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

+ **BAIL APPLN. 1766/2023**

DURGESH @ MANGAL

..... Petitioner

Through: Ms. Mugdha and Mr. Kamran
Khwaja, Advs.

versus

STATE OF GNCT DELHI

..... Respondent

Through: Mr. Shubhi Gupta, APP for the State
with SI Sandeep Yadav, PS Special
Cell.

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Date of Decision: 24th May, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present bail application has been filed under Section 439 read with 436A and 482 of Cr.P.C. seeking regular bail in case FIR No. 63/2015 registered at PS Special Cell, New Delhi under Sections 21/29/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985. Chargesheet qua the petitioner was filed under sections 419/468/471/474 of IPC, under sections 18/21/22/29/61/85 of NDPS Act. The petitioner was charged for offences under sections 21 r/w 29

and 18/22 r/w 29 of NDPS Act vide order dated 17.03.2018.

2. Learned counsel for the petitioner submits that admittedly the petitioner is in custody since 18.11.2015. Learned counsel submits that the petitioner has been incarcerated for the last 7 years and 6 months in jail, without completion of the trial.
3. It has been submitted that in view of the judgement of the Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India*** (1994) 6 SCC 731, the petitioner should be enlarged on bail. In the said judgement, it was *inter alia* held as under:

“15. ...We, therefore, direct as under:

...

(iii) Where the under trial 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.”

4. Learned counsel for the petitioner has further placed reliance on a recent decision of the Hon'ble Supreme Court in ***Mohd. Muslim Hussain vs. State (NCT of Delhi) Criminal Appeal No. 943 of 2023***. Learned counsel submits that the petitioner having undergone over 7 years of incarceration is squarely covered by the aforesaid judgements. Learned Counsel submits that therefore, in light of the

above judgements, the petitioner is entitled to be admitted on regular bail.

5. Issue notice.
6. Learned APP for the State has accepted the notice.
7. Learned APP submits that the facts in the instant case are serious in nature and therefore bail may not be granted.
8. I have considered the submissions. The verdict of the Hon'ble Supreme Court in "***Supreme Court Legal Aid Committee representing Undertrial Prisoners Vs. Union of India***" (Supra) has been followed by this Court in several cases, which includes judgement dated 21.03.2022 in Bail Appln. 1724/2021 titled ***Anil Kumar @ Nillu vs State***; judgement dated 22.12.2022 in Bail Appln. 3638/2021 titled ***Anil Kumar vs. DRI***; judgement dated 21.12.2021 in Bail Appln. 2477/2021 titled ***Atul Aggarwal vs. Directorate of Revenue Intelligence***; judgement dated 31.05.2022 in Bail Appln. 3705 - 4187 of 2020 titled ***Ebera Nwanaforo and Frank Vitus vs. Narcotics Control Bureau***; judgement dated 11.11.2022 in Bail Appln. 891/2022 titled ***Tasawwur Hussain @ Tasawwur vs. DRI***; judgement dated 05.01.2023 in Bail Appln. 991/2022 titled ***Jumah Khan vs The State Govt. of NCT of Delhi***. In the said judgements, this court has granted bail to the accused therein, in terms of the principles laid down in ***Supreme Court Legal Aid Committee (supra)***.
9. Without going into the merits of the case and taking into the account the period of incarceration of the accused, the petitioner is admitted to bail on furnishing a personal bond of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the trial court subject to the

following conditions:

1. The petitioner shall cooperate and appear before the concerned IO as and when directed;
2. The petitioner shall not leave the city without prior permission of the court concerned;
3. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
4. The petitioner shall provide his/her mobile number (s) to the Investigating Officer and keep it operational at all times;
5. In case of change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

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

11. Order *dasti*.

DINESH KUMAR SHARMA, J

MAY 24, 2023

Pallavi