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

+ **BAIL APPLN. 683/2024**

PANKAJ @ JATIN

..... Petitioner

Through: Mr.Anup Kumar Das, Mr.Uday
Chauhan and Ms.Aayushi Gupta,
Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Sanjeev Sabharwal, APP for State
with SI Vinod Kumar and ASI Kartar
Singh

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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10.04.2024

1. By way of present bail application filed under Section 439 read with Section 482 Cr.P.C., the petitioner/applicant seeks regular bail in FIR No. 322/2020 registered under Section 20 of NDPS Act, 1985 at Police Station Dwarka South, New Delhi.
2. Learned counsel for the applicant submits that the applicant has been in custody since 27.09.2020 and that he was arrested on the disclosure statement of co-accused namely *Ranjay Kumar Jha @ Sonu*. He submits that co-accused persons namely *Nasruddin, Vijay* and *Ranjay Kumar* have already been released on bail. He further states that necessary recoveries have already been effected and there is no apprehension of the applicant evading trial or tampering with evidence/influencing witnesses. He also submits that the prosecution has cited as many as 37 witnesses and out of them only 2 witnesses have been examined till date and thus, the trial is likely to take a long time. In support of the same, reliance has been placed



upon the decision of Supreme Court in Tinku Tagadgiri v. State of Odisha passed in **SLP(Crl.)(No.)12844/2023** and Rabi Prakash v. State of Odisha reported as **2023 SCC OnLine SC 1109**. It is further contended that the applicant is not involved in any other case and has clean antecedents.

3. The bail application is resisted by Mr.Sanjeev Sabharwal, learned APP for State. He states that commercial quantity of Gaanja was seized and that despite efforts, the applicant could not be arrested. He submits that on 23.09.2020, the raiding team received the information that the applicant and co-accused *Balram Sharma* would be coming in a Skoda Laura car and would be carrying Ganja. At late night, the Skoda Laura car was intercepted near Pilkhar in District Etawa, U.P. The applicant was found driving the said car while co-accused *Balram Sharma* was sitting on the front seat. On search of the car, a total of 143 kg of illegal Gaanja was seized.

4. On 09.08.2020, the police had apprehended one person namely *Nasruddin @ Nasru*, from whom 4 kg of Gaanja was recovered and the present FIR came to be registered. He made a disclosure that he had obtained the said substance from one *Ranjay Kumar Jha @ Sonu*. When *Ranjay Kumar Jha @ Sonu* was arrested, he disclosed that he procured Gaanja from one *Sushil Agnihotri* and sometimes from one *Balram Sharma* and the present applicant. It is further submitted that charge-sheet stands filed. The applicant is also found connected with other co-accused and in this regard reference is made to CDR details collected during investigation.

5. I have heard learned counsel for the parties and have also perused the material placed on record.

6. In the present matter, it has been alleged that 143 kgs of Gaanja has been recovered from the car being driven by the applicant. The bail



application is resisted on the ground that the said amount recovered from the car of the applicant, qualifies as commercial quantity and thus the rigorous of the Section 37 NDPS Act are applicable in the present case.

7. The prime contention raised by learned counsel for the petitioner is that till date only 2 out of the 37 witnesses have been examined and that the trial is likely to take a long time. It is further submitted that the applicant is not found involved in any other case.

8. For appreciation of the said contention, it is deemed apposite if reference is made to certain decisions of the Supreme Court as well as this Court, wherein while considering the long period of incarceration and the fact that the trial was likely to take a long time, the accused was directed to be released on bail, even in those cases wherein commercial quantity was recovered.

9. In Union of India v. K.A. Najeeb reported as **(2021) 3 SCC 713**, the Supreme Court stated that if a timely trial is not possible, courts are ordinarily obligated to release the undertrial on bail and statutory restrictions do not exclude the discretion of Constitutional courts to grant bail on grounds of violation of Fundamental Rights enshrined in Part III of the Constitution. While the said judgement was passed in the context of UAPA, the said observations merit mention:-

“xxx

12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended



period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

xxx

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

xxx

17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.



xxx”

10. While considering a case where the accused had undergone custody of more than two years, Supreme Court in Jitendra Jain v. Narcotics Control Bureau¹, the Supreme Court observed as under:-

“xxx

3. Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

4. The petitioner is , accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of trial court.

xxx”

11. Again in Rabi Prakash v. State of Odisha (Supra), where the accused had remained incarcerated for more than three and a half years, the Supreme Court while releasing the applicant on bail observed that:-

“xxx

4... 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.

xxx

6. Consequently, while directing that the petitioner shall be released on bail on his furnishing bail bonds to the satisfaction of the Trial Court...

xxx”

¹ 2022 SCC OnLine SC 2021



12. More recently in Man Mandal and Anr. v. State of West Bengal², while taking into account continued custody of more than two years, the accused was granted bail. The relevant extract of observations is extracted hereunder:-

“xxx

5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the quantity being commercial in nature, the present special leave needs to be dismissed.

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.

7. The petitioners are directed to be released on bail in connection with aforesaid FIR, on such terms and conditions as may be imposed by the Trial Court.

xxx”

13. Taking cue from the legal position enumerated hereinabove, Coordinate Benches of this Court have, after due consideration of the facts including the fact that trial is likely to take time, have released the accused on bail. Positive reference in this regard may be made the decision in Sachin Arora v. State Govt. of NCT of Delhi (2023:DHC:5808) and Vishwajeet Singh v. State (NCT of Delhi) (2024:DHC: 1554).

14. In view of the discussion undertaken above, it is clear that even in situations wherein commercial quantity has been recovered from the accused, the said individual has been granted the benefit of bail, while considering of the period of incarceration as well as the fact that the trial is

² 2023 SCC OnLine SC 1868



likely to take some time in a case.

15. Considering the aforesaid factual and legal position especially the fact that the applicant has been in custody for about 3 and a half years as also the fact that only 2 witnesses have been examined so far, the applicant is directed to be released on regular bail subject to his furnishing a personal bond in the sum of Rs.50,000 with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty M.M. and subject to the following further conditions:-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

16. The bail application is disposed of in the above terms.

17. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

18. Copy of the order be uploaded on the website forthwith.

19. Needless to state that nothing observed hereinabove shall amount to



an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

APRIL 10, 2024/rd

MANOJ KUMAR OHRI, J