



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

Reserved on : 11.07.2023

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Pronounced on : 04.09.2023

+ **BAIL APPLN. 930/2021**

QUARI MOHAMMED HANIF SAMADI

..... Petitioner

Through: Mr. J. S. Kushwaha, Advocate.

versus

THE STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with Insp. Rahul Kumar.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in FIR No. 78/2017 under Sections 21 NDPS Act registered with Police Station Special Cell.

2. In brief the facts of the case are that on 27.10.2017, at about 11:30 AM, one of the secret informers gave information that one Afghani national, namely, Hanif has reached Delhi alongwith consignment of Heroin and the same will be delivered to his associate in area of Mehrauli. Accordingly, a raid was conducted and during the raid near Madhi Masjid Sri Devpurji Ashram Marg, Mehrauli, Delhi, one person, namely, Mohd. Hanif s/o Abdul

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Samad r/o Near Petrol Pump, Dewan Begi, Khushal Begi, Khushal Khan, Kabul, Afghanistan was apprehended along with a black colored cloth bag which he was carrying in his right hand. During the search of the black coloured cloth bag which the petitioner was carrying in his right hand, a recovery of 525 grams Heroin was effected. In this regard, case FIR No. 78/2017 dated 27.10.2017 under Section 21 NDPS Act was registered at P.S. Special Cell.

3. During the investigation of the case, the petitioner was arrested on 27.10.2017. On interrogation, the petitioner disclosed that one consignment of Heroin is kept in his trolley bag at his rented room at Lajpat Nagar-II, Delhi. Accordingly, at the instance of accused Mohd. Hanif, 575 grams Heroin was also seized from his rented flat at Room No. 2, Fourth Floor, E-28/B Lajpat Nagar-II, Delhi in the presence of two independent witnesses. From the rented room one Afghani passport bearing no. 02867826 of accused/petitioner was also recovered and it was revealed that as per the passport, name of the petitioner is Qari Mohammad Hanif Samadi s/o Abdul Samad r/o Near Petrol Pump, Dewan Begi, Khushal Khan, Kabul, Afghanistan.

4. I have heard the Ld. Counsel for the petitioner, Ld. APP for the State and perused the Status Report filed by the State.

5. Learned counsel for the petitioner submitted that the petitioner is an Afghan National who does not know Hindi is being falsely implicated in this case. He further submitted that he is in judicial custody since 27.10.2017 and has undergone more than 5 years 7 months and 22 days. He further



submitted that the petitioner has clean antecedents and no purpose will be served by keeping the petitioner in judicial custody. In support of his contentions, Ld. counsel for the petitioner has also placed reliance on *Anil Mahajan vs. Commissioner of Customs [84(2000) DLT 54]*, *H.B. Chaturvedi vs. CBI [2010 (3) JCC 2109 DHC]*, *Sanjay Chandra vs. CBI [Criminal Appeal No. 2178/2019]* and *Suresh Kalmadi vs. CBI [Bail Appln. 1692/2011]*.

6. On the other hand, learned APP for the State has vehemently opposed the bail application and has argued on the lines of the status report. It is submitted by the Ld. APP for the State that the petitioner is a foreign national who indulged in illegal trafficking of contraband substances and total 1.100 kg Heroin which is commercial quantity has been recovered from the petitioner. He further submitted that from investigation regarding subscribership's of mobile numbers, it has been revealed that the petitioner used mobile phones issued on other person's identity in order to conceal his identity. He further submitted that the petitioner also used two different passports to travel to India which were issued on different name and date of birth in order to evade arrest by law enforcing agencies. Lastly, he submitted that keeping in view the fact that the petitioner is a foreign national, recovery effected from petitioner which is of commercial quantity and the serious allegations against the petitioner, there is strong likelihood of him absconding if released on bail.

7. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India, [(1994) 6 SCC 73]*, the Hon'ble Supreme Court has observed and held as under:



“15. ...We, therefore, direct 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 (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 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order. The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned 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. In the latter case the learned Special Judge will, if he has



reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

- (ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;*
- (iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;*
- (iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;*
- (v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;*
- (vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;*
- (vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and (viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority*



and the Special Court will proceed with them as provided in Section 309 of the Code.”

8. In ***Manoj Kumar Singh vs. The State of West Bengal, [SLP (Crl) No. 4711-4712/2020, decided on 06.10.2021]***, the Hon’ble Supreme Court granted bail considering the fact that the *accused persons are entitled for grant of bail, as they have served more than five years under the judicial custody, following the directives in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India (supra).*

9. In ***Satender Kumar Antil vs. CBI, [Miscellaneous Application No. 1849 of 2021 in SLP (Crl.) No.5191 Of 2021, decided on 11.07.2022]***, the Hon’ble Supreme Court has observed and held as under:

“47. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word ‘shall’ clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule.

Once again, we have to reiterate that ‘bail is the rule and jail is an exception’ coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21.”



10. Reliance can also be placed upon *Jumah Khan vs. The State Govt. Of NCT Of Delhi (BAIL APPLN. 991/2022, decided on 05.01.2023)*, *Rakesh Kumar Bhola vs Directorate Of Revenue Intelligence (BAIL APPLN. 216/2020, decided on 19.10.2022)* and *Sarvan Kumar vs. State (NCT of Delhi) (BAIL APPLN. 956/2022, decided on 18.07.2022)*, wherein the coordinate benches of this court granted bail considering that *the rigors of Section 37 of the NDPS Act would 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.*

11. In the instant case, 525 grams Heroin which is commercial quantity has been recovered from the black colored cloth bag which the petitioner was carrying in his right hand. Furthermore, 575 grams Heroin which is commercial quantity was also seized from a trolley bag kept at his rented flat at Room No. 2, Fourth Floor, E-28/B Lajpat Nagar-II, Delhi. That being the case, as the total recovery is of 1.100 Kgs Heroin which is commercial quantity, it would invite a minimum sentence of ten years extendable 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.

12. However, without going into the merits of this case, considering the period of incarceration as the petitioner has already undergone more than 5 years 7 months and 22 days which is more than half of the minimum sentence of 10 years and since the trial would take a long time to conclude, no fruitful purpose would be served by keeping him detained in prison, therefore, the bail application stands allowed and the petitioner is admitted



to bail on his furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount to the satisfaction of concerned Trial Court subject to the following conditions:

- i) Petitioner will not leave the country without prior permission of the concerned Trial Court and will deposit his passport with the Trial Court;
- ii) The petitioner shall provide his mobile phone number to the Investigating Officer (IO) concerned – at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail;
- iii) The petitioner shall provide his residential address to the Investigating Officer (IO) concerned at the time of release. The petitioner shall not change the same without prior intimation to the IO concerned, during the period of bail;
- iv) The petitioner shall report to the IO on every Friday at 4:00 P.M., unless leave of absence is obtained from the Ld. Trial Court. The IO's telephone number shall be provided to the Ld. counsel for the petitioner;
- v) The petitioner shall not leave the NCT of Delhi without prior permission of the concerned trial court;
- vi) The petitioner shall not indulge in any criminal activity during the bail period.

13. It is made clear that in case these conditions are violated, the State



shall be free to move an appropriate application for cancellation of the grant of bail to the present petitioner.

14. The bail application stands disposed of in the aforesaid terms. Pending applications, if any, are also disposed of accordingly.

15. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

16. Copy of this order be electronically transmitted to Jail Authorities as well as the concerned Trial Court.

RAJNISH BHATNAGAR, J

SEPTEMBER 04, 2023/_p

