,66,000/-, after the arrest of the appellant. Perusal of the report, reveals that Mrs. Shakeela Bano had one more bank

account in Bank of Baroda bearing a/c number 54980200000177 in the name of 'MOLANI FOREX AND TRAVEL PRIVATE LIMITED' and she is holding the said account in the capacity of Director of the said firm. The statement of account of the aforesaid bank account reveals that at the time of arrest of the appellant, the said account was having a balance of Rs.22 Lakhs approximately. However, gradually the entire amount was withdrawn and this account was suspiciously closed. It is further submitted that Mrs. Shakeela Bano is the owner of a plot of land measuring 1455 square feet at Ward No. 16 of Kuchaman City which is having commercial shops and flats. This clearly shows that the appellant's family is financially sound and not facing any financial hardships.

13. So far as matter concerning service of notices and non-cooperation by the appellant in the investigation is concerned, it is stated that three notices dated 03.10.2018, 05.10.2018 and 22.10.2018 were served at the residential address of the appellant at Kuchaman City, District Nagaur, Rajasthan. However, the appellant did not join the investigation and, therefore, subsequently a Look Out Circular was issued on 07.01.2019 following which accused was arrested on 21.01.2019. It is lastly

submitted that the charge-sheet in the present case has already been filed before the learned Trial Court. The appellant has been charge-sheeted under Section 120-B IPC and 17 & 21 of UA (P) Act on 18.07.2019. It was further submitted that the case is at the stage of scrutiny of documents and the Learned Trial Court may hear the arguments on charges shortly.

14. In rebuttal to the above submissions, learned counsel for the appellant has filed reply submitting that the appellant was residing in Dubai and his wife and children had travelled to Dubai on numerous occasions, to meet him, details whereof have already been placed on record. It is further stated that the wife of the appellant and her children have travelled to Dubai even after the arrest of the appellant as their residence permit would be declared invalid in case of failure to travel to the U.A.E ./Dubai at least once in 6 Months.

15. It is denied that appellant's family members are not facing any financial hardship. It is submitted that amounts ranging from Rs. 1.5 lakh to Rs. 2.25 lakhs, were only received by the Appellant's wife over a period of 4-5 months and at the time of closure of the company "Molani Forex & Travel Pvt. Ltd." and its bank account. The said company had to

be wound up because of the arrest of the appellant in January 2019, as there was no other person to look after the business and operations of the said company and the company had started facing huge losses consequently. Since the appellant's wife had to look after the children and old and ailing parents, she was not in a position to look after the business of the said company after the arrest of the appellant.

16. It is further stated that the aforesaid amounts received in the bank account of the appellant's wife have already been utilized by her from time to time in order to meet the educational expenses of her children, medical expenses of the ailing parents/in-laws, lawyer's fee and other family and miscellaneous expenses. It is stated that the appellant is the sole earning member of the family and it is, therefore, imperative that he be released on interim bail in order to arrange funds for his wife's surgery. It is denied that the account of "Molani Forex & Travel Private Limited" was closed in suspicious circumstances and is stated that that said company and its account was closed in compelling circumstances.

17. It is further denied that the Appellant's family is financially sound and is stated that the land admeasuring 1455 square feet at Ward No. 26, Kuchaman City is a piece of barren land and does not fetch any income,

rent or financial return to the appellant, his wife or his family. It is submitted that as far as the alleged amount of approx. Rs. 4 lacs 91 thousand is concerned, it is stated that the same was received over a period of 3 years as rental income from the plot bearing measuring 3189.75 square feet at Ward No. 16 of Kuchaman City. The said plot is jointly owned by the appellant's wife with Ms. Salma Bano, w/o Abdul Haqim Molani (the appellant's brother) and the aforesaid amount has already been used towards various expenses of the appellant, his wife and their family members.

18. It is further denied that the appellant has been non-cooperative during investigation. It is submitted that immediately after coming to know about the notices sent by the NIA Authorities to the Appellant's residence in India, the appellant had communicated his willingness to join investigation, by way of a letter, duly signed and sent from Dubai on 24.11.2018 and pursuant to the same, the appellant had voluntarily and willingly travelled back to India for the purpose of joining investigation, when he was arrested at the airport. The aforesaid act shows the bonafide of the appellant to return to India and join investigation being a law abiding citizen of this country.

19. We have considered the rival submissions. Perusal of the record reveals that wife of the appellant was being treated at Krishna Hospital, Kuchaman City earlier. The prescription of Krishna Hospital at Kuchaman City, Nagour, reflects that on 18th March, 2020, the hospital had asked her to be admitted for **Laparoscopic myomectomy, which is considered to be a minimal invasive procedure, in which surgeon accesses and removes fibroids through several small abdominal incisions**.

20. The record, however, reveals that thereafter, the family of the appellant had taken his wife to Unique Hospital, Vaishali Nagar, Jaipur where she was advised surgery and if need be, hysterectomy might also be done for the same ailment. There is a medical certificate issued by Unique Hospital, Jaipur dated 22nd June, 2020 also. According to the said certificate, the wife of the appellant is advised surgery to remove fibroid during the course of which hysterectomy might be required. There is another typed certificate on record which is also dated 22nd June, 2020 which says that she has fibroid in her uterus, for which she needs urgent surgery as soon as possible and she also might need hysterectomy.

21. Perusal of the record reveals that an independent expert Dr. L. Shyam Singh has stated in his report that at present the condition of the wife of the appellant is not serious and in case the bleeding is not stopped by medication, she can undergo a small procedure of D&C (Dilation & Curettage) if required.

22. The record, thus, reveals that as per the opinion of Government City Hospital, Kuchaman City, Rajasthan and opinion of Dr. L. Shyam Singh, Consultant (Gynae & Obst), the condition of the wife is not serious. Government City Hospital, Kuchaman City, Rajasthan has advised that wife of the appellant only requires Laparoscopic myomectomy. Dr. L. Shyam Singh has categorically opined that in case, the bleeding is not controlled by medical treatment, minor procedure of D&C (Dilation & Curettage) could be done. Even the Unique Hospital's report dated 22nd June, 2020 shows that at this stage only surgery is being planned to remove the fibroid and during the course of which if need be hysterectomy may be required. **The word used is 'may' and not 'shall'**. Thus, as per medical record prima facie at this stage, no major surgery is required for treating the appellant's wife.

23. In view of the above medical report of Government City Hospital, Kuchaman City, Rajasthan and opinion of Dr. L. Shyam Singh, which do not suggest any major surgery, this Court is of the opinion that imminent presence of the appellant, who is alleged to be a Hawala operator and is involved in a serious offence of transfer of funds to terrorist organization like LeT, is not required at the time of suggested surgery and is, therefore, not entitled to interim bail. This Court is further of the opinion that there are other family members like father, mother, brothers and sisters of the wife of the appellant to look after appellant's wife and can give consent for surgery. In the opinion of this Court, even the patient herself can give the consent as there is no bar regarding the same.

24. Learned counsel for the appellant has, however, argued that appellant has to arrange funds for surgery. However, the hospital discharge report of Unique Hospital nowhere mentions that wife of the appellant has been discharged for want of funds nor there is any such request made by the patient or her relatives to the hospital that operation cannot be performed because of paucity of funds. On the other hand, the record reveals that the family of the appellant has taken the wife of the appellant from one hospital to another i.e. first to a Government hospital

and thereafter to a Private one which prima facie shows that they are capable of taking care of the medical expenses of a private hospital and there is no paucity of funds. Besides the above facts, the Bank Accounts of the wife of the appellant reveals that family of the appellant are not living in poverty and therefore, in the opinion of this Court insufficiency of funds is not coming in the way of surgery of appellant's wife and, therefore, release of appellant is not required on the ground that he has to arrange the funds for surgery, if at all it is to be done.

25. Reply filed by the National Investigating Agency further reveals that the wife of the appellant had visited Dubai twice after the arrest of the appellant. Though learned counsel for the appellant has submitted that this was because of residence permit/visa requirement. However, no such document has been placed on record to show that appellant's wife had gone to the Dubai for the purpose of fulfilling conditions of residence permit/visa requirement. Thus, in the opinion of this Court, there is no satisfactory explanation regarding the visit of the appellant's wife to Dubai even after the arrest of the appellant and those visits, therefore, belies the fact that there is an issue relating to arrangement of funds.

26. Furthermore, this Court is further of the opinion that even if the wife of the appellant has to undergo Laparoscopic myomectomy or D&C (Dilation & Curettage), as the case may be, no grounds for interim bail are made out since the allegations against the appellant are highly serious in nature. NIA has registered a case pertaining to terror funding by Falah-i-lnsaniyat Foundation (FIF) a proscribed terrorist organization and a frontal organization of internationally designated and proscribed terrorist organizations Jamaat-ud-Dawah (JuD) and Lashkar-e-Taiba (LeT), at PS New Delhi vide FIR no. 20/2018 u/s 120-B & 121 of IPC and u/s 17, 18, 21, 38 & 40 of UA(P) Act on 02.07.2018. Despite notices u/s 160 Cr. PC issued to Mohd Hussain Molani @ Babloo on his native address 29, Gulzarpura, Ward no. 23, Kuchaman City, Nagaur, Rajasthan, he had not appeared and co-operated in the investigation. Thereafter, a Look Out Circular was issued against him and on his arrival at Jaipur Airport on 20th January, 2019, he was detained by Immigration Department and handed over to P.S. Sanganer, Jaipur City (East) and subsequently handed over to NIA and was arrested on 21st January, 2019 by NlA and upon finding sufficient prosecutable evidences against him, a charge-sheet u/s. 120-B of IPC and u/s 17, 21 of UA(P) Act has been filed against him on

18th July, 2019 before the learned Trial Court. The contents of charge-sheet prima facie reveals that the appellant Mohammad Hussain Molani @ Babloo was in conspiracy with other accused persons, who were allegedly transferring hawala funds to India in the garb of charity/religious work. According to NIA, this was done to attract sympathizers and to create bases in the remote areas in India for funding terrorist activities. A system was being created vide which sleeper cells/ hide outs could be created at a later stage for carrying out act of terrorism at appropriate time or stage. Thus, keeping in view the gravity of offence as spelled out in charge-sheet, this court is not inclined to release the appellant on interim bail.

27. Learned counsel for the NIA in support of its contentions has relied upon the judgment of Hon'ble Apex Court titled ***National Investigation Agency vs. Zahoor Ahmad Shah Watali,*** (2009)5 SCC 1. In the said pronouncement**,** the Hon'ble Apex Court has set aside the order of Co-ordinate Bench of this Court dated 13.09.2018 granting bail to the accused. This was a case where a chargesheet was filed by NIA against the accused under Sections 120-B, 121 and 121-A of the Indian Penal Code (IPC) and under Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the

Unlawful Activities (Prevention) Act, 1967. The accused had filed an application for bail before the District and Sessions Judge, Special Court (NIA), New Delhi, which was rejected vide order dated 8th June, 2018. The said order was, however, set aside by the Co-ordinate Bench of this Court in Criminal Appeal No.768/2018 vide order dated 13th September, 2018. The Co-ordinate Bench of this Court had observed that the NIA has not disputed that the appellant is a leading businessman in Kashmir. He runs a conglomerate of business entities and has been active in the context of the Indo–Pakistan trade and nothing has been shown to the Court from the charge-sheet that these trade activities were geared towards funding of terrorist activities, as alleged in the charge-sheet. Aggrieved by the order of Coordinate Bench of this Court, the NIA had gone in SLP before the Hon'ble Apex Court. The Hon'ble Apex Court held that High Court should have taken into account the totality of material and evidence referred in the charge-sheet and should not have discarded it as being inadmissible. It was also observed by the Hon'ble Apex Court that at the stage of considering the prayer for bail, the evidence is not required to be examined minutely but only an opinion is to be formed on the basis of the material before the Court. The Court at

that stage is only supposed to ascertain whether the allegations against the accused are prima facie true or not. If these are prima facie true, the bail ought not to be granted. The relevant paras of the said judgment runs as under;

> *"53. The appellant has relied on the exposition in Salim Khan (supra), to contend that in cases where the High Court adopted a totally erroneous approach, as in the present case, discarding the crucial material/evidence which is referred to in the report under Section 173 Cr.P.C. and presented before the Designated Court, then the order granting bail by the High Court cannot be countenanced. The argument of the respondent is that the said decision would make no difference as it is concerning an application for cancellation of bail made by the informant. However, we find force in the argument of the appellant that the High Court, in the present case, adopted an inappropriate approach whilst considering the prayer for grant of bail.* ***The High Court ought to have taken into account the totality of the material and evidence on record as it is and ought not to have discarded it as being inadmissible. The High Court clearly overlooked the settled legal position that, at the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities. The Court is expected to apply its mind to ascertain whether the accusations against***

the accused are prima face true. Indeed, in the present case, we are not called upon to consider the prayer for cancellation of bail as such but to examine the correctness of the approach of the High Court in granting bail to the accused despite the materials and evidence indicating that accusations made against him are prima facie true.

54. In a decision of this Court in Chenna Boyanna Krishna Yadav (supra), to which reference has been made, the Court has re−stated the twin conditions to be considered by the Court before grant of bail in relation to MCOCA offences. We are of the view that in the present case, the Designated Court rightly opined that there are reasonable grounds for believing that the accusation against the respondent is prima facie true. As we are not inclined to accept the prayer for bail, in our opinion, it is not necessary to dilate on other aspects to obviate prolixity.

55. A fortiori, we deem it proper to reverse the order passed by the High Court granting bail to the respondent. Instead, we agree with the conclusion recorded by the Designated Court that in the facts of the present case, the respondent is not entitled to grant of bail in connection with the stated offences, particularly those falling under Chapters IV and VI of the 1967 Act.

56. Accordingly, this appeal succeeds. The impugned judgment and order is set aside and, instead, the order passed by the Designated Court rejecting the application for grant of bail made by the respondent herein, is affirmed.'

(Emphasis Supplied)

28. Thus, in view of above law laid down by the Hon'ble Apex Court, this Court has to form a prima facie view. As discussed earlier, there is prima facie sufficient material on record to show the involvement of the appellant in a serious offence i.e. transfer or aiding to transfer of funds to terrorist organization.

29. Learned Counsel for the appellant in support of his contentions has, however, relied upon the following judgments:-

(i) **Phoolshanker vs. State of Rajasthan**, D.B. Criminal Misc Suspension of Sentence Application (Appeal) No. 480/2020, dt. 26.05.2020.

(ii) **Devi Lal vs. State of Rajasthan**, S.B. Criminal Miscellaneous V Bail No. 12149 / 2017, dt. 18.09.2017.

(iii) **Gurtej Singh @ Geja vs. State of Rajasthan**, S.B. Criminal Misc. Interim Bail No. 3205 / 2017, dt. 04.05.2017.

(iv) **Shankar Lal vs. State of Rajasthan**: D.B. Criminal Appeal 590/2008.

(v) **Wuthlkorn Naruenartwanch @ Willy vs. NIA**, Criminal Appeal no. 40 of 2017.

(vi) **Bhaskar Khatnani vs. Narcotics Control Bureau**, Bail Application No. 1479 of 2017.

(vii) **Vikas Yadav vs. NCB**- Criminal Appeal 16 of 2020.

(viii) **Lingaram Kodopi vs. State of Chattisgarh**; Crl. Appeal No.357/2014 (Supreme Court).

(ix) **Angela Harish Sontakke vs. State of Maharashtra**, SLP Crl. No. 6888/2015.

(x) **Thounaojam Shyakumar Singh vs. State**: Bail Appl. No. 569/2007.

(xi) **Manish Mohan vs. I.O., NCB**, Bail. Appl. No. 1409/2020.

(xii) **Mehboob Dawood Shaikh vs. State of Maharashtra**, (2004) 2 SCC 362.

(xiii) **Hitendra Vishnu Thakur and Ors. vs. State of Maharashtra and Ors.**, (1994) 4 Supreme Court Cases 602.

30. We have gone through the above judgments carefully. These judgments are distinguishable on the basis of facts and circumstances stated therein. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases.

31. In ***Padma Sundara Rao v. State of Tamil Nadu*** (2002) 3 SCC 533 the Supreme Court has held that the ratio of a judgment has to be read in the context of the facts of the case and even a single fact can make a difference. In para 9 of the said judgment, the Supreme Court has held as under:

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in British Railways Board v. Herrington. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

32. In ***Bharat Petroleum Corporation Ltd v. N.R. Vairamani,*** (2004) 8 SCC 579**,** the Supreme Court has held that a decision cannot be relied on without considering the factual situation. The Supreme Court observed as under;

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of*

their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge…"

10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said,

> *"Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances".*

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed:

> *"One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of*

Parliament."

And, in Herrington v.British Railways Board [(1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

> *"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."*

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> *"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.*
>
> *xxx xxx xxx*

> *Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.""*
>
> *(Emphasis supplied)*

33. Thus, the above judgments which are based upon their own peculiar facts and circumstances are distinguishable and does not help the learned counsel for the appellant in his submissions for interim bail.

34. Moreover, it is also a settled law that in case of bail, number of factors are required to be considered by Court. The Hon'ble Supreme Court in '***State of Bihar & Anr. vs. Amit Kumar@ Bachcha Rai,*** (2017) 13 SCC 751' held that there cannot be a straight jacket formula for consideration of grant of bail to the accused. The relevant para of the judgment runs as under:-

> *"11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime*

by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a persons liberty is abridged. ***Although bail is the rule and jail is an exception is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail."***

(Emphasis Supplied)

35. Thus, in the opinion of this Court, the present appeal has to be considered on the basis of its own facts and circumstances which have been discussed in detail in earlier part of this judgment and which prima facie show the serious nature of the offence and, therefore, no grounds for interim bail are made out. The Learned Trial Court has passed a very detailed and reasoned order discussing all the contentions raised by learned counsel for the appellant and there seems to be no infirmity, irregularity or illegality in the same which warrants interference by this Court. The appeal is, therefore, dismissed and stands disposed of accordingly.

36. This Court is, however, of the opinion that though no case for interim bail is made out, however in the interest of justice, if the wife of the appellant undergoes surgery, the appellant is allowed custody parole for six hours (excluding the time of journey) on the date of operation of his wife so that he can meet her and be with her at the time of operation whenever the date for surgery is fixed by the doctors, which shall be verified by the Trial Court. During the custody parole, the NIA shall ensure that the police officers are deputed with him while the appellant is out of Jail.

37. The order be uploaded on the website of this court forthwith.

BRIJESH SETHI, J.

J.R. MIDHA, J.

OCTOBER 23rd, 2020/AP