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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON 29.03.2023

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PRONOUNCED ON 01.05.2023

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BAIL APPL. 6/2023

SATNAM SINGH @ BANTI

..... Appellant/petitioner

Through: Mr. Sumit Sharma, Advocate.

Versus

STATE

..... Respondent

Through: Mr. Amit Sahni, APP for the State
with SI Dharmender, Spl. Cell,
Rohini

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BAIL APPL. 2919/2021

MANJIT SINGH

..... Appellant/petitioner

Through: Mr. Sumit Sharma, Advocate.

Versus

STATE

..... Respondent

Through: Mr. Amit Sahni, APP for the State
with SI Dharmender, Spl. Cell,
Rohini

+

BAIL APPL. 2893/2022

KRISHNA DEVI

..... Appellant/petitioner

Through:

Versus

STATE

..... Respondent

Through: Mr. Amit Sahni, APP for the State
with SI Dharmender, Spl. Cell,
Rohini

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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 applications have been filed under section 439 Cr. P.C seeking bail by the applicants namely Satnam Singh, Manjit Singh, and Krishna Devi for offences punishable under section 21/22/29/61/85 NDPS Act in case FIR No.10/2016 dated 18.03.2016 registered at PS Special Cell.
2. The bail applications filed by Manjeet Singh; Satnam Singh and Krishna Devi before the Ld. Spl. Judge, NDPS/N. Delhi in case titled “*State vs Manjeet Singh & ors*” were rejected vide a detailed order dated 09.07.2021; 16.07.2022 and 23.08.2022 respectively.
3. Briefly stated facts of the case are that on receipt of a secret information, FIR No.10/2016 got registered on 18.03.2016 at PS Special Cell under sections 21/61/85 NDPS Act, 1985 against the three accused namely Satnam Singh @ Banti, Manjit Singh, and Krishna Devi. It is alleged in the FIR that on 17.03.2016 one secret informer informed the S.I. (special cell) that ‘one man namely Manjeet, who is a resident of Jalandhar, Punjab, does a business of supplying heroin in Delhi from Haridwar, will come at Mukarba Chowk Delhi between 9:45 pm - 10:45 pm to give the consignment of heroin to his contact. It was informed that this person namely Manjeet will come in his Fortuner car’. This information was conveyed to ACP Special who, on receipt of this information immediately gave orders to conduct a raid and take appropriate action. At around 9 pm at the instructions of Insp. Attar Singh a raiding party consisting of S.I.

Bijender Singh along with HC Hawa Singh, HC Suresh, Ct. Devender, Ct. Parvej Alam, and Ct. Parveen along with the secret informant reached the Mukarba flyover, at about 9:50 pm SI Bijender Singh briefed his accompanying staff of the raiding party and spread the staff on the blockade. At about 10 pm one white colour Fortuner car stopped and Manjeet came out from the car. At about 10:15 pm S.I. Bijender alongwith the accompanied staff went to Manjeet. SI told Manjeet about the secret information he received about him doing the business of supplying heroin in Delhi from Haridwar. Manjeet was told that, given the facts, there was every possibility of recovery of contraband from him and therefore his search was to be conducted. Having informed this Manjeet was also made aware of his legal right of giving his search before the nearest gazetted officer or magistrate. He was also informed that he could take a search of any member of the raiding party before his search. In this regard written notice under section 50 NDPS Act was served upon Manjeet, and the contents of the notice were made understood to him. Manjeet did not express his desire to be searched before any gazetted officer or magistrate or to take search of any member of the raiding party before his search. The refusal was recorded by SI Bijender. Thereafter SI Bijender Singh took his cursory search but no contraband was recovered from his bodily search. The SI then conducted a search of the Fortuner car and one green coloured bag having transparent polythene inside it was found which was having light brown coloured powder which was checked with a testing kit and it was found to be heroin. On weighing upon an electronic scale, heroin in polythene was found 1 Kg. The

polythene was marked A. Out of this quantity 2 samples of 5 gms heroin each were taken out and were marked A1 and A2. The remaining 990 gms of heroin along with a transparent polythene packet were packed in a separate cloth parcel. FSL form was filed up. All these three parcels along with the FSL form were taken into possession through a seizure memo. A rukka was prepared and sent to PS Special Cell, Lodhi Colony, Delhi.

On interrogation by Insp. Attar Singh and ACP Nishant, Manjeet disclosed that the recovered 1 kg heroin was handed over to him by Satnam Singh @ Bunty in Haridwar on 17.03.2016. On receipt of this information, S.I. Parveen was briefed about the location of Satnam Singh as per the mobile number used by him. S.I. Parveen surveyed the area frequented by Satnam Singh as per CDR of various mobile numbers used by him from time to time. On 18.03.2016 SI Parveen received a secret information that 'Satnam Singh would come near the main gate of Mahanagar Colony, Bareilly, UP between 6:30 pm to 7:00 pm to deliver heroin to one of his contacts.' At about 6:40 pm a person was coming out from the colony and stated that he was Satnam Singh. He was made aware of his rights. A written notice under section 50 NDPC Act was served upon him and he was made to understand the contents of the notice. It is alleged that Satnam Singh did not express his desire to be searched before any gazetted officer or magistrate or to take search of any member of the raiding party before his search. His refusal was duly recorded. Thereafter search was carried out and a red bag was taken from Satnam which he was carrying in his right hand. Transparent polythene wrapped in Hindi

Newspaper containing a light pink coloured substance in powder form was found which was found to be heroin. The weight of the polybag was 500 gms out of which 2 samples of 5 gms each were taken out and kept in separate packets marked as B1 & B2. The remaining 190 gms of heroin was converted into a separate parcel marked as B. All three parcels along with the FSL form were handed over to Ct. Abhishek.

During the interrogation, Manjeet Singh had further disclosed that he used to supply heroin to small drug peddlers in Punjab including Krishna Devi. Thereafter on 20.03.2016, a raid was conducted in the house of Manjeet Singh but no incriminating substance was recovered from there. Efforts were also made to trace the remaining accused persons in Jalandhar and other parts of Punjab. On 21.03.2016 through a secret informant, it was found that Krishna Devi would be meeting one of her contacts at around 10:15 pm. Krishna Devi was thereafter apprehended near Bhaguran Road. She was briefed about the facts. A notice under section 50 NDPS Act was served to her and she was made to understand the contents of the same. She did not express her desire to be searched before any gazetted officer or magistrate. Her refusal was recorded. Thereafter her bodily search was conducted by Lady Ct. Bhagwati by taking her inside the car. No heroin or any other drug was recovered from her bodily search. Thereafter in pursuance of her disclosure statement she was taken to her house in Langdoya Colony, Distt. Nawasher, Punjab, and search of her house was conducted. From a room situated at first floor of her house in an Almirah, a green colour polybag having

transparent polythene inside it was found containing a light pink coloured substance which was found to be heroin. It weighed 275 gms marked as C out of which 2 samples of 5 gms each were taken marked as C1 & C2. Her jewellery item i.e. Kooka was also taken into police possession vide a separate seizure memo. Information regarding her arrest was given to her family members and local police.

4. After completion of Investigation Charge sheet was filed and the charges were framed against each accused person vide framing of charge order dated 22.09.2016 and the accused persons were charged under section 21(c) r/w Section 29 of NDPS Act. The prescribed punishment for offence committed under section 21(c) is imprisonment of 10 years which may extend to 20 years and fine of Rupees One Lakh which may extend Two Lakh Rupees.

5. Section 21 (c) of NDPS Act reads as under –

“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”

6. Section 29 of NDPS Act reads as under –

“Punishment for abetment and criminal conspiracy.—(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who,

in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—

- (a) would constitute an offence if committed within India; or*
- (b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”*

7. Accused Manjeet Singh was arrested on 17.03.2016, accused Satnam Singh was arrested on 18.03.2016 and accused Krishna Devi was arrested on 21.03.2016 therefore the accused persons have been in judicial custody for an approximate period of 7 years.

8. As noted earlier the prescribed punishment for offence committed under section 21(c) of the NDPS Act is imprisonment of 10 years which may extend to 20 years and fine of Rupees One Lakh which may extend Two Lakh Rupees and the punishment as per section 29 of the NDPS Act is also 10 years which may extend to 20 years and fine of Rupees One Lakh which may extend to Two Lakh Rupees.

9. The applicants are heavily relying upon the judgement of the Hon'ble Supreme Court in ***Supreme Court legal aid committee representing Under trial Prisoners V. Union of India & Ors. (1994) 6 SCC 731*** in which it was held that if an accused has been incarcerated for more than a period of five years in a case 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 under trial 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.

10. Learned APP has opposed the bail applications predominantly on the ground that the offence(s) with which the accused persons are charged with come within the ambit of serious offence(s). He further submits that the accused persons may not be released on bail merely on the ground of long custody period.

11. In *Supreme Court legal aid committee representing Under trial Prisoners V. Union of India & Ors. (1994) 6 SCC 731* it was *inter-alia* held as under:

“15....

(i) *Where the under trial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an under trial 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 the like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for the like amount.*

(ii) *Where the under trial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an under trial 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 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 under trial 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 under trial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an under trial 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 under trial 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 matter 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 under trial accused;

(ii) the under trial 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 under trial 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 accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the under trial 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 under trial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the under trial 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.”

12. The Co-ordinate bench of this court after calling out the entire law on this subject in ***Jumah Khan vs The State Govt. of NCT of Delhi*** in Bail APPLN. 991/2021 *inter-alia* held as under—

*“What can be called out and is evident from these decisions listed above is that the Hon’ble Supreme Court has in 1994 in **Supreme Court Legal Aid Committee** (supra) enunciated certain principles/directives which inter alia provide that if an under trial is charged for an offence under the NDPS Act punishable and the trial is delayed and the accused has already undergone almost half of the sentence prescribed (or the minimum if there is a range provided) then he should be entitled for being released on bail subject to conditions. Directive (iii), for example, provides that where minimum imprisonment of ten years and a minimum fine of Rupees one lakh is prescribed, such an under trial shall be released on bail if he has been in jail for not less than five years on the condition that he furnishes bail in the sum of Rupees one lakh with two sureties for like amount. This principle is*

*further buttressed by another decision of the Hon'ble Supreme Court in **Satender Kumar Antil** (supra) where it was held when dealing with cases of category 'C' (special Acts) that provisions contained in Sections 436A Cr.P.C would apply to special Acts as well in the absence of any specific provision. It was specifically stated by the Hon'ble Supreme Court that "the rigor as provided under section 37 NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person". The jurisprudential crux of this principle being enunciated by the Hon'ble Supreme Court is that "bail is the rule and jail is an exception" and that there is a principle of presumption of innocence, the core intendment being Article 21 of the Constitution of India which guarantees right to personal liberty and right to speedy trial. In this context, the decisions in **Kishan Lal** (supra) of the Hon'ble Supreme Court would not have relevance since the principles enunciated in **Supreme Court Legal Aid Committee** (supra) and endorsed in **Satender Kumar Antil** (supra) would hold ground. These principles have been followed inter alia by this court in **Gurmito v. CBI** (supra), **Anil Kumar v. State** (supra), **Sarvan Kumar v. State** (supra), **Ejike Jonas Orji v. Narcotics Control Bureau** (supra).*

13. Learned Counsel further submits that in another recent decision of this court in case titled **Ved Prakash @ Mistri vs. The State (NCT OF DELHI) B. A. No. 1225/2022** this Hon'ble court noting that *"..the bare reading of section 21(c) of the NDPS Act makes it clear that the minimum punishment provided in 10 years which may extend to 20 years"* and further relying on the decisions of 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 24.11.2022 in Bail Appln. No. 2737/2022 titled **Nabi Alam @ Abbas**

vs State (Govt. of NCT of Delhi) and judgement dated 14.12.2022 in Bail Appln. No. 2630/2022 titled *Johri vs State(NCT of Delhi)* followed the dictum of the Supreme Court in **Supreme Court Legal Aid Committee** (supra), thereby granting bail to the petitioner on furnishing a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount subject to certain conditions.

14. This court in *Anil Kumar @ Nillu v. State, 2022 SCC Online Del 778*, while following the judgement of Hon'ble Supreme Court in **Supreme Court Legal Aid Committee** (supra), granted bail in an identical case observing that while remaining cognizant of the impact that drugs have on society, Courts must also remain conscious of the fact that prolonged deprivation of one's personal liberty, without the assurance of a speedy trial runs contrary to principles of the constitution. It is pertinent to note that the decision in *Anil Kumar @ Nillu* (supra) was challenged in appeal before the Hon'ble Supreme Court and vide order dated 14.10.2022, SLP (Criminal) 25615/2022 was dismissed.

15. There is no doubt that the petitioner(s) are charged with very serious offence but at the same time it's a matter of record that they are in custody for more than five years. Thus, without going into merits of the case and following the dictum in **Supreme Court Legal Aid Committee** (supra) the accused persons are held to be entitled to be admitted to bail.

16. I consider that for the reasons stated above, the appellants are directed to be released on bail on them furnishing a personal bond of

Rs. 1,00,000/- with two sureties of the like amount subject to the satisfaction of the Learned Trial Court, subject to the following conditions—

- a) the applicants shall under no circumstances leave India without prior permission of the Court concerned and the applicants shall surrender their passports;
- b) the applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- c) the applicants shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
- d) the applicants shall appear before the Learned Trial Court as and when the matter is taken up for hearing
- e) In case of change of residential address and/or mobile number, the applicants shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

17. However, it is made clear that this court has not gone into the merits of the case, and no expression made herein shall tantamount to be an expression on the merits of the case. With this the present bail application is disposed of.

18. Copy to be sent to the concerned Superintendent jail.

DINESH KUMAR SHARMA, J

MAY 01, 2023

BAIL APPL. 6/2023, 2919/2021 & 2893/2022

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