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

+ **BAIL APPLN. 1875/2021**

DEVENDER SEN

..... Petitioner

Through: Mr.Kamal G. S, Mann and Mr.
Vikrant Pandey, Advs.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Adv. Sr.
Standing Counsel for NCB with Mr.
Shashwat Bansal, Adv. (VC)

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Date of Decision: 06.09.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 24356/2023 in BAIL APPLN. 1875/2021

1. This is an application seeking early hearing.
2. Learned counsel for the petitioner submits that the petitioner has already undergone custody of around five years.
3. In view of the above, early hearing is allowed and matter is taken up

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for hearing.

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4. The present petition has been under section 439 CrPC seeking grant of regular bail in SC No. 93/2018 u/s 20 (C)/23 read with 29 NDPS Act in case titled “*NCB vs Devender Sen and Ors*”.
5. As per Nominal Roll, the petitioner has been in custody since 25.09.2017 and has undergone custody for more than five years.
6. Learned counsel for the petitioner submits that the petitioner is entitled to be admitted to bail in view of the judgment passed by the Hon’ble Supreme Court in *Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India*, (1994) 6 SCC 731.
7. Briefly the facts as per the status report are that on the basis of information, a search was conducted by the NCB Team on 07.12.2017 wherein a Courier Parcel was seized bearing Airway bill no, 3048407936 at UBX Courier and sender as per details was Jenish Lama and the parcel was destined to Pontel, France. Upon search of said parcel, it was found to contain 70 religious books, and on cut-open, the board of the books it was found to contain a dark-brown colour substance on Field-Testing Kit gave a positive result for Charas. In a similar manner, all 70 books had positive results for Charas, and the total quantity of recovers came out to be 06.5(M) Kgs of Charas. Subsequently, charas was concealed from the religious books. Further, during the investigation, it was found that the parcel



was booked from 'OVERNITE EXPRESS' Courier Shop, Agra, and upon the inquiry, the area manager of OVERNITE EXPRESS Mr. Pawan Kumar Pandey revealed that one person who came to book the parcel gave the ID in the name of Jenish Lama and Pawan Kumar Pandey informed that they had also taken the ID of the said person who came to book the said Parcel which disclosed the name of Devender Sen. During the investigation, on 09-12-2017, the NCB team reached the address of Devender Sen who disclosed that the parcel concealing the Charas in the religious book was delivered to him by his friend Ram Avtar Tyagi which was actually sent to him by Vikrant Gurung a Nepal National, who further admitted that he had sent this parcel from Nepal through a bus, which was received by Ram Avtar Tyagi and delivered to Devender Sen, wherein he admitted his involvement in the commission of crime and booking of the parcel on 05.12.2017. Subsequently, the accused Devendra Sen was arrested on 10-12-2017"

8. Learned counsel for NCB has also fairly submitted that the accused is in custody for more than 5 years. Learned Counsel has further stated at BAR that the charges have been framed under Section 20(C) and 29 of NDPS Act.
9. The punishment provided under Section 20(C) of NDPS Act is 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. Similarly, punishment prescribed under Section 29 of NDPS act is that the offender shall be punished with the punishment provided for the offence.

10. In ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India***, (1994) 6 SCC 731. It has been *inter alia* held as

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(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."*

11. In light of the above, applying the law that has been laid down by the Supreme Court in ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India***, (1994) 6 SCC 731, the petitioner is admitted to Court bail subject to the following terms and conditions:

- a. The Petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount, one of them should be the relative of the Petitioner, to the satisfaction of the Trial Court;
- b. The Petitioner is directed to deposit his passport with the Trial Court.



- c. The Petitioner is directed to reside in Delhi till further orders and the address shall be verified by the learned Trial Court at the time of acceptance of bail bonds.
- d. The Petitioner shall not leave NCT of Delhi without the prior permission of the trial Court;
- e. The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;
- f. The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;
- g. In case it is established that the petitioner has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the petitioner shall stand cancelled forthwith.

12. In view of the above, the present bail application stands disposed of.

13. Let a copy of this order be communicated to the concerned Jail Superintendent.

14. The next date i.e. 02.11.2023 stands cancelled.

DINESH KUMAR SHARMA, J

SEPTEMBER 6, 2023/Pallavi