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

+ **BAIL APPLN. 1225/2022**

VED PRAKASH @ MISTRI

..... Petitioner

Through: Ms.Sushma Sharma, Mr.Girish
Kumar Sharma, Mr.Karan Verma and
Ms.Ayushi Gaur, Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr.Amit Sahni, APP for the State.
SI Neeraj Chahal, Special Cell, NR &
STF
(Mobile No.9910116077)

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Date of Decision: 06.01.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 7300/2022 (exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

BAIL APPLN. 1225/2022

1. Present application has been moved for regular bail in case FIR No.0040/2015 under Section 21 (1) of NDPS Act, 1985 registered at PS Special Cell.

2. Case of the prosecution is that on the basis of surveillance and intelligence inputs, accused Ram Pal was apprehended on 24.05.2015 and from his possession 1 kg heroine was recovered from the dicky of his motorcycle no. DL-13SG 2747. During the course of investigation accused Rampal disclosed that recovered heroine was purchased by him from the present petitioner namely Ved Prakash @ Mistri. On the basis of this information the petitioner was arrested on 25.05.2015. Subsequently, other accused persons namely Shabrati Shah @ Sabir and Shakir Ali were also arrested. After investigation, the charge sheet was filed against the accused persons and the charges were framed on 30.10.2017.
3. Learned counsel for the petitioner submits that as per the custody certificate issued by office of the Deputy Superintendent of Prison, Central Jail No.03, Tihar, New Delhi dated 31.12.2022, petitioner has undergone custody of 5 years, 3 months and 19 days. Learned counsel submits that since the custody of the petitioner is of more than 5 years, he is entitled to be admitted to bail in view of the judgment of the Supreme Court in *Supreme Court Legal Aid Committee vs. Union of India* (1994) 6 SCC 731. Learned counsel submits that coordinate benches of this court have followed the judgment of the supreme court and granted bail to the persons whose custody in cases are beyond five years. Reliance has been placed upon the order dated 07.09.2022 in Bail Appln. No.1182/2022 titled *Jagannath vs. State (NCT of Delhi)*, order dated 24.11.202 in Bail Appln.2737/2022 titled *Nabi Alam @ Abbas vs. State (Govt. of NCT of Delhi)* and judgment dated

14.12.2022 in Bail Appln.2630/2022 titled as ***Johri vs. State (NCT of Delhi)***.

4. Learned APP for the state has submitted that the petitioner is a source of supply of heroine and has actively participated in the commission of the offence in the present case. It has been submitted that charge under 29 NDPS Act has already been framed. Learned APP submits that if the accused is released on bail he may not be available for trial.
5. I have considered the submissions and perused the record.
6. In ***Supreme Court Legal Aid Committee*** (supra), it was inter alia held as under:

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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 31A 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 under-trials 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.

7. It is a matter of record that the petitioner has been charged for the offence punishable under Section 29 of the NDPS Act being in relation to the abatement and criminal conspiracy qua alleged commission of the offence punishable under Section 21 of the NDPS Act.
8. Section 21 of the NDPS Act provides as under:

[21. Punishment for contravention in relation to manufactured drugs and preparations.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend 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:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

9. Thus, bare reading of Section 21 (c) of the NDPS Act makes it clear that the minimum punishment provided is 10 years which may extend to 20 years.
10. The coordinate benches of this court in the order dated 07.09.2022 in Bail Appln. No.1182/2022 titled *Jagannath vs. State (NCT of Delhi)*, order dated 24.11.202 in Bail Appln.2737/2022 titled *Nabi Alam @ Abbas vs. State (Govt. of NCT of Delhi)* and judgment dated 14.12.2022 in Bail Appln.2630/2022 titled as *Johri vs. State (NCT of Delhi)* have followed the dictum of the Supreme Court in *Supreme Court Legal Aid Committee (supra)*.
11. Taking into account the totality of the facts and circumstances of the case, the petitioner is admitted to bail on furnishing bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount of the like amount to the satisfaction of the trial court, subject to the following conditions:
 - he shall deposit his passport with the Special Court concerned within one week from date of release and if it is submitted on behalf of the petitioner that he does not have any passport, the petitioner shall file an affidavit to the effect before the Special Judge concerned and furthermore the said aspect shall also be verified by the Investigating Officer qua the aspect of the petitioner not having been issued any passport;
 - he shall on being released on bail present himself through video conferencing on Tuesday of each week from the date of his release at PS Special Cell,

- he shall not leave the area of Bareilly except with the permission of the learned Special Judge concerned;
12. With the above directions, the bail application stands disposed of.
 13. Copy of the order be sent to the concerned Superintendent of Prison, Central Jail for information and compliance.

DINESH KUMAR SHARMA, J

JANUARY 06, 2023/rb

