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

+ BAIL APPLN. 3864/2022, CRL.M.A. 3321/2023

ABDUL HAMID TURKMAN Petitioner

Through: Mr.Tarish V. Sathe, Advocate

versus

NARCOTICS CONTROL BUREAU Respondent

Through: Mr.Subhash Bansal, Sr.standing
counsel for NCB with Mr.Shashwat
Bansal, Advocates

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Date of Decision: 20.04.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed for grant of bail in case No.VIII/05/DZU/2020 on the complaint on behalf of NCB under Section 21 (b) & 23 (b) of NDPS Act, 1985.
2. Learned counsel for the petitioner submits that the petitioner is in custody since 28.12.2019. It has been submitted that the petitioner is entitled to be admitted to bail in view of the judgment of the Supreme Court in *S.C. Legal Aid Committee Representrial Undertrial Prisoners vs. Union of India* 1994 SCC (6) 731. Learned counsel submits that the case of the petitioner is of the intermediate quantity and falls within Section 21 (b) of the NDPS Act which provides RI for

a term which may extend to 10 years and with fine which may extend to Rs.1 lakh. Learned counsel submits that since no minimum punishment has been prescribed for this offence, his case falls under the following category:

(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.

3. Learned counsel has also relied upon on two judgments of this Court in ***Festus Chukwudi Odom vs. NCB***, Bail Appl.2619/2019 dated 19.04.2022 and ***Ebera Nwanaforo vs. NCB***, Bail Appln.3705/2020 with ***Fran Vitus vs. NCB***, Bail Appln.4187/2020 dated 31.05.2022. Learned counsel for the petitioner submits that since it is case of intermediate quantity, rigors of Section 37 will not be applicable.
4. Learned counsel for the petitioner has further submitted that the petitioner is a young boy of 24 years of age and belongs to a war prone country and has no criminal antecedents. Learned counsel submits that

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keeping in view the period of incarceration, the petitioner may be admitted to bail.

5. Per contra, learned counsel for the respondent has opposed the bail application and submitted that the petitioner is accused of a serious offence of drug trafficking and from his stomach there was recovery of 142 gms. of heroine concealed in capsules, the petitioner, thus, has committed grave offence and is under statutory obligation to prove his innocence as provided under Section 35 and 54 of the NDPS Act. Learned counsel has submitted that the trial is under way and in case, the petitioner who is a foreigner Afghan national is released on bail, there is a possibility that he may not attend the trial. It has further been submitted that the petitioner has indulged himself in drug trafficking of intermediate quantity of contraband and there are no reasonable grounds for believing that the petitioner is prima facie not guilty of said offence nor that he will not commit this offence again. Learned counsel has relied upon *Madan Lama vs. NCB*, Bail Appln.1812/2021 dated 16.08.2021
6. I have considered the submissions and perused the record carefully.
7. It is not disputed that there was recovery of 142 gms. heroine which was concealed in capsules and was recovered from the stomach of the petitioner. It is also a matter of record that the petitioner is an Afghan national and he had allegedly came to India for supply of heroine and brought it by swallowing it in the form of capsules. The bail of the petitioner has already been dismissed by the learned trial court.
8. In *Madan Lama* (supra), on the similar facts, the coordinate bench of this court has relied upon *Ram Govind Upadhyay vs. Sudarshan*

Singh, (2002) 3 SCC 598, *Prasanta Kumar Sarkar vs. Ashis Chatterjee*, (2010) 14 SCC 496 and *Mahipal vs. Rajesh Kumar* (2020) 2 SCC 118. In *Madan Lama* (supra), this court *inter alia* as held as under:

“12. The petitioner being a citizen of Nepal has no roots in society and can be considered a potential flight-risk. Thus he satisfies the factor that there exists the danger of him absconding or fleeing from justice, if released on bail. Furthermore, if the petitioner is released on bail, it cannot be ruled out that he will not indulge in such activities again. It is also to be noted that the petitioner has indulged in offences under the NDPS Act and the same cannot be equated with the offences under the IPC or other offences. The harmful effects of drugs on an individual and on the society have been researched extensively and are well known. The menace of drug abuse is also on the rise in the country and the consequences of the same can be experienced across the board from causing economic issues to societal disintegration. The purpose of enacting the NDPS Act was to curb this menace. This purpose must be kept in mind while considering the grant of bail in matter pertaining to the NDPS Act. The petitioner is also alleged to have committed an offence which is punishable up to ten years of imprisonment. Furthermore, the case herein is different from the case of Haresh Rawal, who was granted bail vide order dated 03.06.2021 as charges have are yet to be framed in the instant case and the chances of the petitioner jumping bail cannot be ruled out as he is not the resident of India.”

9. In the present case also, keeping in view the seriousness of the allegations and the fact that the petitioner is an Afghan national, I consider that he is at a flight-risk and irrespective of Section 37 of the NDPS Act for grant of bail, the conditions of Section 439 Cr.P.C. are to be met. The offences are serious in nature. The trial is continuing. I

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consider that taking into account the totality of the facts and circumstances of the case, the petitioner is not entitled to bail.

10. Hence the petition along with the pending application is dismissed.

DINESH KUMAR SHARMA, J

APRIL 20, 2023/rb

