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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 317/2024**
OKOLIE CHIEDUPetitioner

Through: Mr. Anoop Kumar Das, Mr. Uday
Chauhan, Advocates.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Amit Ahlawat, APP for State with
SI Santosh Kumar, PS: Narcotics
Squad.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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03.10.2024

1. This bail petition has been filed seeking bail in FIR no. 254/2021, under Section 20 of NDPS Act and 14 Foreigners Act registered at PS CR Park, Delhi.
2. As per the case of the prosecution, the petitioner was arrested on 04th August, 2021, pursuant to receiving an information that he is supplying *Charas* in the area of Delhi and Delhi NCR; raiding party was prepared and a trap was laid out near Alaknanda DDA Community Centre, Alaknanda Road. At about 10.00 p.m., a scooter with registration no. DL 9SBT 5173 ridden by the accused was intercepted.
3. Petitioner was explained his rights in English language, which he was able to understand. Notice under Section 50 NDPS Act was furnished. Nothing was found on his personal search. However, two *polythene* bags were recovered from his scooter which was identified to be *Charas/Hashish*.



4. The recovery was effected in presence of the Gazetted Officer, ACP, Operations, South District. The FIR was, thereafter, registered.
5. Subsequently, an application was moved for sampling under Section 52A NDPS on 05th August, 2021, which was finally decided on 31st August, 2021.
6. APP for State submits that it was due to delay because of Covid pandemic.
7. The petitioner has been in custody since then. The trial is proceeding ahead, however, only 2 witnesses out of 18 have been examined. There is no previous involvement of the petitioner.
8. Counsel for petitioner has raised an issue relating to the delay in sending the samples to the FSL which was admittedly done on 06th September, 2021, while the seizure was made on 04th August, 2021.
9. This, he states is militates against the Standing Order 1/88 which mandates that the samples be sent to FSL within 72 hours. For this he relies upon the decision of Coordinate Bench in ***Rishi Dev v. State*** 2008 SCC Online Del 1800.
10. APP states on instructions that the seizure and the samples were stored in the *Malkhana* and were only produced before the Magistrate on 31st August, 2021.
11. In these circumstances, counsel for petitioner states that one can't rule out the possibility of tampering. Further, he had moved an application before the Magistrate for preservation of CCTV installed at the place where he was intercepted. The said application was allowed and the CCTV footage was preserved. However, there is no confirmation in the Status Report regarding his presence or not in the said CCTV footage.



12. Aside from this, counsel for petitioner relied upon the decisions of Supreme Court in ***Rabi Prakash v State of Odisha*** 2023 SCC OnLine SC 1109, ***Dheeraj Kumar Shukla v State of U.P.*** 2023 SCC OnLine SC 918, ***Man Mandal & Anr. v State of West Bengal*** 2023 SCC OnLine SC 1868, ***Badsha Sk. v State of West Bengal*** 2023 SCC OnLine SC 1867 where the Supreme Court has granted bail on ground of prolonged custody, unfettered by rigors by Section 37 NDPS.

13. Despite stringent requirements imposed under Section 37 of the NDPS Act for grant of bail, it has been established by the Supreme Court that these requirements do not preclude grant of bail on account of undue delay in the completion of trial. The Supreme Court has categorically held that long incarceration militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and liberty must override the statutory embargo created under Section 37 of the NDPS Act.

14. ***Rabi Prakash v State of Odisha*** 2023 SCC OnLine SC 1109 where a recovery of 247 kgs of ganja was made and the petitioner had been in custody for more than three and a half years, with no criminal antecedents, the Court held as under:

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS



Act.”

(emphasis added)

15. In SLP (Crl) 4648/2024 titled **Ankur Chaudhary v State of Madhya Pradesh** order dated 28th May 2024, it was held by the Supreme Court as under:

“It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.”

(emphasis added)

16. Coordinate benches of this Court have also considered the principles set out by the Supreme Court and granted bail in **Gurpreet Singh v State of NCT of Delhi** 2024 SCC OnLine Del 696 wherein a seizure of 26.790 kgs of *Ganja* was done and only 2 witnesses had been examined, having been in custody for three and a half years, the petitioner was granted bail; in **Ramesh Kumar v D.R.I.** 2024 SCC Online Del 5304, where recovery of 457 kgs of *Ganja*, the petitioner having been in custody for about three and a half years, the Court in relying upon these principles laid out by the Supreme Court granted bail; in **Gopal Dangi v State** 2024 OnLine Del 4825, a case of recovery of 260 kgs of *ganja* and only one witness having been examined and the petitioner having been in custody for about 2 years was granted bail.

17. In these circumstances, the Court is of the opinion that the trial is going to take time and the petitioner cannot be incarcerated endlessly as an undertrial. Only 2 out of 18 witnesses have been examined, in the last 3 years.



Contention of the petitioner may have some merit and will be tested on the filter of the evidence, which will be recorded in trial. Moreover, there is no previous involvement of the petitioner.

18. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will deposit his passport in the Trial Court.
- ii. Petitioner will not leave the country without prior permission of the Court.
- iii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Trial Court by way of an affidavit and to the IO regarding any change in residential address.
- iv. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- v. Petitioner shall join investigation as and when called by the IO concerned.
- vi. Petitioner shall provide all 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.
- vii. Petitioner will mark presence physically before the



concerned I.O. every first and third Monday of every month at 4 p.m..

viii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

19. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

20. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

21. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

22. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 3, 2024/RK