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2. Present petitions have been filed under Section 439 Cr.P.C and under 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 respectively for the grant of regular bail to the petitioners in respect of Crime No.2 of 2022 dated 05.07.2022 registered under Sections 8, 21, 25, 27-A 28, 29, 30 and 35 of the NDPS Act at Police Station Preventive and Intelligence Cell, Central Bureau of Narcotics, New Delhi (Annexure P-2).

3. Learned counsel appearing on behalf of the petitioner-accused Kala Singh (in CRM-M-5920-2024) submits that the petitioner is innocent and as no recovery of the contraband has been done from him and only the recovery has been done from the other co-accused Manoj Kumar, the petitioner Kala Singh be granted the concession of regular bail as the petitioner has only been roped in the present case on the basis of the disclosure statement of other co-accused.

4. Learned counsel for the petitioner-accused Kala Singh further submits that as the similarly situated co-accused namely Mahesh Kumar, who was also roped in the present case on the basis of the disclosure statement of other co-accused, has already been granted bail by the Coordinate Bench of this Court while passing order in ***CRM-M- 14503 of 2023 decided on 24.05.2023 (Annexure P-4)***, the petitioner Kala Singh be also extended the concession of regular bail.

5. With regard to the claim of the petitioner-accused Manoj Kumar from whom, the actual recovery has been done, learned counsel for the petitioner (in CRM-M-37827-2024) submits that he is behind the bars for the last more than two years and four months and therefore, as the trial is

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likely to take some time, he should be granted the concession of regular bail keeping in view the various order passed by the Coordinate Benches of this Court as well as by the Hon'ble Supreme Court wherein, right to speedy trial has been held to be a right and in the absence of a speedy trial, the bail has to be granted.

6. Learned counsel appearing on behalf of respondent-Central Bureau of Narcotics, submits that the petitioner i.e. Kala Singh in the present case is attributed to be the master mind and actual supplier of the contraband (7.483 kgs of Lomotil tablets containing narcotic substance diphenoxynate, which is assessed as a commercial quantity), which is also part of the 53.095 kg of contraband recovered from the co-accused Manoj Kumar. Learned counsel for the respondent further submits that enough evidence has already come on record to show that the co-accused Manoj Kumar from whom, the contraband was recovered, was in constant touch with the petitioner Kala Singh and had rather sent the photographs of the contraband to the petitioner Kala Singh acknowledging the receipt of the contraband for his information on his mobile through whatsapp.

7. Learned counsel for the respondent further submits that there is enough chat record to establish the relation between the petitioner Kala Singh as well as co-accused Manoj Kumar from whom the contraband has been recovered and as per the evidence, which has already surfaced during the investigation, the petitioner Kala Singh has supplied the contraband (7.483 kgs of Lomotil tablets containing narcotic substance diphenoxynate, which is a commercial quantity), which was part of the 53.095 kg of

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contraband, which has been recovered from the co-accused Manoj Kumar.

8. Learned counsel for the respondent further submits that the claim of parity made by the petitioner Kala Singh with Mahesh Kumar for the grant of bail is not made out in the facts and circumstances of the present case and therefore, the prayer of the petitioners for the grant of regular bail may kindly be declined.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. Though, the contraband of commercial quantity of 53.095 kgs has been recovered from Manoj Kumar but out of the said contraband, 7.483 kgs loose tablets of Lomotil have also been recovered, which are alleged to have been supplied by the petitioner Kala Singh to the said Manoj Kumar, which quantity itself is commercial in nature.

11. The pictures of the Lomotil tablets have been sent by the co-accused Manoj Kumar to the petitioner Kala Singh acknowledging the receipt of the contraband, is part of the record during investigation. Further, there are financial transaction between the petitioner Kala Singh and co-accused Manoj Kumar from whom, the said contraband was recovered, which has also come on record during investigation.

12. Learned counsel for the petitioner Kala Singh has not been able to explain the said act on the part of the petitioner including the financial transaction between the petitioner and co-accused Manoj Kumar, when put to him during hearing of the petition.

13. The only argument raised is that the petitioner Kala Singh had given money for personal use to Manoj Kumar which was being returned by

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him.

14. On being asked as to when the said money was given by the petitioner to the co-accused Manoj Kumar and how the said money was given to Manoj Kumar, learned counsel for the petitioner Kala Singh has not been able to substantiate the oral averment.

15. From the facts, once *prima facie*, it has come on record that the petitioner Kala Singh had supplied the contraband to Manoj Kumar which quantity is commercial in nature, which was ultimately recovered from him, the petitioner cannot claim innocence or to contend that there is no material apart from the disclosure statement to involve the petitioner in the present case. There is enough material which is on record as of now to co-relate the petitioner the contraband, which has been recovered from the co-accused Manoj Kumar.

16. Further, as per the judgment of the Hon'ble Supreme Court of India in ***SLP (Criminal) No. 8137 of 2022 titled as State By the Inspector of Police vs. B. Ramu, decided on 12.02.2024***, the Apex Court has held that the Courts should be slow in granting regular bail where recovery of huge/commercial quantity has been made and should satisfy the rigours of Section 37 of the NDPS Act wherein, the Court should record a satisfaction that there are grounds for believing that the accused is not guilty of offence alleged or is not likely to commit any offence.

17. In the present case, even if the contraband has been recovered from a particular co-accused and further the evidence has come to relate the said recovered contraband to another accused i.e. petitioner also, apart from

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the disclosure statement hence, the involvement of the petitioner is not only limited to the disclosure statement. In **B. Ramu's case (supra)**, following has been held:

“ 10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather completely ignored the factum of recovery of narcotic substance (ganja), multiple times the commercial quantity. The High Court also failed to consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.

11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.”

18. Learned counsel for the petitioner Kala Singh has not been to substantiate his claim that he is innocent and is not related in any way to the recovery of the contraband from the co-accused Manoj Kumar so as to escape the rigors of Section 37 of the NDPS Act.

19. The last argument which has been raised by the learned counsel for the petitioner Kala Singh is that the petitioner has undergone the custody of more than one year and the trial is not likely to conclude in near future.

20. The custody of the petitioner Kala Singh is not that much so as to grant him the benefit of bail and that too by ignoring the facts which have

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come on record qua his involvement in the present case.

21. With regard to the petitioner Manoj Kumar, it may be noticed that the petitioner Manoj Kumar is the one from whom, a large quantity of contraband i.e. 53.095 kg which is multiple times of the designated commercial quantity, has been recovered. Not only this, the petitioner Manoj Kumar has connections with the drug peddlers, who are supplying him the drugs for selling the same.

22. With regard to association of petitioner Manoj Kumar with co-accused Kala Singh, the details have already been given according to which, Manoj Kumar is procuring the drugs from Kala Singh and then selling and then also returning the sale proceed to co-accused Kala Singh.

23. Though, it is a matter of fact that the petitioner Manoj Kumar is behind the bars for the last more than two years and four months but in all the cases, the incarceration will not be a ground to grant the bail ignoring the facts of the case especially when Court feels that the petitioner Manoj Kumar, in case allowed the grant of bail, will involve himself in the same activities. His connections with the drug peddlers show what kind of antecedents the petitioner Manoj Kumar has. The safety of the general public, as the petitioner is involved in polluting the generations by selling the narcotics, has to be kept in mind while considering the claim of the petitioner Manoj Kumar for the grant of bail.

24. Learned counsel for the accused Manoj Kumar has argued that the secret information on the basis of which FIR was recorded, has not been sent to the higher authorities which itself should be a ground to grant the

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bail.

25. It may be noticed that a large quantity of contraband which is multiple times of the commercial quantity, has been recovered from the petitioner Manoj Kumar.

26. Hence, the claim that the non-compliance of Section 42 of the NDPS Act which fact is yet to be proved during the trial, should be brought into operation to grant bail to the petitioner Manoj Kumar so as to ignore the recovery of such a large quantity of contraband, is not made out in the facts and circumstances of the present case.

27. Keeping in view the facts mentioned hereinbefore, petitions seeking bail are accordingly rejected.

28. The trial Court is directed that all the efforts be made to conclude the trial in a time bound manner by recording the testimony of the witnesses concerned even if the said purpose is to be achieved by giving short adjournment and procuring the presence of the witnesses by coercive orders.

29. A photocopy of this order be placed on the file of other connected case.

November 13, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No