

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

+ **BAIL APPLN. 216/2020**

Date of Decision: 19.10.2022

IN THE MATTER OF:

RAKESH KUMAR BHOLA
S/O SHRI HEMRAJ BHOLA,
THROUGH PARORKAR/
WIFE-SMT. JYOTI BHOLA
W/O SHRI RAKESH BHOLA
RESIDENT OF 135-B, PREM NAGAR,
ROHTAK (HARYANA)

ALSO AT:
1436-B, SECTOR-21, PREM NAGAR,
ROHTAK, HARYANA

.....PETITIONER

Through: Mr. J.K. Bhola, Advocate

Versus

DIRECTORATE OF REVENUE INTELLIGENCE
HEADQUARTERS, NEW DELHI
THROUGH
INTELLIGENCE OFFICER

..... RESPONDENT

Through: Mr. Satish Aggarwala & Mr. Gagan
Vaswani, Advocates

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This is an application under section 439 read with Section 482 of the Criminal Procedure Code (in short 'Cr.P.C.') filed on behalf of the applicant for grant of regular bail in connection with SC No. 7520/16 under Section 22/25/25A/29 of the Narcotics Drugs

Psychotropic Substances Act, 1985 (in short, 'NDPS Act'). Learned counsel appearing for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. According to him, the applicant is in judicial custody since 23.08.2015 and there is no possibility of completion of trial in near future. Medical condition of the applicant is not good and this court *vide* order dated 12.04.2019 in bail application number 639/19 had noted that the applicant was advised Cholecystectomy and reassess for Hernia and he was advised to undergo surgery for squint correction and, therefore, interim bail of four weeks was granted. It is submitted that later on it transpired that the applicant was wrongly treated by the doctors in jail which resulted into symptoms of prostatitis. He started getting treatment for prostatitis, and as per the latest medical report, he was advised for regular Self Intermittent Catheterization cleaning at least twice a week with aseptic precautions. He states that the said treatment is not possible in judicial custody. The applicant is the sole bread winner of the family and cannot be kept in incarceration for indefinite period. He also states that when the applicant was granted interim bail, there was no allegation of any misuse.

2. The learned counsel appearing on behalf of the applicant placed reliance on decision of this court in the case of ***Atul Aggarwal Vs. Directorate of Revenue Intelligence¹, Mahesh v. State (Govt. of NCT of Delhi)²***, BAIL APPLN. 51/2022 dated 08.02.2022, & BAIL APPLN. 956/2022 dated 18.07.2022, ***Shravan Kumar @ Kishan v. State (NCT of Delhi)³*** and other connected matters to state that, without assurance of speedy trial, personal liberty of an accused cannot be deprived of.

¹ (2021) SCC OnLine Del 5489

² (2022) SCC OnLine Del 394

³ (2022) SCC OnLine Del. 2079

3. Learned counsel appearing on behalf of the respondents prosecuting agency opposed the application and he submits that the applicant is accused in connection with serious offence. After completion of the investigation, the complaint was filed and the trial court had taken cognizance on 20.10.2015. The applicant was a party to the criminal conspiracy with accused no. 1. The present applicant is accused no. 2 in the complaint. The applicant was the person, second in command with regard to the activities of M/s Lakshaya Traders. The applicant was knowingly and consciously concerned with fraudulent diversion of 2348 kg of Pseudoephedrine Hydrochloride from the premises of accused no. 6 through M/s Lakshaya Traders and further disposal of 1300 kg of Pseudoephedrine Hydrochloride, which was diverted from the premises of accused no. 10 to M/s Weishorn Biotech, owned by accused no. 1.

4. According to the status report, the applicant was involved in illicit trafficking of Ketamine Hydrochloride, a psychotropic substance and Pseudophedrine. Under his supervision, on 19.08.2015, 275 kg of Pseudoephedrine Hydrochloride had been fraudulently diverted from the premises of accused no. 6 under parallel invoice and 25 kg of same Pseudoephedrine Hydrochloride was disposed of. There are further allegations of repacking and diversion of the contraband substance and seizure had taken place in the presence of the applicant and co-accused against vide seizure memo dated 19.08.2015. There are statements under section 67 of the NDPS Act made by accused no. 1, D.P. Saxena, showing the complicity of the applicant.

5. Reliance is placed on the decision of Hon'ble Supreme Court in the case of *Satpal Singh v. State of Punjab*⁴ CRL.A.462/2018 dated 27.03.2018, *Union of India v. Rattan Mallik @ Habul*⁵, *N.R. Mon v.*

⁴ (2018) 13 SCC 813

⁵ (2009) 2 SCC 624

*Nasimuddin*⁶, *Union of India v. Shiv Shanker Keshari*⁷, CRL.A. 1223/2007, *Union of India v. Ram Samujh & Anr*⁸ CRL.A. 866/1999, *Daler Singh Vs. State of Punjab*⁹, *State of Kerala v. Rajesh*¹⁰ CRL.A.154-157/2020, *Customs v. Ahmadalievva Nodira*¹¹ CRL.A. 312/2004, *Union of India v. Mahaboob Alam*¹², *Babua alias Tazmul Hossain v. State of Orissa*¹³, *Intelligence officer, NCB v. Sambhu Sonkar & Anr*¹⁴ and *State of Madhya Pradesh v. Kajad*¹⁵.

6. I have considered the submissions made by the learned counsels appearing for the parties and perused the record.

7. Grant of bail in a case involving commercial quantity of contraband substances under the NDPS Act, is governed by section 37 of the NDPS Act. A reading of provisions of section 37 of NDPS Act would clearly indicate that bail can be granted only, when the requirement of Section 37 of NDPS Act is fulfilled.

8. The Hon'ble Supreme Court in the matter of **Ahmadalievva Nodira** (*supra*) after considering the earlier pronouncements, including the decision in the case of Union of India Vs. Thamisharasi (1995) 4 SCC 190, has held that clause (b) of sub-section 1 of section 37 imposes limitation on granting of bail in addition to those provided under the Cr.P.C. The law requires to afford an opportunity to public prosecutor, to oppose the bail application, and should record its satisfaction, that there are reasonable grounds for believing that the accused is not guilty of such offence and that, he is not likely to commit any offence, while on bail. The expression “reasonable

⁶ (2008) 6 SCC 721

⁷ (2007) 7 SCC 798

⁸ (1999) 9 SCC 429

⁹ 2007 (1) CC Case (SC) 252

¹⁰ (2020) 12 SCC 122

¹¹ (2004) 3 SCC 549

¹² (2004) 4 SCC 105

¹³ (2001) SCC OnLine SC 315

¹⁴ (2001) 2 SCC 562

¹⁵ (2001) 7 SCC 673

grounds” means something more than *prima facie* grounds. The Hon’ble Supreme Court in another decision in the matter of *Union of India Vs. Rattan Mallic*¹⁶, while considering the decision in the case of *Shiv Shanker Keshari (Supra)* has held that, at the stage of granting bail, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding, as to whether or not the accused had committed the offence under NDPS Act, and what is required to be assessed is, whether, there is a reasonable ground for believing that the accused is not guilty of the offence he is charged with. It is also to be seen whether there is likelihood of the accused committing an offence under the said Act, if he is released on bail.

9. In the present case, no doubt, that the quantity of contraband substance falls within the commercial quantity. The provisions of the NDPS Act have been enacted, to deal with deleterious impact of narcotic drugs on society. The purpose of the NDPS Act is to curb this menace that affects our societal fabric. The object of the NDPS Act, and the stringent conditions, in granting bail, needs to be kept in mind. However, deprivation of personal liberty without the assurance of speedy trial, is also an aspect that requires due consideration.

10. The Hon’ble Supreme Court in the case of ‘*Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India*’ (1994) 6 SCC 731, has issued certain directions for disposal of NDPS cases. The same are being reproduced as under:

"(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

¹⁶ (2009) 2 SCC 624

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 (1) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for 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.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 3 and 31A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order."

11. In the instant case, the Nominal Roll of the applicant states that as on 20.09.2022, he has undergone 6 years, 4 months and 10 days of jail incarceration. The record also indicates that he was granted interim bail w.e.f. 08.06.2018 to 24.08.2018 and 15.04.2019 to 20.12.2019. His overall conduct in jail has been reported to be good and there is no instance of any misuse of liberty during the period of interim bail. Nominal Roll also does not indicate any previous involvement of the applicant.

The punishment prescribed under section 22 of the NDPS Act can extend upto 20 years and shall not be less than 10 years. Section 22 of the NDPS Act, further, prescribes for fine which shall not be less than Rs. 1,00,000/-, but may extend to Rs. 2,00,000/-. Section 36 of the

NDPS Act, requires for constitution of Special Courts. Section 36(A) requires that the offences should be triable by Special Courts.

12. As per the complaint the prosecution has cited 53 prosecution witnesses. As of now only nine prosecution witnesses have been examined. Learned counsel for prosecuting agency, however, states that there is possibility of dropping as many as 10 witnesses. The fact remains that the applicant is in judicial custody for more than 6 years. There does not seem to be any possibility of early completion of the trial. It is also to be noted that in the instant case there is no averment in the Status Report to indicate that the trial is being delayed at the instance of the present applicant.

13. The paragraph No. 2(c) of the complaint indicates that the Officers of DRI conducted the search of the business premises of *M/s Weishorn Biotech* located at *102, Malhotra Complex, A-212, Street No, 1, Shakarpur Delhi-92*. *Shri D.P. Saxena*, is the owner of the said premises. The presence of the present applicant was found only at the time of the search. The search of the premises of *D.P. Saxena* resulted in recovery of contraband articles and various documents etc. It is stated that the present applicant was the business associate along with the others of the main accused *D.P. Saxena*. It is also alleged in the subsequent paragraph of the complaint that the present applicant played a significant role in aiding and abetting the crime in question. It is also alleged that the present applicant always remained in the background and never occupied the centre stage notwithstanding the fact that he is the person involved in the disposal of controlled psychotropic substance. A meticulous examination of the role of the applicant and material collected against him at this stage may not be warranted. However, a *prima-facie* view can still be taken that the applicant is not guilty of such offence.

14. In the case of *Narcotic Control Bureau v. Mohit Aggarwal*, CRL.A. Nos. 1001/2022 & 1002/2022 dated 19.07.2022, the Hon'ble Supreme Court has held that the length of the period of the custody of accused or the facts that the charge sheet has been filed and the trial has commenced are by themselves not considerations for grant of bail. However, these factors can be treated as being persuasive ground for granting relief to the accused under Section 37 of the NDPS Act.

15. In the case of *Jainam Rathod v. State of Haryana*, CRL.A. 640/2022 dated 18.04.2022, the Hon'ble Supreme Court has held that in the absence of a fair likelihood of the trial being completed within a reasonable period, the court is required to protect the personal liberty of the accused in the face of delay in the conclusion of the trial. Accordingly, the accused in that case was granted bail for an offence under the provisions of Section 447 of the Companies Act, 2013 despite there being similar conditions similar to that of Section 37 of the NDPS Act in Section 212 (6) of the Companies Act, 2013. In that case the accused remained in judicial custody for more than 2 years and 8 months. A similar view has been taken by the Hon'ble Supreme Court in the case of *Sujay U. Desai v. Serious Fraud Investigation*, CRL.A. 1023/2022 and it has been held that the right to an expeditious trial is protected under Article 21 of the Constitution. The applicant in that case was also accused of violating the provisions of Section 447 of the Companies Act and was arrested on 19.03.2020 but was granted bail by the Hon'ble Supreme Court on 25.07.2022.

16. It may be noted here that the Supreme Court in *Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra)* while recording that the Special Court would be free to exercise its power to grant bail under Section 37 of the Act, also opined that it must exercise that power, keeping in view the complaint to inordinate

delay in disposal of the pending cases. This aspect has been reiterated in the latest judgment of the Supreme Court in **Satender Kumar Antil v. CBI & Anr.**,¹⁷ which is reproduced herein below:

64. 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. (emphasis added)

17. The rigors of Section 37 of the NDPS Act would thus not come in the way while dealing with an application for bail moved by an undertrial prisoner who has remained in custody for more than half of the minimum sentence prescribed.

18. In view of the facts and circumstances of the present case as detailed above, this court finds that the constitutional right of the applicant for speedy trial stands violated. The delay in conducting the trial and the resulting long incarceration can also be taken into consideration for the grant of bail. This court is conscious of the fact that the delay or long incarceration alone should not be the sole and dominant factor and, therefore, this court has considered the allegations against the applicant, his role in the commission of the alleged offence, and it has been found that the applicant is not the main accused.

19. Accordingly, the present bail application is allowed and it is directed that the applicant be released on bail on his furnishing a personal bond in the sum of Rs.2,00,000/- with two sureties of the like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M./trial court and subject to the following further conditions:-

- (i) The applicant shall not leave the NCT of Delhi, without prior permission of the Trial Court.
- (ii) The applicant shall deposit his passport with the trial court.
- (iii) The applicant shall not change his address without prior permission of the Trial Court.
- (iv) The applicant shall regularly appear before the trial court on each date, unless, his exemption application is accepted.
- (v) The applicant shall furnish the mobile phone on which he would be available to the concerned Investigating Officer and the said Mobile Number would not be changed without prior permission of the Trial Court.
- (vi) The applicant shall not directly or indirectly tamper with evidence or try to influence the witnesses, in any manner.

20. The concerned Investigating Officer of the case is at liberty to file application for cancellation of bail, in case he finds that there is any breach of the conditions of grant of bail or the applicant is found to have violated any of the conditions enumerated in sub-section 3 of section 437 of Cr.P.C.

21. With the aforesaid direction, the bail application stands disposed of.

22. *Dasti.*

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 19, 2022

'bsr/p'ma'