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

+ **CRL.A. 39/2021**

ASIF IQBAL TANHA

..... Appellant

Through: Ms. Sowjhanya Shankaran, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Mahajan & Mr. Amit Prasad, SPPs for the State with Mr. Raj Kumar, Jail Superintendent.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **04.06.2021**

The present matter has been taken-up for hearing by way of Video Conferencing on account of COVID-19 pandemic.

CRL.M. (BAIL) 774/2021 (Interim Bail)

The applicant, who is an undertrial in case FIR No.59/2020 dated 06.03.2020 ('subject FIR', for short) initially registered under sections 147/148/149/120-B IPC at P.S.: Crime Branch, New Delhi, to which *inter alia* Sections 13/16/17/18 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA', for short) were subsequently added, and which is now being investigated by P.S.: Special Cell, Lodhi Colony, seeks interim bail for a period of two weeks from 12.06.2021 to 26.06.2021 on the ground that he wishes to prepare for and sit 03 compartment/supplementary examinations

for completing his final year of B.A. (Hons.) (Persian) Programme at the Jamia Milia Islamia University, New Delhi ('JMIU', for short).

2. The schedule/date-sheet of examinations announced by JMIU *vidé* notification dated 28.05.2021 for the 'Even Semester Open Book Mode Examinations–2021' for the Faculty of Humanities & Languages and Faculty of Social Sciences has been annexed to the present application.
3. It is recited in the application that the applicant is a 25-year old student of JMIU, who was pursuing his final year of B.A. (Hons.) (Persian) Programme, when he was unlawfully arrested in the subject FIR on 19.05.2020; and that he has been in continuous custody from the time of his arrest i.e. for a period of more than 01 year now. It is also stated that the applicant had filed the present appeal bearing CRL.A. No. 39/2021 under section 21(5) of the National Investigation Agency, 2008 r/w section 43(D)(5) of the UAPA challenging the dismissal of the applicant's regular bail plea, which was rejected *vidé* order dated 26.10.2020 by the learned Special Court; and that although arguments in the appeal have already been heard, judgment is reserved by this court.
4. It is also stated that having joined the B.A. (Hons.) (Persian) Programme in 2017, the applicant should have graduated in July, 2020, but that process has been impeded *inter alia* by reason of his allegedly unlawful arrest.
5. It is pointed-out that *vidé* order dated 03.12.2020 made by a learned single Judge of this court, the applicant was granted 'custody parole' for 04 days from 03.12.2020 to 07.12.2020, when he took 03 out of

his 06 pending compartment/supplementary examinations; and that he availed custody parole and did not misuse the relief so granted. It is submitted that, now, the applicant needs to take the remaining 03 backlog/compartment/supplementary examinations on the dates indicated below:

- a. Semester 4-BLPH 402-Classical Persian Poetry, for which the **exam is to be held on 15.06.2021**;
- b. Semester 4-BLPH 403-Grammar, Translation and Composition, for which the **exam is to be held on 17.06.2021**; and
- c. Semester 4-BLUX 41-Modern Urdu Poetry, for which the **exam is to be held on 26.06.2021**

It is clarified that the aforesaid examinations are in the Open-Book format and are to be conducted on-line; whereby the applicant would require access to the reading and study material for the subject in question along with access to a laptop/personal computer or smart phone, and most importantly access to a properly functioning, uninterrupted internet connection, so that there is no impediment to the smooth writing of the examinations.

6. Having explained the ground on which interim bail is sought, Ms. Sowjhanya Shankaran, learned counsel appearing for the applicant urges that it is imperative that the applicant sits the remaining 03 backlog/compartment examinations so that he is able to complete the B.A. (Hons.) (Persian) Programme and graduate with a degree. Counsel submits that the required reading material, including books, articles and on-line content, is not available in prison; and moreover

since the examinations will be conducted in the Open-Book format, the applicant would also require access to the reading material, books etc. during the examinations, along with uninterrupted internet access with good connectivity, to enable him to effectively take the examinations. It is also pointed-out that by reason especially of the prevailing pandemic, there are severe restrictions in prison on movement of individuals, on access to services and facilities, and inmates are unable to even have the usual communication and *mulakaat* with family members and others. Counsel submits therefore that it will be all but impossible for the applicant to sit the examinations from within prison; and that these examinations are crucial for his future career. In particular, it is explained, that internet connectivity in prison is particularly bad in the present times, due to the large number of requests for *e-mulakaat* by inmates.

7. Notice in this application was issued on 03.06.2021; when Mr. Amit Mahajan and Mr. Amit Prasad, learned Special Public Prosecutors appearing on behalf of the State sought time to take instructions as to the possibilities available, within the constraints of the applicant being in judicial custody, to enable him to sit the examinations in question so that his educational goals are not prejudiced.
8. While no formal status report has been filed by the State due to paucity of time, in the course of a detailed hearing conducted today, learned counsel appearing on behalf of the applicant as well as learned SPPs representing the State, have explained their perspectives and have, very fairly, come-up with a constructive solution, which would solve the purpose for which the present application has been

filed, without compromising on the applicant's custody and addressing the apprehensions expressed by the State.

9. In fact, counsel for both sides have placed before this court, by way of an e-mail, all logistical and security matters as agreed upon between them, to facilitate the applicant sitting the examinations, while also addressing the apprehensions expressed by the State.
10. Upon a conspectus of the facts and circumstances, and in particular the fact that it is imperative for the applicant to sit his 03 remaining backlog/compartments examinations to complete his B.A. (Hons.) (Persian) Programme, and based on the terms and conditions as agreed to between counsel for the parties, this court considers it appropriate to grant to the applicant *interim custody bail* for the period and upon the conditions as set-out hereinbelow:
 - (a) The applicant shall be released on *interim custody bail* on 13.06.2021 by 9 a.m. and shall be brought back to prison by 6 p.m. on 26.06.2021;
 - (b) As agreed by the applicant and the State, during the period of interim custody bail, the applicant shall stay at the FABHOTEL-LE-GRAND, L12 Kalkaji Main Road, Block-L, Kalkaji, New Delhi ('said facility', for short) under the custody of 02 prison guards who would be deputed for the purpose by the Jail Superintendent ('deputed prison guards', for short);
 - (c) The applicant undertakes to bear all charges, costs and expenses for 02 rooms at the said facility, one to be occupied by him and the other to be occupied by the two deputed prison

guards (who would work on shift-basis and take turns in guarding the applicant's custody), for the entire duration of interim custody bail; and since, we are informed that food is not available at the said facility because of applicable COVID restrictions, food for the applicant as well as for the deputed prison guards shall be arranged through on-line apps/web-sites by or on behalf of the applicant, again at the applicant's cost and expense, throughout the period of interim custody bail;

- (d) Towards all charges, costs and expenses as aforesaid, to be borne by the applicant as per actuals, the petitioner shall deposit, in advance, with the concerned Jail Superintendent the sum of Rs.50,000/- (Rs. Fifty Thousand Only) on or before 10.06.2021; and also submit proof of such deposit to the SHO, P.S.: Special Cell; which amount shall be applied and adjusted towards actual costs and expenses incurred for the lodging and boarding of the applicant and the two deputed prison guards as aforesaid; that after defraying all actual costs and expenses from the advance deposit, the balance money, if any, shall be refunded to the applicant within 03 days of the expiration of the period of interim custody bail;
- (e) During the period of interim custody bail, the applicant shall not invite to the said facility any visitors or guests, including family members, friends, classmates or any other person;
- (f) For his use in the examinations, the applicant shall arrange for a laptop computer, and a *basic* mobile phone (not a smart phone) through his *pairokar*, which computer would be handed-over to

the SHO, P.S.: Special Cell, for being checked; and after conducting requisite checks, the laptop computer and mobile phone would be delivered to the applicant at the said facility by the SHO, P.S.: Special Cell on 13.06.2021 by 10 a.m. for the applicant's use;

- (g) Although the said facility has informed that a broadband Wi-Fi connection is available there, as a matter of abundant precaution, 01 dongle/mobile hotspot device would also be arranged by the applicant, through his *paikar*, as a stand-by in the eventuality that the Wi-Fi connection at the said facility should fail at any stage. The applicant undertakes to provide details of the IMEI number, the manufacturer's and service provider's name in relation to the dongle/mobile hotspot to the SHO, P.S.: Special Cell by or before 13.06.2021;
- (h) The applicant undertakes that he will not use the laptop computer or the mobile phone or the dongle/mobile hotspot device for any purpose other than for purposes of study, preparations and taking of the said examinations; except that the applicant shall be entitled to make phone calls to his family and/or counsel for upto a total of 10 minutes per day on the following phone numbers: 9945469905, 9810633219, 8826571429, 8800611533 and 8271023222, to speak with them individually (but not with any third party) and not on conference call;
- (i) The applicant further undertakes not to delete, erase or tamper with his browsing history/cookies on the laptop computer, nor

- any sms or call records, whether incoming or outgoing, from the mobile phone, relating to the period of interim custody bail;
- (j) The applicant will hand-over the laptop computer and mobile phone for forensic audit to the SHO, P.S.: Special Cell, upon expiration of the said period. On their part, the SHO, P.S. Special Cell agrees that *at the time* the applicant hands-over the laptop computer and mobile phone as aforesaid, *there and then*, the SHO would provide to the applicant a copy of the entire browsing history/cookies on the laptop computer and of the sms and call records on the mobile phone, through applicant's counsel; and complete the forensic audit and return the laptop computer and mobile phone to the counsel at the earliest, and in any event within 03 weeks of receiving the devices;
- (k) The SHO, P.S.: Special Cell is at liberty to report to this court any violations by the applicant in relation to the conditions imposed as regards the browsing history/cookies and/or the sms and call records, if any;
- (l) It is clarified that even before the commencement of interim custody bail, the applicant is permitted to receive all books and reading/study material, as he may consider necessary, through the Jail Superintendent, after being checked as per usual procedures. During the period of interim custody bail, the applicant shall be entitled to receive all books and reading/study material that he may require for his examinations, at the said facility, which would be delivered to him after being checked by the SHO, P.S.: Special Cell; and unless there is

compelling reason to do otherwise, the SHO shall permit all such books etc. to be handed-over to the applicant with due expedition. It is made clear that, considering the subjects of the applicant's study, the books and reading material may be in Persian or Arabic and permission to have such books and reading material shall not be withheld for that reason alone;

- (m) It goes without saying that the applicant shall not in any way misuse or abuse the *guarded liberty* hereby granted to him by way of interim custody bail;
- (n) The State agrees that during the period of interim custody bail, the applicant shall be entitled to unhindered access to the internet/world-wide-web, limited of course for purposes of and related to the said examinations, but the applicant shall not use internet access for purposes of visiting any social media websites/platforms;
- (o) It is further directed that the deputed prison guards shall throughout remain in plain clothes.

10. By way of abundant clarity, the period spent by the applicant on interim custody bail would be counted as period undergone in prison as an undertrial.
11. The present application is allowed and stands disposed of in the above terms.
12. Other related pending applications, if any, also stand disposed of.
13. A copy of this order be sent to the Jail Superintendent, to the SHO, P.S.: Special Cell and to counsel appearing on behalf of the applicant,

by e-mail for information and compliance.

14. This order has been made in the backdrop of the facts and circumstances antecedent and attendant, and peculiar to the applicant, and shall not be treated as a precedent.

SIDDHARTH MRIDUL, J.

ANUP JAIRAM BHAMBHANI, J.

JUNE 4, 2021/uj

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