

News

In medical emergencies, having an elderly family member around is essential. The J&K High Court grants bail to the NDPS accused.

"This Court cannot (lose sight) of the fact that presence of an elder male member of a family for attending upon an ailing daughter requiring surgery/ hospitalization is a call of the day," the judge stated.



A man arrested in a drug case was recently granted bail by the High Court of Jammu and Kashmir and Ladakh so that he could be present during his minor daughter's surgery. The

court noted that it should take into consideration the necessity of having an older family member present during such medical emergencies **[Aasif Amin Thoker V/s Union Territory of J&K]**.

Justice Rahul Bharti stressed that courts must keep in mind a person's civil and social obligations when dealing with the health and hospitalization of minor children.

"This Court cannot (lose sight) of the fact that presence of an elder male member of a family for attending upon an ailing daughter requiring surgery/ hospitalization is a call of the day, keeping in view the nature of the Civil and Social (society) of which all of us are part of,"

the Court stated in its ruling of April 25.

The petitioner in question was detained in 2021 in connection with a case filed under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

The Principal Sessions Judge in Kulgam had previously given him short-term bail so that he could care for his sick daughter. Nevertheless, this bail period ended prior to the surgical date. He moved to the High Court when the trial court denied his request for an extension.

The trial court may have had some justification to deny the petitioner's request to extend the bail period, the High Court admitted.

The High Court did add, though, that given that the case concerned a child's urgent medical needs, humanitarian considerations ought to have taken precedence.

"The Principal Sessions Judge, Kulgam, should have maintained the judicial trust in the petitioner... without going into the petitioner's bona fide in terms of the previous prescriptions that were not obtained by the petitioner himself but were during the time when the petitioner was in jail and his wife was possibly attending the petitioner's ailing daughter, given that the petitioner is the only guardian who is supposed to attend her ailment." The High Court stated, "It is possible that the petitioner's attorney, who filed the petition for short-term bail from the Court of Principal Sessions Judge, Kulgam, was unable to properly stitch facts for which the petitioner should not have been made to suffer the prejudice of having denial of extension of bail."

The petitioner was then given 20 days of short-term bail so that he could attend his daughter's surgery and take care of her medical requirements afterward.

Usman Gani, an advocate, represented the petitioner.

Lawread