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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Order pronounced on 18.10.2022*

+ BAIL APPLN. 1759/2022

RAM KISHAN

..... Petitioner

Through: Ms. Nitya Ramakrishnan, Sr.
Advocate with Mr. Raghav Tankha
and Ms. Rudrakshi Dev, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. N.S. Bajwa, APP for State with
SI Rohit, PS Crime Branch.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The petitioner has prayed for regular bail in case FIR No. 131/2016, PS Crime Branch registered under Section 20(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act), which is pending before the learned Special Judge. It has been submitted that the allegation against the petitioner is that 1.5 kg of Charas was recovered from the petitioner and he was engaged in supplying Charas to the youth of Delhi NCR.

1.1 The petitioner was apprehended on 22.07.2016 at 9.00 p.m. at Ghata Masjid Road and 1.5 kg of Charas was recovered from him. It is a crowded place but no public witness was joined at the time of alleged recovery. The prosecution's story is that the petitioner was served with a notice under Section 50 NDPS Act before search was conducted on him, however, no public witness had signed the said notice. The FSL submission form was

not prepared in triplicate. The petitioner was arrested at 6.10 a.m. on 23.07.2016 and the present FIR was registered under Section 20 of the NDPS Act. The first regular bail was rejected by learned Special Judge on 02.11.2016. Charge-sheet under Section 20(ii)(c) of the NDPS Act was filed on 19.01.2017. Charge was framed on 17.04.2017. The second bail application was rejected on 11.05.2022, in which it was observed that the trial has been delayed on account of petitioner's counsel, which was in fact delayed because of non-availability of prosecution witnesses and the Presiding Officer being on leave.

1.2 The petitioner has prayed for bail on the grounds that he has been falsely implicated in the FIR and there is no public witness to corroborate the case of prosecution; no independent witness has signed the notice under Section 50 of the NDPS Act or other documents alleged to be prepared at the site by the IO; FSL form was not filed in triplicate which is a violation of guidelines laid down by the Narcotics Control Bureau; the learned Special Judge has erroneously opined that the trial has been delayed on account of adjournments sought by the learned defence counsel; the petitioner has been languishing in jail for approximately 6 years pending trial and has not been granted bail even once by any court of law.

1.3 It has been also submitted that delay caused by the prosecution is inordinate and the halt in the trial due to outbreak of the Covid-19 pandemic cannot be attributed to the petitioner in any manner. Moreover, in contravention of the settled position of law in catena of judgments, the magnitude of offence cannot be the only criterion for denial of bail. The prosecution has already collected the evidence and all the witnesses are police officials, therefore, there can be no apprehension of petitioner

tempering with the evidence; grant of bail is the rule and its denial is an exception; Accused is presumed to be innocent until proven guilty; Status of an under-trial prisoner is distinguished from that of a convict and personal liberty of a person is put at a very high pedestal in the Constitution.

1.4 It is also submitted that petitioner is 27 years old and when he was arrested, he was the only bread earner of his family. It has been prayed that the petitioner be released on bail.

2. Notice was issued.

2.1 Status Report has been filed in which the fact regarding receipt of secret information, forming of raiding team and apprehension of the present petitioner has been mentioned. Notice under Section 50 of the NDPS Act was served to petitioner and his legal rights were explained to him as per law. Thereafter, his cursory search was conducted and about 1.5 kg of Charas was found and thereafter, the present case was registered. During investigation, the present petitioner was interrogated and arrested on 23.07.2016. All mandatory provisions of the NDPS Act i.e., Section 42, 50, 55 and Special Report regarding recovery were duly complied with. After completion of investigation, charge-sheet was filed. Out of total 14 public witnesses, 10 witnesses have already been examined. The witnesses have confirmed the recovery of the contraband substance from the possession of the accused.

2.2 The bail application has been opposed on the ground that recovery of contraband substance is of commercial quantity as per the NDPS Act; the crime is serious in nature and there is an apprehension that if bail is granted, the petitioner may jump the bail and moreover, he may get involved in a crime of similar nature if he is released on bail.

3. Arguments were heard.

3.1 Learned counsel for the petitioner has relied upon the following judgments during arguments:-

(i) *Atul Aggarwal vs. Directorate of Revenue Intelligence*, 2021 SCC Online Del 5489. In this judgment, a coordinate bench of this Court was pleased to release the petitioner on bail where he has been in custody for more than 9 years.

(ii) *Anil Kumar vs. State*, 2022 SCC Online Del 778. In this case, the petitioner has been in incarceration for almost 8 years. It was observed that the role of the petitioner in the commission of the offence of drug trafficking and supply is a matter of trial and the same cannot justify the prolonged incarceration of the petitioner.

3.2 In the present case, the petitioner is in custody since 27.07.2016 and about 6 years and 3 months have passed. The case is at the advance stage of trial. Out of 14 witnesses, 10 witnesses have already been examined. No one can be blamed for halt of the further progress of the case during Covid period of about 2 years. The recovery made of narcotic substance from the present petitioner is of commercial quantity.

3.3 In *Narcotic Control Bureau vs. Mohit Aggarwal*, 2022 LiveLaw (SC) 613, it was observed as under:-

“18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations

that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

19. As a result of the aforesaid discussion, the present appeals are allowed and the impugned order releasing the respondent on post-arrest bail, is quashed and set aside. The bail bonds of the respondent are cancelled and he is directed to be taken into custody forthwith”.

3.4 In the said case, a co-ordinate bench of this Court was pleased to grant bail to the accused/respondent in a case for offence under Section 8/22/29 of the NDPS Act, the recovery of 20 kg of Tramadol tablets. The Accused in the said case had disclosed under Section 67 of the NDPS Act that he had been purchasing and selling drugs from one Promod Jaipuria. His bail applications were rejected by the learned Special Judge, so he filed a petition for grant of regular bail before this Court, which was allowed. The NCB challenged the said order on the ground that it was wrongly observed by this Court that no incriminating material was recovered from the accused.

3.5 Another infirmity pointed out by NCB before Hon’ble Supreme Court is that co-ordinate bench committed a grave error by not applying the terms and conditions imposed under Section 37 of the NDPS Act as the recovery was of commercial quantity of the Narcotic Drug and the accused ought not to have been admitted to bail in view of the embargo placed in Section 37 of the NDPS Act.

3.6 On behalf of the accused/respondent it was argued that the accused had remained in custody for one year and 3 months; no recovery was made from the respondent’s residence/shop and he was implicated only on the basis of a statement of the co-accused recorded under Section 67 of the NDPS Act, which was retracted by the accused at the first instance and in

view of the law laid down by the Apex Court in *Tofan Singh vs. State of Tamil Nadu*, 2020 SCC Online SC 882, the confessional statement recorded under Section 67 of the NDPS Act is inadmissible in trial and there was no other incriminating material except the said statement of the co-accused.

3.7 It was observed by the Hon'ble Supreme Court in *NCB vs. Mohit Agarwal (supra)* regarding the conditions mentioned in Section 37 of the NDPS Act as under:-

“We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail”.

3.8 The Hon'ble Supreme Court has agreed with the learned Single Judge of this Court that the appellant NCB could not have relied upon the confessional statement of the co-accused and other statements recorded under Section 67 NDPS Act; however, the recovery was made subsequent to the said statement from the addresses and locations of the co-accused, who was arrested later on and the CDR details of the mobile phones of all co-accused including the respondent showed that they were in touch with each other. The Hon'ble Supreme Court cancelled the bail granted to the accused/respondent.

4. In the present case, recovery was made from the present petitioner at a public place, when he was apprehended on 22.07.2016 at about 9.00 p.m.

The quantity recovered, i.e., 1.5 kg of Charas is a commercial quantity, the trial is in progress, majority of the witnesses have already been examined, the delay cannot be attributed to the prosecution alone and the petitioner has only undergone about 6 years of the sentence and keeping in view the judgment of the Hon'ble Supreme Court in the matter of *Narcotic Control Bureau vs. Mohit Aggarwal* (supra) and the embargo imposed by Section 37 of the NDPS Act, in my view this is not a fit case for grant of bail to the present petitioner.

5. The petition is hereby dismissed. However, the learned Trial Court is requested to expedite recording of evidence, subject to its workload.

6. A copy of this order be sent to learned Trial Court.

TALWANT SINGH, J

OCTOBER 18, 2022/nk

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