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

+ **BAIL APPLN. 329/2024**

RAJAT TAILOR

.....Applicant

Through: Mr. Aditya Aggarwal, Ms.
Kajal Garg & Mr. Naveen
Panwar, Advocates.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Shashwat Bansal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

30.08.2024

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1. Petitioner seeks regular bail in NCB case no. VIII/52/DZU/2021, registered at Narcotics Control Bureau, for offences under Sections 20(ii)(b), 21(a), 22(b), 22(c), 23(c), 27-A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. The case of the prosecution is that on the basis of a 'secret information', dated 23.09.2021, the NCB team along with independent witnesses reached the house of one, Shakti Agarwal, and a recovery of 605 LSD Blots, 79 gms of Hashish, 1.6 gms of Cocaine, and 18 gms of MD was made from the rented premises in occupation of one Shakti Agarwal.

3. On 23.09.2021, in pursuance of the notice given to the accused Shakti Agarwal under Section 67 of the NDPS Act, he gave his voluntary statement. He disclosed that he had gotten

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addicted to drugs and then started selling drugs to support himself. He confesses that he purchased drugs through Wicker and Telegram. He disclosed the name of the applicant and other co-accused persons, namely Jasbir Singh, and Divyas Bardewa, and their involvement in the commission of the crime as well. The accused Shakti Agarwal, on the basis of the recoveries made, and statement tendered under Section 67 of the NDPS Act was arrested on 23.09.2021.

4. During investigations, consequent to the recovery of commercial quantity of contrabands and on the basis of the disclosure statement of the co-accused Shakti, production warrants were issued against co-accused Jasbir Singh, and Shradha Surana who were both lodged in Tihar jail in another case under the NDPS Act. Both the co-accused persons Jasbir Singh, and Shradha Surana were thereafter arrested on 25.09.2021.

5. On 26.09.2021, another recovery of 13gm of contraband (magic mushroom believed to be the psychotropic substance psilocybin) was effected in this case from the parcel which was delivered at the house of the premises of co-accused Dibyas Bardewa, who was the consignee of the said parcel. It is alleged that co-accused Dibyas revealed that the parcel had been received by him on 23.09.2021. It is alleged that co-accused Dibyas had voluntarily handed over the parcel from which the contraband was recovered. The co-accused Divyas Bardewa was arrested on 27.09.2021.

6. On 29.09.2021, in follow up action, on the basis of the disclosure statement of co-accused Shakti, a search was conducted at the house of the applicant. It is alleged that co-accused Shubham Banshiwal brought a parcel allegedly on the

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asking of the applicant, at the house of the applicant. A recovery of 36 LSD Blots weighing 10.4 gms was made from the said search.

7. Thereafter, on 01.10.2021, on the basis of the disclosure statement of the applicant, one consignment bearing no. CY550967135D shipped from Germany was tracked and searched. It is alleged that the said parcel was found to be named for Shubham, address 342A, Vasundhara Colony, Gopalpura Mode, Jaipur, and got delivered at Shyam P.G. Vasundhara Colony, Plot No. 342-343, Gopalpura Mod, Jaipur, Rajasthan. It is alleged that in the presence of one Rahul Chaudhary, and upon the search of the parcel, two big containers were found containing dark greyish pills, allegedly found to be Ecstasy (MDMA) Tablets. It is alleged that a total of 1.230 kg of MDMA pills were recovered.

8. During investigations, the mobile number as used by co-accused Shakti, was found to be in contact with co-accused Shubham Banshiwal, Divyas Bardewa, and the applicant. As per the CDR details, the numbers registered in the name of the applicant were found to be in contact with co-accused Shubham Banshiwal, and Shakti.

9. It is alleged that one sim card, registered in the name of one Mohd. Nafees, was recovered from the applicant. It is alleged that the said number was mentioned on the parcel with tracking number CY550967135 from which 1.230kg of Ecstasy pills were recovered on 01.10.2021.

10. In view of the above, the applicant was arrested on 29.09.2021.

11. The learned Additional Sessions Judge *vide* order dated 02.03.2023 had dismissed the earlier bail application filed by the

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applicant. It was noted that on the disclosure of the applicant, a recovery of 36 LSD blots was made from the co-accused Shubham, and the CRCL report tested positive for LSD. It was also noted that another recovery of 1.230kg of MDMA pills were made at the instance of the applicant. It was noted that since there is a recovery of commercial quantity of contraband at two places on the disclosure of the applicant, the bar under Section 37 of the NDPS Act is attracted.

12. Further, *vide* order dated 14.12.2023, the learned Additional Sessions Judge had dismissed the bail application of the applicant while noting that mere delayed compliance of Section 52A of the NDPS Act cannot be a ground for bail.

13. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the applicant was roped in the case based upon the disclosure statement of the accused, Shakti Agarwal.

14. He submits that the applicant has been arrested because the accused Shubham Banshiwal brought a parcel at the residence of the applicant. He submits that it is the case of the prosecution that the accused Shubham Banshiwal brought a parcel at the instance of the applicant, and handed the same to the applicant, which contained the contraband. He however submits that there is nothing to link the said parcel to the applicant in the present case.

15. He further submits that the other consignment for which the applicant has falsely been implicated was booked by some person namely Arun, and on the name of Shubham, that too, at a fake P.G.

16. He submits that these facts alone are not sufficient to link the applicant to the said consignment since neither the name nor the address or phone number of the said consignment belongs to

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the applicant. He submits that the statement of the P.G. owner in itself reflects that the parcel belonged to Shubham, and not the applicant.

17. He submits that the applicant has been in incarceration since 29.09.2021, and charges are yet to be framed. He submits that there are twenty-five witnesses who are yet to be examined, and that there is a delay in trial.

18. He submits that the applicant has clean past antecedents, and should be enlarged on bail on the ground of parity. He submits that the other co-accused persons have already been granted bail. He cites the order of the Hon'ble Apex Court in Special Leave to Appeal (Crl.) No. 11628/2022, to argue that despite there being a clear recovery at the instance of the accused Divyas Bardewa, he was still enlarged on bail on account of the delay in trial.

19. The learned counsel for the respondent vehemently opposes the grant of bail to the petitioner. He submits that the case of the applicant is different from that of the other co-accused persons. He submits that two recoveries have been made at the instance of the applicant.

20. He submits that the ground of parity would not be available to the applicant, and submits that it must be seen if there are reasonable grounds to conclude whether the applicant is guilty of the offence. He submits that the accused Divyas Bardewa was granted bail by the Hon'ble Apex Court on the ground that the FSL was not annexed with the chargesheet, and had not tested positive for contraband. He submits that in the present case, however, the recovery effected at the instance of the applicant has tested positive for contraband.



Analysis

21. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration, and the delay in trial is also a relevant factor that cannot be overlooked.

22. It is pertinent to note that the charges are yet to be framed in the present case. Speedy trial in such circumstances does not seem to be a possibility. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

23. It is trite law that grant of bail on account of delay in trial cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of ***Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352*** has observed as under:

“21....Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra).



Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State²¹ as "a radical transformation" whereby the prisoner:

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

24. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

(emphasis supplied)

24. It is seen that all the accused persons have been chargesheeted for similar offences under Section 29 of the NDPS Act. It is not the case that some co-accused are charged with a lesser degree of offence than the applicant in the present case. It



is noted that co-accused Shradha Surana, and Jasbir Singh have already been admitted on bail by this Court.

25. It is further noted that co-accused Divyas Bardewa has been admitted on bail by the Hon'ble Apex Court *vide* Special Leave to Appeal (Crl.) No. 11628/2022 dated 01.05.2023. The Hon'ble Apex Court, without reference to whether the accused had acquired a right to seek statutory bail since the chargesheet was filed without an FSL report, noted that the co-accused had been in custody for some time, and the trial was not likely to conclude in the near future. The benefit of the order of the Hon'ble Apex Court cannot be denied to the applicant.

26. The applicant was arrested on 29.09.2021. It has been almost three years since the applicant is in custody, and till date charges are yet to be framed. It is not likely that the trial will conclude in the near future. In such circumstances, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail on the ground of parity, and delay in trial.

27. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the boundaries of Delhi without informing the concerned SHO;



- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the details of his permanent address where he would be residing after his release to the learned Trial Court and intimate the Court, by way of an affidavit, as well as to the IO about any change in his residential address;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

28. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

29. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

30. The bail application is allowed in the aforementioned terms.

31. The pending applications are also disposed of.

AMIT MAHAJAN, J

AUGUST 30, 2024

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