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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 7th December, 2022

Pronounced on: 22nd December, 2022

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BAIL APPLN. 3638/2021

ANIL KUMAR

..... Petitioner

Through: Mr. Amjad Khan and Mr. Sumit
Khowal, Advocates.

versus

**DIRECTORATE OF REVENUE INTELLIGENCE
(D.R.I.)**

..... Respondent

Through: Mr. Satish Aggarwala, Sr. Standing
Counsel for DRI.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA J.

1. The present application under section 439 read with section 482 of the Code of Criminal Procedure, 1973 ('CrPC') has been filed on behalf of the applicant seeking regular bail in case SC No. 7256/2016, registered by the Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') for offences under sections 22, 27A, 29 and 30 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. Briefly stated, the facts relevant for adjudication of the present application are as under:

(a) On 15.04.2013, on the basis of specific information, the officers of the DRI intercepted a green Mahindra Champion luggage carrier three-wheeler, having

registration number DL 1 LN 7074, near the red light of Sir Ganga Ram Hospital, Shankar Road, New Delhi. The vehicle was occupied by one Shri Bablu Ram and Mr. Anil Kumar (applicant herein), who was running a courier company in the name of M/s Cruze Courier at House No. 374 (basement), Sant Nagar, East of Kailash, New Delhi. A search of the said vehicle resulted in the recovery of a white colored crystalline substance, suspected to be Methaqualone, weighing 272.800 kg, packed in 11 white colored duly stitched HDPE bags.

(b) During further investigation, 33.450 kg of white crystalline substance suspected to be Methaqualone was recovered and seized from the Office premises of one Manu Khosla of M/s Magic Vibration India Pvt. Ltd. situated at 611, 6th floor, Pragati Tower, Rajendra Place, New Delhi and 951.350 kg. of white crystalline substance suspected to be Methaqualone was recovered and seized from a white colored Toyota Fortuner car having registration No. DL 13 CA 1800, owned by Amit Kumar Singh and his wife, Ms. Nupur Singh.

(c) It is alleged that in total, 1257.600 kg of the substance has been recovered and seized from the possession of the present applicant and his co-accused, i.e., Manu Khosla and Amit Kumar Singh.

(d) As per the reports of Central Revenue Control Laboratory, New Delhi and the Central Forensic Science Laboratory, New Delhi, the details of the recoveries effected are as under:

(i) 747.400 kg seized from Toyota Fortuner car having registration No. DL 13 CA 1800, owned by Amit Kumar Singh and his wife, Ms. Nupur Singh was confirmed to be Ketamine Hydrochloride.

- (ii) 272.800 kg seized from the luggage carrier three-wheeler, having registration number DL 1 LN 7074, owned by the present applicant was confirmed to be Ketamine Hydrochloride.
- (iii) 23.400 kg seized from the premises owned by Manu Khosla was confirmed to be Ketamine Hydrochloride.
- (iv) 150 kg seized from the Toyota Fortuner car having registration No. DL 13 CA 1800, owned by Amit Kumar Singh and his wife, Ms. Nupur Singh was confirmed to be Methamphetamine.
- (v) 53.95 kg seized from the Toyota Fortuner car having registration No. DL 13 CA 1800, owned by Amit Kumar Singh and his wife, Ms. Nupur Singh was confirmed to be Phenylpropanolamine.
- (vi) Report in respect of the remaining 10.05 kg of substance seized read as “General Narcotic Drugs and Psychotropic Substances like Heroin, Morphine, Codeine, Cocaine, Amphetamine, Methamphetamine, MDMA, Methaqualone, Diazepam, Lorazepam, Clonazepam, Ketamine Ephedrine have not been detected”.
- (e) As per the case of the prosecution, Ketamine Hydrochloride is a psychotropic substance listed at serial no. 111 read with serial no. 110 A of the Schedule to the NDPS Act. Methamphetamine is a psychotropic substance listed at serial No. 19 of the Schedule to the NDPS Act, 1985 and serial No.30 of the Schedule II to the Narcotics Drugs and Psychotropic Substances Rules, 1985 (hereinafter referred to as ‘NDPS Rules’). Phenylpropanolamine is a Controlled Substance under Schedule B & C of the Narcotics Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013.

(f) A complaint for commission of offences under sections 22, 27A, 29 and 30 of the NDPS Act was filed by the DRI on 06.09.2014 against the present applicant and co-accused, Manu Khosla and Amit Kumar Singh.

(g) The applicant has been in judicial custody since 15.04.2013, in SC No. 7256/2016.

(h) The applicant's application for bail moved before the learned trial Court was rejected by the learned Special Judge – NDPS/ASJ (South), Saket Courts, New Delhi vide order dated 12.08.2012, with the following observation:

“Considering the entire facts and circumstances, this is not a fit case for grant of bail. Although the public witness have been examined and they have not supported the prosecution case on some aspects, however, in their cross examination by the Ld.SPP they have indeed admitted their signatures on some documents and at this stage when the entire evidence is not concluded, it cannot be said that the evidence so far recorded lends reasonable grounds for believing that the accused is not guilty of the offence charged with. Huge commercial quantity was recovered from the vehicle the accused was occupying. The co-accused have also not received regular bail so far even from the Hon'ble Apex Court and are on interim bail only due to health reasons.

Accordingly, the present bail application is disposed off as dismissed.”

(i) Hence, the present application for bail.

SUBMISSIONS ON BEHALF OF THE APPLICANT

3. Learned counsel appearing on behalf of the applicant seeks bail, primarily on the ground that the latter has been in judicial custody for more than 08 years now. It is submitted that the trial is ongoing and out of a total of 42 witnesses, only 25 have been examined by the prosecution. It is further submitted that the applicant is only an undertrial and has not yet been convicted of any offence and his prolonged incarceration, while on trial is contrary to the law. In support of his contention, learned counsel places

reliance on a judgment of the Hon'ble Supreme Court in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, 1994 6 SCC 731**, wherein it has been directed as under:

“(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.”

Learned counsel appearing on behalf of the applicant submits that following the decision of the Hon'ble Supreme Court in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (supra)**, a coordinate bench of this Court, in **Atul Aggarwal v. Directorate of Revenue Intelligence, 2021 SCC Online Del 5489**, has observed that deprivation of one's personal liberty without the assurance of a speedy trial is contrary to the mandate of Article 21 of Constitution of India. It was held as under:

“12. However, it is also pertinent to note that the Petitioner herein was arrested on 20.07.2012. It has been nine years since he has been in custody. While remaining conscious of the fact that the gambit of drug trafficking must be deterred with stringent punishments, and that those who indulge in such nefarious activities do not deserve any sympathy, Courts must also not ignore the plight of the undertrials who remain languishing in jails as their trials are delayed with no end in sight. Deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution under Article 21, and is, therefore, unconstitutional to its very core. In such cases, in absence of the pronouncement of conviction, the process itself becomes the punishment. Nine years cannot be said to be a short period of time.

13. The Supreme Court, while deciding a petition pertaining to the delay in disposal of cases under the NDPS Act, had issued certain directions, subject to general conditions, in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (supra)** which have been reproduced as follows:

“(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 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 31 and 31A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.”

(emphasis supplied)

14. As per Direction (iii) in the aforementioned judgment, where an undertrial accused has been charged with offence(s) under the NDPS Act which is punishable with minimum imprisonment of ten years and a minimum fine of rupees one lakh, then such an undertrial is to be released if he has been in jail for not less than five years. In the instant case, the Petitioner has been charged with offences punishable under Sections 9A, 21, 23, 25A of the NDPS Act. With minimum imprisonment of 10 years as stipulated under these offences, an undertrial is to be released if he has been in jail for not less than five years. However, in the case herein, the Petitioner has been in custody for

more than 9 years. Therefore, the petitioner is squarely covered by the aforementioned judgment.”

Learned Counsel for the applicant further submits that in Atul Aggarwal (*supra*), the quantity recovered from the applicant therein was also commercial.

5. It is submitted that the applicant has also proved his *bonafides* inasmuch as he has been enlarged on interim bail by the learned trial Court on three occasions – from 01.11.2018 to 14.11.2018, from 05.02.2019 to 15.02.2019 and then from 05.10.2019 to 15.10.2019 and while he was out on interim bail, the applicant did not violate any conditions imposed on him and duly surrendered upon expiration of the time period of bail.

6. It is further submitted that it is most likely that the peititioner will be acquitted of all the offences that he has been charged with as the primary public witnesses, i.e., Babloo (PW-8), Gulfam (PW-19), Khalid Hassan (PW-21) and Dalip Singh (PW-22) have all turned hostile and did not support the prosecution case.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

7. *Per contra*, Mr. Satish Aggarwala, the learned Senior Standing Counsel (‘Sr. SC’), appearing on behalf of the DRI opposes grant of bail to the applicant in the present case. He has invited the attention of this Court to the fact that the present applicant and his co-accused had been granted bail vide orders dated 20.07.2013 and 24.07.2013 passed by the learned Additional Sessions Judge–Special Judge, NDPS, Saket Court Complex, New Delhi. The said orders were set aside by this court in **Directorate of Revenue Intelligence**

v. Anil Kumar, 2014 SCC Online Del 4915. This Court's order was carried in appeal by co-accused Manu Khosla before the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide order dated 15.12.2014 was pleased to dismiss the said special leave to appeal. It is thus submitted that attempts made on behalf of the co-accused before this Court, as well as before the Hon'ble Supreme Court, for grant of bail have not been successful.

8. As far as the argument regarding the applicant being in custody for over 08 years without being convicted of any offence is concerned, the learned Sr. SC submits that it is not a ground for grant of bail, as per Section 37 of the NDPS Act. In support of his argument, he places reliance on the judgment of the Hon'ble Supreme Court in *Narcotics Control Bureau v. Mohit Aggarwal*, 2022 SCC Online SC 891, wherein while allowing the appeal preferred by the NCB against a judgment of the High Court of Delhi granting bail to the respondent Mohit Aggarwal, the Hon'ble Supreme Court observed that the length of the period of custody or the fact that the chargesheet 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.

9. The learned Sr. SC submits that the reliance placed by the learned counsel of applicant in the judgment of the Hon'ble Supreme Court in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India* (*supra*) and the judgment of this Court in *Atul Aggarwal* (*supra*) is misplaced since the facts of those cases are completely different from those of the present case and thus, the law laid down therein does not apply here.

10. It is also submitted that in his statement recorded under Section 67 of the NDPS Act, the applicant has admitted the recovery, the seizure and other

incriminating facts and the said statement has to be accorded due consideration while dealing with the present bail application.

11. In support of his contentions, learned Sr. SC has placed reliance on the following judgments:

(i) Prince; Dileep Kumar; Sunil Kumar; Sudhir Kumar v. State of Punjab, 2022 LawSuit(P&H) 2861.

(ii) Union of India Through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan, (2021) 10 SCC 100.

(iii) Indresh Kumar v. The State of Uttar Pradesh, Criminal Appeal No. 938 of 2022, Arising out of SLP (Crl.) No. 4982 of 2022.

(iv) Narcotics Control Bureau v. Laxman Prasad Soni Etc. Etc., Criminal Appeal Nos. 438-440 of 202, Arising out of SLP (Crl.) Nos. 3361-3363 of 2021 and SLP (Crl.) Dy. No. 24219/2020.

(v) Narcotic Control Bureau v. Ajeet Kumar Yadav, Criminal Appeal No. 46 of 2022, Arising out of SLP(Crl.) No. 6958 of 2021.

ANALYSIS

12. Heard learned counsel appearing on behalf of the parties.

13. It is pertinent to note that a coordinate bench of this Court in Anil Kumar @ Nillu v. State, 2022 SCC Online Del 778, while following the judgment of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (*supra*) observed that while remaining cognizant of the impact that drugs have on society, Courts must also remain conscious of the fact that prolonged deprivation of one's personal liberty, without the assurance of a speedy trial runs contrary to principles of the Constitution. It was held as under:

“14. In view of the above, this Court believes that achievement of universal equality before the law requires the tenets of personal liberty to be applicable to all similarly circumstanced individuals and must not be restricted unless according to procedure established by law. This Court does not find any weight in the submission of the learned APP that the aforementioned judgment of the Supreme Court does not apply to the instant case and that the judgment of this Court in Atul Agarwal v. Directorate of Revenue Intelligence (*supra*) must be referred to a larger Bench due to the incorrect application of the Supreme Court's judgment. Furthermore, in Atul Agarwal v. Directorate of Revenue Intelligence (*supra*), this Court had not solely granted bail on the footing of the inordinate delay in trial, but had also considered the twin requirements stipulated under Section 37 of the NDPS Act. Therefore, this Court is of the opinion that the Petitioner herein is squarely covered by judgment of the Supreme Court and is entitled to release on account of inordinate delay in trial and prolonged judicial custody.

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16. Therefore, fair, just and reasonable procedure is implicit in Article 21 and it creates a right in the accused to be tried speedily. This Court has consistently observed that while Courts must remain cognizant of the deleterious impact of drugs on society, it is also important to keep in mind that deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution. In the instant case, the Petitioner has been incarcerated for almost eight years now, i.e. since 27.03.2014, for an offence that is punishable with a minimum imprisonment of ten years. This is an egregious violation of an accused's right to personal liberty and right to speedy trial as, in the off-chance that the Petitioner is acquitted, it would entail an irretrievable loss of eight years of his life that cannot be compensated. Whether or not the Petitioner played an active role in the commission of the offence of drug trafficking and supply is a matter of trial and cannot justify the prolonged incarceration of the Petitioner.”

14. It is pertinent to note that the decision in Anil Kumar @ Nillu (*supra*) was challenged in appeal before the Hon'ble Supreme Court and *vide* order dated 14.10.2022, SLP (Criminal) 25615/2022, was dismissed.

15. Similarly, another coordinate bench of this Court, in Sarvan Kumar v. State (NCT of Delhi), 2022 SCC Online Del 2079 reiterated the aforesaid

position of law as laid down in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (*supra*) and observed that the rigors of Section 37 of NDPS Act would not come in the way while dealing with an application for bail moved on behalf of an undertrial who has remained in custody for a prolonged time period.

16. The judgments relied upon by the learned Sr. SC do not relate to the submissions advanced by learned counsel appearing on behalf of the applicant relying upon the directions laid down by the Hon'ble Supreme Court in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (*supra*). As far as the contentions of the Sr. SC with regard to setting aside of bail granted to the present applicant is concerned, it is pertinent to note that the same was granted under section 167 Cr.P.C., on the ground that the contraband recovered was not covered under the NDPS Act, and therefore, the same is not relevant for the purpose of the present bail application, which is being pressed on distinct grounds as discussed hereinbefore. Furthermore, the order of this Court setting aside the bail granted to the present applicant and other co-accused was passed in 2014.

17. The Hon'ble Supreme Court, in Union of India v. K.A. Najeeb, (2021) 3 SCC 713 took note of the law laid down in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (*supra*) and observed that if a timely trial is not possible, courts are ordinarily obligated to release the undertrial on bail and statutory restrictions do not exclude the discretion of constitutional courts to grant bail on grounds of violation of fundamental rights enshrined in Part III of the Constitution. It was held as under:

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its

protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India* [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39], it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

18. The present applicant was arrested on 15.04.2014 by the DRI and as per the nominal roll dated 07.09.2022 received by this Court, the applicant has been in custody for a total period of 08 years 03 months 28 days. The applicant has been chargesheeted for offences related to commercial quantity and will therefore be covered under direction (iii) in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (*supra*), which is as under:

“(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.”

Since, in the present case, the applicant has been in custody for more than 08 years, his case is squarely covered by the aforesaid judgment of the Hon’ble Supreme Court.

19. In view of the facts and circumstances of the present case, the application is allowed and the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith two sureties of like amount to the satisfaction of the learned trial Court/Duty Magistrate, further subject to the following conditions:

- i. The applicant is directed to deposit his passport with the learned trial Court.
- ii. The memo of parties shows that the applicant is residing at House No. 342, Sant Nagar, East of Kailash, New Delhi. The petitioner is directed to reside at the same address. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer.

- iii. The applicant shall report shall report to the office of DRI twice in a week, i.e., on every Wednesday and Friday at 10.30 AM and the DRI is directed to release him by 11.00 AM after recording his presence and completion of all the necessary formalities.
- iv. The applicant shall not leave the NCT of Delhi without the prior permission of the trial Court.
- v. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
- vi. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
- vii. In case it is established that the applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.
20. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.
21. The application stands disposed of along with all the pending application(s), if any.
22. Let a copy of this order be communicated to the concerned Jail Superintendent.

AMIT SHARMA
JUDGE

DECEMBER 22nd, 2022/bsr