



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

% Judgment reserved on : 07.08.2023
Judgment pronounced on: 17.08.2023

+ **BAIL APPLN. 597/2020**

BHASKAR KHATNANI

..... Petitioner

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Yogesh Kumar Saxena, Ms. Priya Saxena, Mr. Vikrant Pandey and Mr. Devyanshu Bharti, Advocates.

For the Respondent : Mr. Subhash Bansal, Senior Standing Counsel and Mr. Shashwat Bansal, Special Counsel.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The applicant has filed the present bail application under Section 439 of Code of Criminal Procedure, 1973 seeking grant of regular bail in Case No. SC/81/19 titled "*Narcotics Control Bureau Vs. Gaurav Mehta & Ors.*" under Sections 21(c), 23 and 29 of



Narcotic Drugs and Psychotropic Substances Act, 1985, pending before the Court of learned Special Judge, NDPS Court, New Delhi.

2. The allegations as set out in the case of the prosecution are that a recovery was made from the house of one accused Gaurav Mehta, who was then arrested and it was on his disclosure statement that the respondent NCB apprehended the applicant Bhaskar Khatnani on 17.08.2018. Upon applicant's statement recorded on the same day, a further recovery at Laxmi Nagar Metro Station was made from one of the delivery boys.

3. As per the prosecution case, a secret information was received on 17.08.2018 in respect of two parcels destined to USA and Canada respectively lying at DHL Express, Rama Road, Kirti Nagar, New Delhi booked by one Gaurav Mehta of Desi Global E Mart. The parcels were suspected to contain narcotics/psychotropic tablets. Further, it was also learnt that the accused Gaurav Mehta was continuously sending narcotics/ psychotropic medicines from his office cum warehouse at K-121, Backside, West Patel Nagar, New Delhi.

4. As per the Panchnamas dated 17.08.2018, a search was first conducted at the DHL office and then at K-121, West Patel Nagar, New Delhi wherefrom a huge quantity of transparent plastic polythenes containing white colour tablets were recovered. On asking the accused Gaurav Mehta, he disclosed that these are vellum tablets,



which he used to send abroad through parcel and further disclosed that these tablets were provided to him by Bhaskar Khatnani who resides in Gurgaon, with Amit Ranjan and some other persons.

5. On further search of the room, one transparent plastic polythene containing white tablets were recovered on which Xanax was written and on further checking the racks of the said room, packets containing different tablets i.e. Alprazolam, Lorazepam, Phentamine, V.C. Don, Clonazepam along with 4 parcels ready to be sent to different foreign destinations were recovered. The total weight of Tramadol recovered was more than 250 gms and the same is a commercial quantity.

6. Accused Gaurav Mehta, in his statement under section 67, NDPS Act recorded on 18.08.2018, disclosed that the medicines recovered from his house were provided by Bhaskar Khatnani. The accused further stated that Bhaskar Khatnani used to supply 20-25 packets per week to him and on the instructions of Bhaskar Khatnani, he used to pick up tablets in strip and loose form of Phentermine, Butalbital, Viagra, Cialias, Tramadol, Zolpidem, Adderall, Hydrocodone etc. from Laxmi Nagar which were provided by accused Manish Mohan through accused Amit Ranjan.

7. The accused Gaurav Mehta further disclosed that he lifted the medicines from the house of Bhaskar Khatnani also, and the parcel that has been recovered from DHL were destined to USA and Canada and were sent by him. Thereafter, on his disclosure, the applicant



herein was apprehended and his house was searched, and forged printed stickers of Xanax, Alprazolam, Hydrocodone Bilartrate, Acetaminophen and Zolpidem Tartrate were recovered.

ARGUMENTS ON BEHALF OF THE APPLICANT:

8. Mr. Yogesh Kumar Saxena, learned counsel for the applicant submits that the accused/applicant was arrested on 18.08.2018 and was sent to judicial custody on 19.08.2018.

9. It is submitted by the learned counsel that nothing was recovered from the applicant and the contraband materials/tablets were recovered from the accused Gaurav Mehta, the applicant in BAIL APPLN. 1257/2022.

10. He also submits that no statement of the applicant was recorded on 17.08.2018 and that he was arrested on 18.08.2018 and disclosure statement was recorded only thereafter.

11. The learned counsel for the applicant brings attention of this court to the various seizures alleged to have been affected on 17.08.2018 and their respective Panchnamas to reflect the discrepancies in the timings of recording of these documents to submit that the said documents are false and forged.

12. The first seizure was affected by a team consisting of Anand Kumar, IO, Sh.Virender Kumar IO, Havaldar Sanjiv Kumar and Driver Babulal at 09:55 hours from the office of DHL Express 71/3, Rama Road, Kirti Nagar, New Delhi. The seizure memo was prepared



by IO Anand Kumar wherein it is alleged that from the two parcels, Activan 2mg tablets and other tablets were recovered. All the proceedings completed at about 12:00 hours.

13. The second seizure was conducted by Rajesh Kumar Yadav IO, Sh. Bhojraj IO, Sh. Anand Kumar IO, Sh. Virender Kumar IO, Sh. Sanjeev Kumar Havaldar, Sh. Babu Lal Meena Sepoy, Sandeep Kumar Sepoy, Sh. N.P. Singh Driver and Sh. Malkeet Singh Driver around 10:00 hours at the warehouse of accused Gaurav Mehta at K-121, West Patel Nagar, New Delhi, wherein tablets of Vellium, Xenax, Alprazolem, Lorezapam 2 mg, Phentermine, 375 Mg. V.C. Don, Clonazepam etc. were recovered. The seizure was concluded at 12:00 hours as per the noting in Panchnama.

14. Third Panchnama was drawn around 15:40 hours at Tower No.6, House No.401, M3M Marlin Sector-67, Gurgaon, Haryana i.e. the residence of the applicant herein. The said seizure concluded at 16:30 hours.

15. Fourth Panchnama was drawn near the stairs of Gate No.2, Laxmi Nagar, Metro Station, Delhi at around 21:00 hours wherein it is alleged that various tablets i.e. V.C. Don, Activan 2mg, Lorezapam, Phentermine, and Lupin-10 were recovered. All the proceedings completed at about 22:10 hours on the same day.

16. On this basis, the learned counsel submits that there are discrepancies in the timings of preparation of the said Panchnamas.



The first 2 Panchnamas were purportedly prepared simultaneously at the same time i.e. 09:55 hours and 10:00 hours respectively but at two different places viz. Kirti Nagar and West Patel Nagar, which is not possible. He further submits that both the seizures in the said Panchnamas have been conducted by the same team of officers.

17. Learned counsel further submits that the places of search in the first 2 Panchnamas were Kirti Nagar and West Patel Nagar. The proximity between the two areas is 2-3 kms and it is not just highly improbable but next to impossible that the teams could have reached the second location, conducted the search and accordingly prepared a Panchnama, all in 5 minutes of time.

18. Learned counsel also refers to the third Panchnama as it is correlated with the Malkhana register. The said Panchnama shows that the proceedings started at the residence of applicant in Gurgaon at 15:40 hours whereas the Entry No.24B in the *Malkhana* register shows that the said recovered material was deposited at 15:50 hours, which is not possible. The said Malkhana is located at R.K. Puram and again, it is impossible to reach there from Gurgaon in just 10 minutes of time.

19. He also relies upon the special flow chat filed by the respondent NCB to further indicate the discrepancies in the timings of conduction of searches in the Panchnamas on the one hand and the version of the prosecution on the other. Learned counsel submits that such



discrepancies raise a reasonable doubt, enough to weaken the prosecution case, in favour of the applicant.

20. He further submits that the clash in the timings mentioned in the Panchnamas is only possible if the raiding team did not prepare the documents at the place of raid/search, rather at their offices. The learned counsel submits that these discrepancies point towards the ill conduct of the officers who fabricated the said documents and thus, these documents cannot go through the scrutiny of law.

21. Learned counsel for the applicant brings the attention of this court to another Panchnama drawn for raid conducted at co accused Pulkit Kumar's house, at Page 396 of the present petition, wherein the investigating officer notes that on disclosure by the applicant, the raiding team alongwith the applicant Bhaskar Khatnani left from the applicant's house in Gurgaon at 16:40 hours and travelled together to another accused Pulkit's house in Noida. The said Panchnama is timed as 18:10 hours and as per the same, the team alongwith the applicant were in Pulkit's house till 19:30 hours. On this basis, learned counsel submits that the said disclosure of the applicant which is timed at 19:00 hours is fabricated as how would the team get the time to record the disclosure statement of the applicant when infact, they were at Pulkit's house in Noida conducting raid.

22. He further submits that the applicant has been shown to be arrested on 18.08.2018 as per their own complaint whereas the



information purported to be supplied by him to the respondent was on 17.08.2018 which further reflects the loophole in respondent's made up case against the applicant herein.

23. Learned counsel for the applicant refers to the first Panchnama drawn at the DHL office to submit that the said Panchnama gives a detailed description of the packaging and appearance of the contraband seized from there but there is no mention of any sticker on or alongwith the said seized medicines. On this basis, he submits that there is not interlink between the actual seizures of contraband and the stickers recovered from the applicant herein.

24. Learned counsel also submits that the applicant has been apprehended on the basis of the disclosure statement of another accused person and the same is a matter of trial and needs to be proved in accordance with law.

25. It is submitted by the learned counsel that the Section 27 of Indian Evidence Act, 1872 makes the said recorded statement of the applicant exculpatory. He relies on the judgment of the Supreme Court in *Tofan Singh Vs. State of Tamil Nadu* reported as (2021) 4 SCC 1 wherein it was held that confessions made to NDPS officers by the accused are inadmissible in evidence.

26. Learned counsel for the applicant relies upon the judgment of the Supreme Court in *Rabi Prakash vs. The State of Odisha*, SLP (Crl.) No(s).4169/2023 rendered on 13.07.2023 to submit that the



fundamental right guaranteed under Article 21 of the Constitution of India must override the statutory embargo created under Section 37 of the NDPS Act. On this basis, learned counsel submits that the applicant has been in incarceration for a period of 4 years and is entitled to be considered for enlargement on bail.

27. He further relies upon the judgement of the coordinate bench of this court in BAIL APPLN. 1383/2022 titled as ***Phundreimayum Yas Khan vs. State (GNCT of Delhi)*** dated 11.01.2023 which reiterates the ratio laid down in ***Tofan Singh (supra)***.

28. Learned counsel also submits that five years have passed since the applicant was arrested on 18.08.2018 and yet, the case has only reached the stage of framing of charges. He further submits that the examination of witnesses is yet to commence and it is apparent that the trial will take a long time to conclude.

29. He further submits by referring to the Nominal Roll that there is no previous involvement of the applicant and the jail conduct of the applicant is also satisfactory, as also admitted by the prosecution.

30. It is submitted by the learned counsel for the applicant that the co-accused persons viz. Amit Ranjan and Manish Mohan have since been granted bail and another co-accused Pulkit Kumar has been discharged in the present case. On that, learned counsel submits that the case against the applicant is similar to that of the co-accused



persons and requests that the applicant may also be enlarged on regular bail.

ARGUMENTS ON BEHALF OF THE RESPONDENT:

31. *Per contra*, Mr. Subhash Bansal, Senior Standing Counsel for respondent NCB submits that as per the Panchnama, a search of Bhaskar Khatnani was conducted by the NCB but no drugs or psychotropic substance was recovered from his house. On further search, heavy quantity of forged stickers of Roxicodone, Xanax, Alprazolam tablets, Hydrocodone Bitartrate and Acetaminophen tablets, Zolpidem tartrate tablets were recovered.

32. He further submits that the stickers recovered during the search were found similar to the stickers which were seized alongwith the medicines from other co-accused person. He refers to the second Panchnama and submits that Xanax boxes recovered from the premises of accused Gaurav Mehta had the same stickers as the ones recovered from the applicant.

33. Learned counsel further submits that at the instance of the applicant/accused Bhaskar Khatnani, a search party was conducted and a seizure was done at Laxmi Nagar Metro Station which clearly points towards the involvement of the applicant in the drug trafficking racket.

34. Learned counsel for the respondent submits that not only there is a recovery on the instance of applicant, but there are chats of the



applicant with co-accused Gaurav Mehta from whom there is a direct recovery.

35. He further submits that during the raid conducted at the house of the applicant on 17.08.2018, the various forged wrappers of medicines were recovered from the applicant which as per their case, were used for sticking on the psychotropic medicines for the purpose of trafficking.

36. Learned counsel for the respondent NCB submits that this is a case of illegal drug trafficking racket involving many persons having different roles to play. It is a conspiracy involving sourcing, packaging and sending illegal drugs through couriers to different countries and as such, the contraband passes many hands. He further submits that it is not necessary that contraband will be recovered from each of the accused persons involved in the transaction and as such, even without the recovery, the applicant can be tied to the crime.

37. The learned counsel for the respondent submits that the distance between Kirti Nagar and West Patel Nagar is barely 2-3 kms and can be easily covered in 10 minutes and thus, submits that there is no discrepancy in the first two Panchnamas as argued by the learned counsel for the applicant.

38. Learned counsel submits that the secret information was received by them around 08:00 hours. The first seizure as per the first Panchnama was conducted at DHL Express office, Kirti Nagar from



where 2 parcels containing contraband were recovered. The second seizure was from the office/godown of co-accused Gaurav Mehta in West Patel Nagar around 10:00 hours. He submits that one cannot go into these technicalities at this stage as it is a matter of trial.

39. He further submits that it is an admitted fact that the seizures were conducted and contraband was recovered and the same has not been challenged by the applicant.

40. On query by this court as to how the present case is not affected by the judgment in *Tofan Singh (supra)*, the learned counsel for the respondent submits that there is a difference between a confession and a statement. Section 27 of Indian Evidence Act, 1872 (hereinafter referred to “IEA” in short) deals with discovery of facts and Section 25 of IEA deals with confession. He further submits that a statement *per se* doesn’t become inadmissible but wherever there is a clear confession of guilt, the same is hit by Section 25 of IEA and as such, need not be proved as against a person accused of any offence. Learned counsel submits that in the present case, the statement of the applicant has only given some facts which can be corroborated by leading evidence or examining the witnesses.

41. Learned counsel for the respondent places emphasis on the disclosure statement given by the applicant on 17.08.2018, wherein he stated that there is a consignment of contraband supposed to be received by him at Laxmi Nagar Metro Station, Gate no. 2, in between



21:00 to 22:00 hours on the same day, which will be delivered by the sales boys of the co-accused Manish Mohan who runs Vinay Pharmaceuticals.

42. It is submitted by the learned counsel that upon this information provided by the applicant, a raiding team was formed and a recovery was made exactly at the same place, time and manner as was described by the applicant in his disclosure statement. He also submits that even the sales boy Pankaj Pandit who delivered the cartons of tablets at Laxmi Nagar Metro Station was confirmed to be working at Vinay Pharma Store associated to co-accused Manish Mohan.

43. On this basis, learned counsel for the respondent submits that a recovery made solely at the instance of the applicant is extremely relevant in the present case as it clearly points towards his involvement in the offences as alleged to be committed by him.

44. Learned counsel for the respondent further submits that the said statements of the accused persons stands corroborated by the chats between them, which are supported by a certificate under Section 65-B of IEA.

45. As per the CDR details of mobile number used by the applicant Bhaskar Khatnani, it was found that he was in constant touch with accused Gaurav Mehta and other co accused persons. In this regard, learned counsel refers to the chats and Forensic Examination Report dated 06.11.2018 from the LCR, particularly the chat between the



applicant and co accused Gaurav Mehta at Page 1348 and submits that there is a clear discussion of the stock, quantity, rates and orders for the medicines such as Valium lypin, Xanax, Oxy, Phentramine, Adderall, Ritalin etc.

46. Learned counsel submits that there are tracking numbers, addresses for delivery, money transfers etc. exchanged in the chats between the applicant and co accused Gaurav Mehta. He further submits that the accused persons were running a whole business of trafficking illegal psychotropic medicines.

47. He also submits that as per Section 66 of the NDPS Act, there is a presumption about the documents seized from the custody or control of any person, which covers the chats between the accused persons.

48. Learned counsel refers to Section 8 of the IEA to submit that the prior conduct of the applicant, with regard to the chats recovered from the applicant's mobile phone, is relevant to the case and stands established as against the applicant.

49. Learned counsel also refers to Section 35 of the NDPS Act, 1985 to submit that there is a presumption with regard to the culpable mental state of the accused which includes intention, motive and knowledge of the facts. On this basis, he submits that the chats between the applicant and the accused Gaurav Mehta clearly proves the complicity and culpability of the applicant.



50. Learned counsel relies on the judgment dated 19.07.2022 of the Hon'ble Supreme Court in *Narcotics Control Bureau Vs Mohit Aggarwal* reported as **2022 SCC OnLine SC 891** wherein it was held that the length of incarceration is by itself not a consideration that can be treated as a persuasive ground for granting relief under Section 37 of the NDPS Act and submits that the said judgment is squarely applicable to the present case due to the similarity in facts, and the applicant may not be enlarged on bail.

REBUTTAL BY THE APPLICANT:

51. Learned counsel for the applicant refers to the order of charge dated 05.06.2023 to submit that the learned Trial Court has observed the shortcomings in the chats and on this basis, he submits that the data of the mobile phone is fabricated.

52. He further submits that nothing has been recovered from the possession of the applicant and except statements of the applicant and co-accused persons under Section 67 of NDPS Act, there is nothing against the applicant and the case has been based on fabricated documents.

53. It is further argued that the recovery made from Laxmi Nagar cannot be attributed to the applicant and those two persons who were caught with medicines there have not been made witnesses by the prosecution.



54. With the aforesaid submissions, learned counsel for the applicant concludes that as there is no material evidence against the applicant and as the applicant has already spent 4 years in incarceration and has never misused bail granted before, he is entitled for and may be enlarged on bail in the present case.

ANALYSIS AND CONCLUSIONS:

55. This court has considered the arguments of the learned counsel for the applicant as well as the learned standing counsel for the respondent NCB.

56. Mr. Yogesh Saxena, learned counsel for the applicant has delved deep into the facts of the entire case, however, this Court is of the opinion that at the stage of considering bail application, only general reference to the facts would suffice, lest the observations prejudice either side. In that background, this Court proceeds to consider the bail application.

57. The case, according to the prosecution is that it is on the disclosure statement of one Gaurav Mehta, a co-accused, that the name of the applicant was revealed. On that basis, raid was conducted at the residence of the applicant and a huge number of fake stickers, alleged to be of medicines etc. were recovered and seized. It is undisputed that no recovery of actual contraband or any medicines etc. was at all made from the premises of the applicant.



58. That the prosecution has also alleged that it was upon the disclosure statement of the applicant that the officers of the respondent NCB were able to apprehend other co-accused persons namely, Pulkit Kumar, Manish Mohan and Amit Ranjan. It is further alleged that a recovery was made from Laxmi Nagar Metro Station at 21:00 hours from whose possession 2000 strips of tablets of V.C. Don (Hydrocodone) was seized at the spot, at the instance of the applicant. Thus, the prosecution claims that the applicant had knowledge of the transaction that was about to occur, establishing the clear complicity.

59. That apart, the prosecution also hinges the applicant's culpability and complicity in the offences on the basis of CDR call records as also the messages exchanged between the applicant and Gaurav Mehta, another co-accused from whose premises, illegal psychotropic medicines were recovered in commercial quantity. Thus, according to the prosecution, the applicant is the link in the entire chain of circumstances whose presence is natural and the entire transaction has to be appreciated holistically.

60. It is also the case of the prosecution that the fake stickers that were recovered from the house of the applicant were the same which were present on the boxes in which contraband was seized from co-accused Gaurav Mehta's premises. Thus, according to the prosecution, the same stickers being recovered from the applicant, establishes the culpability and complicity of the applicant to the crime.



61. This court has perused the records meticulously alongwith Mr. Saxena, particularly the 5 Panchanamas which were alleged to have been drawn up by the raiding team from the morning at 9:55 hours till the evening hours on 17.08.2018 to show discrepancies in the timings, the material alleged to have been recovered, the improbability of the raid etc., to submit that the applicant has been falsely framed in the present case. In the opinion of this Court, the aforesaid issue is subject to proof and would require trial and thus, this Court refrains from making any observations on that aspect.

62. It is alleged that the raid at the premises of the applicant resulted in seizure of, what the prosecution terms as “fake stickers” of the medicines which were also alleged to have been found on the boxes containing the medicines etc. seized during raid at other premises. Even if it is assumed, for the sake of arguments, that some stickers were indeed recovered in the raid at the house of the applicant, it is not disputed that no contraband, or any other psychotropic substance was recovered and therefore, the applicant cannot be held to be in possession of any contraband at all to fall within the offences under the NDPS Act, 1985.

63. Since it is also on record that the suspicion upon and the subsequent arrest of the applicant was only upon the disclosure statement recorded under section 67 of the NDPS Act of the co-accused Gaurav Mehta, coupled with the fact that no contraband etc. were recovered from the possession of the applicant, the ratio of the



judgement of Supreme Court in ***Tofan Singh vs. State of Tamil Nadu*** reported in ***(2021) 4 SCC 1*** would be squarely applicable to the facts arising in the present case. The arguments of learned counsel for the respondent regarding non applicability of the ratio laid down in ***Tofan Singh (supra)*** in respect of confession or statement is concerned, the same are untenable for the reason that the distinction is irrelevant inasmuch as officers of the NCB have been considered to be “Police Officers” and thus, the inculpatory part of such disclosure statement would necessarily have to be eschewed from consideration. The relevant para of the aforesaid judgement is extracted hereunder:

"158. We answer the reference by stating:

158.1 That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

64. There is nothing placed on record to show the previous involvement of the applicant in similar offences read with the fact that no contraband or such offensive/psychotropic material was recovered from his possession coupled with the fact that the applicant was arrested on the basis of the disclosure statement of the co-accused, the rigours of section 37 of the NDPS Act, itself would be inapplicable.



65. That apart, the applicant has been in incarceration for almost 4 years excluding the period of interim bail and shall also be entitled to consideration for release on bail in view of the ratio laid down by the Supreme Court in the judgements in the cases of ***Rabi Prakash vs. The State of Odisha***, SLP (Crl.) No(s). 4169/2023, ***Mohd Muslim @ Hussain vs. State (NCT of Delhi)***, Crl.A. No. 943/2023 and ***Biswajit Mondal @ Biswajit Mandal vs. The State of West Bengal***, Crl. A. No. 450/2023 in respect of embargo in section 37 NDPS Act being subservient to the provisions of Article 21 of the Constitution of India. In these cases, the Supreme Court held as under:

- (a) ***Rabi Prakash vs. The State of Odisha***, SLP (Crl.) No(s). 4169/2023 rendered on 13.07.2023 :-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

- (b) ***Mohd Muslim @ Hussain vs. State (NCT of Delhi)***, Crl.A. No. 943/2023 rendered on 28.03.2023 :-

“19. A plain and literal interpretation of the conditions under 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence)



would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation as held in *Union of India v. Rattan Malik*. Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country of these 122,852 were convicts; the rest 4,27,165 were under trials."



(c) ***Biswajit Mondal @ Biswajit Mandal vs. The State of West Bengal***, CrI. A. No. 450/2023 rendered on 14.02.2023 :-

“The appellant seeks enlargement on bail in FIR No.303/2021 under Sections 21(c)/29 of the NDPS Act. The appellant has undergone a sentence of about 1½ years. The trial has just begun and no other criminal antecedents qua the aforesaid act of drug use. The material detected is the medicine Codenine but of 10 litres. Taking in to consideration the period of sentence undergone by the appellant and all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court.”

66. Keeping in view the facts that are placed on record, coupled with the fact that in the present case, the embargo under section 37 NDPS Act is not attracted and considering the ratio laid down by the Supreme Court in the aforesaid judgements, this Court is of the view that the applicant is entitled and is thus, directed to be enlarged on regular bail on stringent conditions, which shall be enumerated subsequently.

67. Hence, the applicant is enlarged on regular bail on a personal bond in the sum of Rs.1,50,000/- with 2 sureties of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions :-

(a) He shall surrender his passport, if any, to the Court concerned and shall under no circumstances leave Delhi-NCR without prior permission of the Court concerned;



- (b) He shall cooperate in the trial and shall appear before the Court as and when required;
- (c) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- (d) He shall not indulge in similar or other criminal activity of any nature whatsoever;
- (e) He shall provide his mobile number(s) to the Investigating Officer and keep it at his person and operational at all times;
- (f) He shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer;
- (g) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/ Court concerned by way of an affidavit; and
- (h) He shall inform the IO about the movement or visitation to any city or State out of Delhi-NCR at least 48 hours before such travel and shall also inform the IO about the return. He shall contact the IO everyday evening at 7 PM so long as he is out of Delhi-NCR.

68. Any infraction of the aforesaid conditions shall make the applicant liable for the revocation of this bail.



69. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

70. The application is disposed of in the above directions.

TUSHAR RAO GEDELA, J.

AUGUST 17, 2023

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