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

+ **BAIL APPLN. 487/2024**

SACHIN RAI @ PINKU

.....Petitioner

Through: Mr. Suraj Prakash Sharma, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
along with SI Kalyan Chand, PS:
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

09.12.2024

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1. This petition has been filed seeking regular bail in FIR No. 134/2022 under Section 20(b)(ii)(C) NDPS Act registered at P.S. Crime Branch. As per the Nominal Roll, the petitioner is in custody since 17th July 2022 (about two and half years). The petitioner has no previous involvement and his jail conduct has been satisfactory.
2. The case of the prosecution is based on a recovery of 6 kg of *ganja* from the petitioner on 11th July 2022, based on a secret information. The said seizure was allegedly made from the petitioner's person near the Atal Bihari Vajpayi MCD Park, Prem Nagar-1, Kirari, Delhi.
3. The case of the prosecution is that pursuant to petitioner's pointing out, another 60 kgs of *ganja* was recovered from his house. Two other co-



accused Rosemerry and Dilraj, on the disclosure of the petitioner, were arrested and 5.25 kg and 4.02 kg of *ganja* was recovered respectively, from them. Rosemerry and Dilraj, have been released on bail. The other co-accused, Ranjit Kumar and Mannu are absconding from their native village in Bihar. Charge-sheets have been filed in January, 2023 and the case is under trial and prosecution evidence is being led.

4. Counsel for petitioner points out that despite two and half years having been passed, only three witnesses have been examined and the trial will take a long time to conclude. He seeks to rely upon the decisions of the Supreme Court *inter alia* in ***Man Mandal & Anr. v State of West Bengal*** 2023 SCC OnLine SC 1868, in this regard. He has also contended that aside from the alleged recovery of 6 kgs of *ganja* from the petitioner's person, which is an intermediate quantity, the recovery of 60 kgs of *ganja* from his home, was not supported by any evidence *inter alia* photographs or any independent witness. Moreover, the house from which 60 kg of *ganja* was allegedly recovered, was rented by Ranjit Rai and the prosecution has not been able to place any rent agreement of the said place in his name.

5. APP for State states that the premises was opened up by the petitioner who had the key to the place and that he has not placed any document stating that the said home is rented out by Ranjit Rai.

6. Perusal of the status report also does not evidence any confirmatory aspects relating to the alleged seizure from the home of the petitioner. On a query to the APP for State that, whether there were any photographs taken or any independent witness relating to the recovery from the home, the answers have been in the negative.

7. This Court in ***Ashok Kumar @ Lala v The State NCT of Delhi***



2024:DHC:7685 had granted bail to the petitioner from whom there was a recovery of 1.1 kg of *charas*, which was a commercial quantity, on the basis of *inter alia* delay in trial and the issue of lack of independent witnesses.

8. The Supreme Court had consistently held that the benefit of delay in trial will accrue to the accused and in this regard; the following decisions are relevant:

8.1 ***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)

8.2 ***Dheeraj Kumar Shukla v State of U.P.*** 2023 SCC OnLine SC 918 where there was a seizure of about 65 kgs of *ganja* and the petitioner was in custody for about two and a half years, the Supreme Court while granting bail, stated as under:

“3. It appears that some of the occupants of the ‘Honda City’ Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity



recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.

(emphasis added)

8.3 In ***Man Mandal & Anr. v State of West Bengal*** 2023 SCC OnLine SC 1868 where the seizure which was commercial in nature and the petitioner had been incarcerated for about two years and there was no hope for the trial to be concluded soon, the Supreme Court while granting bail stated as under:

“6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.”

(emphasis added)

8.4 In ***Badsha Sk. v State of West Bengal*** 2023 SCC OnLine SC 1867 where the seizure was of 100 bottles of Phensedyl Cough Syrup (100 ml. each), containing Codeine Phosphate, the petitioner had been in custody for about 2 years 4 months and the trial was yet to commence, the Supreme Court while granting bail noted as under:

“5. The above would show that the trial is yet to commence in the matter(s) and in the meantime, petitioners have been in custody for long. The State counsel submits that there are no known criminal antecedents against the two accused.”

8.5 In ***Mohd. Muslim alias Hussain v State (NCT of Delhi)*** 2023 SCC OnLine SC 352 the Court stated that, grant of bail on ground of undue delay



in trial, cannot be said to be fettered by section 37 of the NDPS Act. The Supreme Court noted as under:

“21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). 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 country. 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. State—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” (also see Donald Clemmer’s ‘The Prison Community’ published in 1940). 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 added)

8.6 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.



8.7 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)

9. It is evident from the above, that 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.

10. 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.

11. Considering the facts and circumstances of the case, on the ground that the recovery from the petitioner’s person is 6 kg which is an intermediate quantity, while the recovery of 60 kg from his home, is under a shroud of doubt and will be subject to evidence in trial, the co-accused having been granted bail, and more than two and a half years have passed since the petitioner has been in custody, taking into account the aforementioned case law by the Supreme Court and that the trial in the matter is likely to take some time, it would not be prudent to keep the



petitioner behind bars for an indefinite period and this Court finds it to be a fit case for grant of bail to the petitioner.

12. 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 not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. 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.
- vi. Petitioner will mark presence physically before the concerned I.O. every Friday at 4p.m. and will be not kept waiting for more than an hour.
- vii. 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.

13. 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.
14. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
15. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 9, 2024/ak/na