

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

+ **BAIL APPLN. 2619/2022**

Date of Decision: 18.10.2022

IN THE MATTER OF:

MRS. KANAN SARKAR @ RATNA
W/O MR. RIPAN SARKAR
R/O HOUSE NO. 163, BENGALI COLONY
GALI NO. 11, TUGALAKABAD
DELHI.

..... Petitioner

Through: Mr. Alamgir, Advocate.

Versus

THE STATE GNCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for State
alongwith Mr. Gagan Kumar, Advocate with SI
Nitin Singh, ARSC/Crime Branch.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

J U D G M E N T

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The applicant is in jail in connection of FIR No. 76/2017 for offence punishable under section 20/29 of the NDPS Act registered at PS Crime Branch, Delhi.
2. Learned Counsel appearing for the applicant submits that applicant is innocent and she has been falsely implicated in the present case. According to him, the entire prosecution story is false and fabricated. The applicant has been deliberately planted to favour the real culprit. The Learned counsel further states that there is no private witness in the instant case. The source

of contraband article and its delivery etc. are not disclosed in the entire chargesheet. He further states that there is non-compliance of the provision of section 50 of the NDPS Act, in as much as, the applicant does not know Hindi or English language, she is a bengali lady and she was not properly explained, with her right to request for the presence of gazetted officer.

3. Beside the aforesaid reason, the learned counsel further states that the applicant is in judicial custody since 24.05.2017 and after completion of the entire investigation, the chargesheet was filed and as of now only 2 witnesses have been examined, whereas, 16 more witnesses are yet to be examined. According to him, the trial will take sufficient time for its disposal and for the entire duration of trial, the applicant cannot be kept in jail.

4. The learned counsel relies on a decision of this Court dated 18.07.2022 passed in bail application no. 956/2022 in Sarwan Kumar @ Krishn & Anr, where under the provisions of NDPS Act, the bail of the applicants in that case was granted.

5. The learned counsel appearing on behalf of the State has filed the status report and he opposes the prayer for granting bail. According to him, there is a bar in Section 37 of the NDPS Act. To admit the accused on bail, unless the prosecution is heard or the court has reasons to believe that the accused is not guilty of the offence in question, the bail should not be granted. He further submits that in the instant case, though this court has afforded an opportunity of hearing to the prosecution but the second condition has not been complied with by the applicant. He also states that the delay in the trial is not on the account of prosecution but, the counsel who was appointed by Delhi Legal Services Authority could not appear on

26.09.2022 and, therefore, the cross-examination of witnesses was not completed and the matter has been posted for further cross-examination on 22.12.2022. He, however, states that the fact with respect of examination of only two witnesses is correct. He submits that looking to the allegation in the instant case, where large quantity of contraband has been seized; the applicant should not be granted regular bail.

6. I have considered the submissions made by learned counsel appearing on behalf of the parties and perused the record.

7. The prosecution story would show, that on 24.05.2017, on receiving information, ASI Murlidhar alongwith other officials conducted raid. He found that, one lady namely Kanan Sarkar (applicant) alongwith her associate Rajeev Majumdar were in possession of *Ganja*. The applicant was apprehended by raiding staff and notice under Section 50 of the NDPS Act stated to have been served upon the applicant. On search of the applicant, one bag/suitcase containing total 35 kg of *Ganja*, was recovered and from the possession of another accused Rajeev Majumdar, 40 kg of *Ganja* is stated to have been recovered. The samples were drawn, case property was sealed and seized and later on deposited to the malkhana by concerned SHO of Police Station, Crime Branch.

8. On the basis of aforesaid prosecution story, case under section 20/29 of the NDPS Act has been registered. The Hon'ble Supreme Court in various pronouncements has held that Clause (b) of sub-section 1 of Section 37 of the NDPS Act, imposes limitation on granting bail, in addition to those which are stipulated in Cr.P.C., when the matter relates recovery of commercial quantity of contraband articles under the NDPS Act. The law requires to afford an opportunity to public prosecution to oppose the bail

application and the court is also required to record its satisfaction that there are reasonable grounds in believing that the applicant is not guilty of such offence.

9. The reasonable ground would not mean that the entire trial will have to be conducted but only requires that the court to record *prima facie* ground. It is thus seen that it is not required to meticulously examine the entire allegation and the chargesheet etc. at the stage of granting bail to the accused of an offence under the NDPS Act.

10. The Hon'ble Supreme Court in the case of '***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) Vs. Union of India***¹', has issued certain directions for expeditious 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 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.

¹ (1994) 6 SCC 731

(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. This court in the matter of **Sarwan Kumar @ Krishn (supra)**, while considering the decision in the case of **Supreme Court Legal Aid Committee (supra)** has held that the rigour of Section 37 of the NDPS Act would thus, not come in the way, while dealing with the bail application moved by undertrial who has remained in the custody of more than half of the minimum sentence prescribed.

12. The decision relied upon by the learned counsel for the prosecution, in the case of '**Narcotic Control Bureau Vs. Mohit Aggarwal²**', relates to the fact, where NDPS Act and other material only on the basis of the period of custody, the bail was accepted by the High Court and material available on record was not considered. That apart, the Hon'ble Supreme court has also noted in that case that the High Court did not go into the other relevant material which was available in the chargesheet and had only relied upon the statement under Section 67 of the NDPS Act. In paragraph no. 18 of the said decision, it has been held that the length of the period of the custody or the fact that the charge-sheet has been filed and the trial has commenced, are by themselves be not consideration for granting bail, however, the same can have the persuasive value for granting bail to the concerned accused. Even

² (2022) SCC OnLine SC 891

the aforesaid decision, recognizes the aspect of accused being in custody to be one of factors for consideration in granting bail.

13. The Hon'ble Supreme Court in another decision in the case of '*Jainam Rathore Vs. State of Haryana & Ors*' CrI. Appeal no. 640/22 dated 18.04.2022, was considering the case for grant of bail in connection with offence under section 447 of the Companies Act, 2013. An argument was made that, the conditions which are spelled out under section 212(6) of Companies Act, 2013 requires the court to record that the court has sufficient reasons to believe that the accused are not guilty. The Hon'ble Supreme Court has considered its earlier pronouncements in the case of '*S.F.I.O. Vs. Nitin Johri*'³. In paragraph no. 8 of the said decision of Jainam Rathore, the Hon'ble Supreme Court has noted that in the absence of fair likelihood of the trial being completed within a reasonable period of time, the personal liberty of the accused was required to be protected, and accordingly, on the ground of delay, the applicant in that case was admitted to regular bail. The Hon'ble Supreme Court has taken note of the fact that the applicant in that case was in custody for nearly 2 years and 8 months.

14. This Court has considered, the aforesaid factual and legal aspects and finds that the rigour stipulated in Section 37 of the NDPS Act is similar to Section 212(6) of the Companies Act, 2013. The provisions of NDPS Act requires, that the trial to be conducted by the Special Judge. The object behind conduction of the trial and designation of the Special Judge appears to ensure that there should be speedy trial in the cases of serious offences. If the rigour of Section 37 of the NDPS is considered in view of the pious object of the Act, the same appears to be reasonable. However, the

³ (2019) 4 SCC 164

Constitutional Court are also duty bound to protect the personal liberties of the under trial prisoners.

15. The Hon'ble Supreme Court in the matter of ***Satender Kumar Antil v. CBI & Anr.***⁴, has considered all earlier decisions relating to the grant of bail and in Paragraph no. 64, it has been held as under:

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).

16. In the instant case, the applicant is in jail for more than 5 years. The sentence prescribed for the offence in question is minimum 10 years which may be extended up to 20 years with fine. In the case in hand, only two witnesses have been examined and 16 more witnesses are to be examined. Applicant has been in jail for more than 5 years and there is no possibility of earlier completion of the trial and keeping in view, the facts that, there is no previous criminal case against the applicant. Therefore, in the instant case, this court finds it appropriate to enlarge the applicant on bail. Accordingly, the application is allowed, the applicant be released on bail, subject to following conditions.

- (i) The applicant shall furnish a personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount, to the satisfaction of the Trial Court.
 - (ii) The applicant shall not leave NCT of Delhi, without prior permission of 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 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.
17. The IO of the case is at liberty to file application for cancellation of bail, in case he finds that, there is any breach of the above 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.
18. With the aforesaid direction, the bail application stands disposed of.
19. *Dasti.*

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 18, 2022
'bsr'

⁴ (2022) SCC OnLine SC 825