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

RESERVED ON -04.07.2023

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PRONOUNCED ON -18.07.2023

+ **BAIL APPLN. 44/2023**

PARGAN RAM ALIAS NIKKA Petitioner

Through: **Mr.Pritish Sabharwal, Advocate**

versus

STATE

..... Respondent

Through: **Ms.Shubhi Gupta, APP for the State**
SI Dhanvir, Crime Branch

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. Present bail application has been filed under Section 439 of the Code of Criminal Procedure (Cr.P.C.) seeking regular bail in SC/534/2018 in FIR no.68/2018 registered under Section 21 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), PS Crime Branch North.
2. Briefly, the facts of the case are that on 10.3.2018 at about 12:00 pm; at SI Office STARS/Crime Branch, Sector-8, R.K. Puram, New Delhi a secret information was received that a person named Paragan Ram



from Phillaur, Punjab i.e. the current petitioner; smuggles drugs between Delhi and Punjab and on that day itself, i.e. on 10.3.2018 at about 3 o'clock the petitioner will come to the GT Karnal Road, ahead of Mukarba Chowk to deliver large quantity of heroin drug on route from Delhi to Karnal.

3. On the basis of this information a raiding party was constituted. The raiding party took the position near Madhuban on Karnal-Delhi Road between the two IGL CNG Pumps. The raiding party also asked public persons to join as independent witnesses but none of the public persons agreed.
4. It has been alleged that at around 3.30 p.m., the petitioner arrived there and was identified as Pargan Ram @ Nikka by the informer. The raiding party approached the petitioner and Sub Inspector informed him his rights and a notice under Section 50 NDPS Act was served. The search was conducted resulting in the recovery of a white coloured bag filled with 400 gms of brown coloured powder in a transparent polythene pouch wrapped on his wrist. When asked about the article recovered, the petitioner did not give any satisfactory reply. The article, upon checking with the Field Drugs Testing Kit, was found to be Heroin drug. The samples were taken and were kept in sealed in accordance with the legal process. The petitioner was arrested and after investigation, the charge sheet was filed. The matter is at the stage of trial.
5. Learned counsel for the petitioner submits that the accused is in custody since 10.03.2018. Learned counsel submits that de-hors merits of the case, the petitioner is entitled to be admitted to bail in view of



the judgment of the Supreme Court in "*Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India*" (1994) 6 SCC 731.

6. Learned APP for the State has opposed the bail application on the ground that the allegation against the petitioner is very serious in nature. The petitioner was found in possession of 400 gms. of heroine drug. It has further been submitted that in case the petitioner is granted bail, he may not be available for the trial. Learned APP has also submitted that the petitioner may also threaten or intimidate the witnesses.

7. In "*Supreme Court Legal Aid Committee representing Undertrial Prisoners* (*supra*), it was inter alia held as under:

"15..... (i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in Jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties or like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years



provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

8. As per nominal roll, the petitioner was arrested on 10.03.2018. As on 20.06.2023, the accused has undergone custody of five years and three months and ten days.
9. The chargesheet in the present case has been filed under Section 21 (c) of NDPS Act. Section 21 of NDPS Act provides as under:

“21. Punishment for contravention in relation to manufactured drugs and preparations.— Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 4 [one year], or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

10. The bare reading of 21 (c) makes it clear that the minimum punishment provided under this provision is 10 years which may extend to 20 years.
11. The judgment of the Supreme Court in ***Supreme Court Legal Aid***



Committee representing Undertrial Prisoners (supra) has been followed in *Ved Prakash @ Mistri vs. The State (NCT of Delhi)* 2023 SCC OnLine Del 58.

12. In *Tasawwur Hussain vs. Directorate of Revenue Intelligence* 2022 SCC OnLine Del 3690, the coordinate bench of this court has inter alia held as under:

14. *The applicant as observed elsewhere hereinabove is incarcerated since 21.02.2015 and more than a period of five years in terms of the verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India" (Supra) has elapsed.*

15. *The alleged disclosure statement made by the applicant in terms of Section 67 of the NDPS Act, 1985, in terms of the verdict of the Hon'ble Supreme Court in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1 and of this Court in Ebera Nwanaforo and Frank Vitus v. NCB in Bail Appl. 3705/2020 and Bail Appln. 4187/2020 dated 31.05.2022, is not admissible in evidence.*

16. *The verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India" (Supra) has been adhered to by Coordinate Bench of this Court in Atul Aggarwal v. Directorate of Revenue Intelligence, 2021 SCC OnLine Del 5489, Anil Kumar @ Nillu v. State in Bail Appln. 1724/2021, a verdict dated 21.03.2022, and the verdict of the Hon'ble High Court of Calcutta in "In Re : Sanawar Ali" 2021 Cri LJ 403 and the verdicts of this Court in Bail Appln. 3705/2020 and Bail Appln. 4187/2020 in Ebera Nwanaforo and Frank Vitus v. Narcotics Control Bureau decided on 31.05.2022. None of these judgments has been assailed by the prosecution. Only the judgment in State (NCT of Delhi) v. Anil Kumar @ Nillu has been assailed by the State and the SLP (Crl) Diary No(s). 25615/2022 against the same has been dismissed vide order dated 14.10.2022 of the Hon'ble Supreme Court.*



17. In view thereof in terms of the verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India" (Supra), the applicant who is charged with the offences punishable under NDPS Act, 1985 with the minimum imprisonment of ten years and the minimum fine of Rs. 1 Lakh and who has been in jail for more than five years, is entitled to be release on bail, and is thus, subject to terms and conditions and directives as laid down in para 15 of the verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Prisoners v. Union of India" (Supra) reproduced elsewhere hereinabove, the applicant is thus allowed to be released on bail on filing a bail bond in the sum of Rs. 1,00,000/- with two sureties of the like amount to the satisfaction of the learned Special Judge NDPS, Delhi concerned, where the trial is in progress, with the direction that the passport of the applicant be impounded, with directions that the applicant shall present himself at the office of the DRI, Delhi Zonal Unit, CGO Complex, New Delhi once a week commencing from the date of his release, unless leave of absence is obtained in advance from the Special Judge, NDPS concerned, and shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge concerned, and furthermore, shall keep his mobile phone on at all times, and shall drop a PIN on the google map to ensure that his location is available to the Investigating Officer of the case.

13. This court has also followed the same proposition in **Kanan Sarkar vs. State GNCT of Delhi** 2022 SCC Online Del 3503 while dealing with an application for bail in a case under Section 20/29 of NDPS Act, placed reliance upon the judgment in **Satender Kumar Antil vs. CBI** 2022 SCC OnLine SC 825, wherein it was inter alia held as under:

86. Now we shall come to category (C). We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the



provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.

14. Similarly, a coordinate bench of this court in **Sarvan Kumar vs. State (NCT of Delhi)** 2022 SCC OnLine Del 2079 after relying upon **Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra)** and **Satender Kumar Antil (supra)** inter alia held that the rigors of Section 37 of NDPS Act would, thus, not come in the way while dealing with a bail application moved by an undertrial who has remained in custody for more than half of the minimum sentence prescribed.
15. In **Jumah Khan vs. State of NCT of Delhi** 2023 SCC OnLine Del 12A, the coordinate bench of this court while dealing with the bail application for the offence under Section 21/29 of the NDPS Act referred to another decision of this court in **Anil Kumar vs. State**, 2022 SCC OnLine Del 778 wherein the contention of the State were that the directions passed in **Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra)** were a one time measure. In **Anil Kumar (supra)** it was inter alia held that the directions were certainly not meant to only apply in the case therein only but rather were directions that are to be followed by courts in all cases pertaining to the NDPS Act wherein the accused has been subjected to long delay



in their trials. It is pertinent to mention here that the judgment *Anil Kumar (supra)* was challenged before the Supreme Court in *State vs. Anil Kumar @ Nillu*, SLP (Crl.) Diary No.25615/2022 and the SLP was dismissed vide order dated 14.10.2022.

16. I consider that the case of the petitioner is squarely covered by the judgment of the Supreme Court in *Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra)*. Accordingly, the petitioner is admitted to bail on furnishing a personal bond of Rs. 1,00,000/- with two sureties of the like amount to the satisfaction of the trial court subject to the following conditions:

1. The petitioner shall surrender his passport with the learned Judge of the concerned Special Court within one week and if he does not hold a passport, he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge and verified by the Investigating Officer;
2. The petitioner shall on being released on bail present himself at the concerned police station on every Thursday of every week, unless leave of absence is obtained in advance from the concerned Spl. Judge.
3. The petitioner shall not leave the city without prior permission of the court concerned;
4. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
5. The petitioner shall provide his/her mobile number (s) to the Investigating Officer and keep it operational at all times;



6. In case of change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
17. With the above directions, the petition stands disposed of.
18. The copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

DINESH KUMAR SHARMA, J

JULY 18, 2023

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