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

+ BAIL APPLN. 3703/2022, CRL.M.A. 25941/2022, CRL.M.A. 873/2023 & CRL.M.A. 874/2023

BABU ROY @ CHOTTU

..... Petitioner

Through: Mr.Aditya Aggarwal, Mr.Naveen Panwar and Ms.Kajol Garg,
Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr.Amit Sahni, APP for the State.

Insp.Rahul Kumar Special Cell/TYR,
Pandav Nagar, Delhi.

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Date of Decision: 17.01.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. This is a regular bail application filed by the accused in FIR No.39/2016 under Section 20/29 of NDPS Act, 1985 registered at PS Special Cell.
2. Learned counsel for the petitioner submits that the petitioner is in custody since 25.06.2016. Learned counsel submits that the matter is still pending trial and it may take a long time for its final disposal. Learned counsel submits that the co-accused namely Jeewan Mondal has been granted bail by a coordinate bench of this court in Bail Appln.3925/2020 vide order dated 04.01.2023. It has further been submitted that another co-accused namely Mohd.Hafiz has also been

granted bail by the learned trial court vide order dated 13.01.2023. Learned counsel submits that co-accused Jeewan Mondal and Mohd. Hafiz have been granted bail by coordinate bench of this court and by the learned trial court on the ground of period in judicial custody. Learned counsel submits that the bail of the present petitioner has also been sought only on the ground that the petitioner has been in custody for more than six years.

3. A coordinate bench of this Court in ***Jeewan Mondal vs. State NCT of Delhi***, Bail Appln.3925/2020 vide order dated 04.01.2023 has *inter alia* held as under:

“9. What can be culled 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 undertrial 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 undertrial 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 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" that there is a principle of presumption of innocence and 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 Anil Kumar v. State (supra), Sarvan Kumar v. State (supra), Ejike Jonas Orji v. Narcotics Control Bureau (supra).

10. Adverting now to the decision by the Hon'ble Supreme Court in Mohit Aggarwal (supra) where it was held that that the length of custody in itself cannot be a persuasive ground for relief under Section 37 NDPS Act. It is noticed on a reading of the decision of the Hon'ble Supreme Court in Mohit Aggarwal (supra) that the facts in the case involved an extremely huge amount of 6.64 lakhs tablets of different psychotropic substances including Tramadol weighing around 328.82 kg and other psychotropic substances and the accused had remained in custody for a period of 1 year 3 months. It is evident that the facts in Mohit Aggarwal (supra) did not involve a case of NDPS accused in custody for at least half the minimum sentence prescribed for the offence and therefore, the Hon'ble Supreme Court in that decision did not traverse through the principles enunciated in the decision of Supreme Court Legal Aid Committee (supra). Nor probably it had the benefit of the decision of the Hon'ble Supreme Court in Satender Kumar Antil (supra) which had been pronounced 8 days prior. The decision in Mohit Aggarwal (supra) was limited to the appreciation of the merits of the case in the rubric of Section 37 NDPS Act for the purpose of dealing with application of bail. Therefore, probably the observation of this Court in Rakesh Kumar Bhola (supra) that when dealing with an application for bail moved by an undertrial prisoner who had remained in custody for more than half the minimum sentence, the rigors of Section 37 of NDPS Act would not come in the way.

11. In the facts of this case, it is evident that the petitioner was allegedly found in possession of 16 kg of ganja. The offence for which he is sought to be charged is for the 16 kg of ganja as per the charge sheet. The recovery of 64 kg of ganja was from the boot and rear seat of the car that did not belong to the petitioner. However, if 16 kg is considered then it is less than commercial quantity (which is prescribed to be 20 kg for ganja). In any event for this the sentence, if convicted, would be for a period extending upto 10 years and fine which may extend upto Rs. 1 lakh. Even if a larger quantity, which is commercial, is attributed to him (recovery from the car), the minimum punishment for which the petitioner would be convicted in case found guilty, would be for 10 years and minimum fine of Rs.1 lakh. Therefore, without adverting to the merits of the matter, it is evident that the petitioner has spent more than half period of the maximum (or in case of commercial quantity, a minimum) sentence of 10 years plus fine of Rs.1 lakh, and that the trial is expected to be prolonged and not conclude in the near future. Therefore, the principles enunciated by the Hon'ble Supreme Court would directly apply to the facts of this case and would entitle the petitioner to bail subject to certain conditions."

4. Thus, taking into account the totality of the facts and circumstances of case and on grounds of parity and without going into the merits of case and taking into account the fact that the petitioner is in custody since 25.06.2016, petitioner is directed to be released on bail on his furnishing a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount subject to the satisfaction of the Learned Trial Court, further subject to the following conditions:
- i) Petitioner will not leave the country without prior permission of the Learned Trial Court and will deposit his passport with the Learned Trial Court.

- ii) Petitioner shall provide his address to the Learned Trial Court by way of an affidavit and revise the same in the event of any change in residential address.
 - iii) Petitioner shall appear before the Learned Trial Court as and when the matter is taken up for hearing.
 - iv) Petitioner shall provide all his mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location shall be kept on at all times.
 - v) Petitioner shall report through video call to the IO between 10:00-11:00 a.m. every week on a Monday.
 - vi) Petitioner shall also report to the Police Station which has jurisdiction over his residential address, to register his presence, in the first week of every month.
 - vii) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.
5. With the above directions, the bail application stands disposed of.
6. Copy of the order be sent through electronic mode to the learned trial court.
7. Copy of the order be also sent to the concerned Jail Superintendent for information and compliance.

DINESH KUMAR SHARMA, J

JANUARY 17, 2023/rb