



2024:DHC:796



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

Reserved on: 10.01.2024
Pronounced on: 05.02.2024

+ **BAIL APPLN. 857/2023**
GURPREET SINGH

..... Petitioner

Through: **Mr.Adarsh Priyadarshi &**
Mr.Sachin Tanwar, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: **Mr.Aman Usman, APP.**
SI Pramod Kumar, PS
Sagarpur.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') seeking release on bail in SC No. 420/2022 pending adjudication before the Court of the learned Special Judge, NDPS Act, Patiala House Courts, New Delhi arising out of FIR No.0285/2021 registered with Police Station: Sagarpur, South-West District, Delhi, under Sections 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act').



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2. In short, it is the case of the prosecution that on 08.06.2021, the applicant was found to be driving a car in a suspicious manner. He was stopped, and on an inspection of the car, two plastic bags were recovered. In one bag there were 7 packets of dark brown colour, while in the other, there were 6 of such dark brown colour packets, making it a total of 13 packets. It is further alleged that on the basis of a visual inspection and from smelling the packets, it could be made out that these packets were containing Ganja (cannabis). Later, the contents of these 13 dark brown packets were taken out from these packets and were mixed together. The total weight of the contraband was 26.790 kgs. The seized Ganja (cannabis) was sealed and deposited in the *Malkhana* of Police Station, Sagarpur.

3. It is further alleged that, in the Police custody, the applicant disclosed that he along with another person, namely Akarm, used to transport cannabis/Ganja from Bawanipatna, (Naxalite Belt), Odisha to Delhi and other places at the direction of one Ajay Lamba. The prosecution alleges that on arrest, Ajay Lamba disclosed that he used to take Ganja from a person, namely Pramod Kumar Tandi @ Tunda, who does agriculture/business of Cannabis in Odisha. He further disclosed that he engaged the applicant herein and Akarm for transporting and supplying Cannabis/Ganja from Pramod Kumar Tandi @ Tunda. The CDRs of the co-accused, that is the applicant, Ajay Lamba, Akarm, and Pramod Kumar Tandi @ Tunda, were analysed, which showed that they were talking to each other from a long time. It is alleged that the applicant herein also disclosed that his



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step-father-Suraj also used to supply Cannabis/Ganja at various places in Delhi. The prosecution also relied upon certain banking transactions between the co-accused. It is alleged that as Suraj, Akarm, and Pramod Kumar Tandi @ Tunda are absconding, they have been declared as Proclaimed Offenders.

4. Charge-sheet was filed against the applicant and the co-accused Ajay Lamba, on 21.10.2021, under Sections 20/29 of the NDPS Act. A Supplementary Charge-Sheet, placing the FSL report, has also been filed and charges have been framed. Examination-in-Chief of two witnesses is being recorded.

Submissions of the learned Counsel for the Applicant

5. The learned counsel for the applicant submits that though the applicant has been in custody since 08.06.2021, and charge-sheet was filed on 21.10.2021, only 2 out of the 22 witnesses cited by the prosecution have been examined by the prosecution, and that too only partially. Placing reliance on the judgment of the Supreme Court in *Mohd. Muslim v. State (NCT of Delhi)*, 2023 SCC OnLine SC 352; *Badsha SK. v. The State of West Bengal* (order dated 13.09.2023 passed in Special Leave Petition (Crl.) 9715/2023 ; *Dheeraj Kumar Shukla v. State of U.P.*, 2023 SCC OnLine SC 918; *Rabi Prakash v. State of Odisha*, 2023 SCC OnLine SC 1109; *Man Mandal & Anr. v. The State of West Bengal* (Special Leave Petition (Crl.) 8658/2023 decided on 14.09.2023); and of this Court in *Suraj v. State (NCT of Delhi)*, 2023 SCC OnLine Del 5323, he submits that only on the ground of delay in the trial, the applicant is entitled to be released on bail.



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6. He further submits that even otherwise, the prosecution had mixed the contents of the 13 packets allegedly recovered from the car of the applicant into one homogenous whole. He submits that the same is in violation of the Standing Order No.1/88 dated 15.03.1988 issued by the Narcotics Control Bureau and the Standing Order No. 1/89 dated 13.06.1989, issued by the Department of Revenue, Ministry of Finance, Government of India. Placing reliance on the judgment of the Supreme Court in *Gaunter Edwin Kircher v. State of Goa, Secretariat Panaji, Goa*, (1993) 3 SCC 145; and of this court in *Amani Fidel Chris v. The Narcotics Control Bureau*, 2020 SCC OnLine Del 2080; *Basant Rai v. State*, 2012 SCC OnLine Del 3319; and *Gopal Das v. NCB*, 2021 SCC OnLine Del 329, he submits that the sampling procedure not being in accordance with the above-mentioned Standing Orders, the applicant has met the strict standards for grant of bail as prescribed in Section 37 of the NDPS Act.

7. The learned counsel for the applicant further submits that in the present case, upon seizure, an application under Section 52A of the NDPS Act for the drawing of samples was made before the learned Magistrate only on 30.07.2021, and the samples were drawn only on 04.09.2021, that is after a period of almost three months from the date of the alleged seizure. Placing reliance on the judgment of this Court in *Kashif v. Narcotics Control Bureau*, 2023 SCC OnLine Del 2881; and *Tamir Ali v. Narcotics Control Bureau*, 2023 SCC OnLine Del 3015, he submits that this delay also entitles the applicant to be released on bail.



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Submissions of the learned APP

8. On the other hand, the learned APP submits that Section 37 of the NDPS Act is an exception to the general principle of law, and where the offence is in relation to a commercial quantity, the accused can be released on bail only if the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while being released on bail. He submits that the offence under the NDPS Act are very serious and affect the entire society including lives of a number of persons. Stringent provisions have therefore, been made for releasing the accused on bail. He submits that Section 37 of the NDPS Act cannot be given a liberal interpretation on the justification that it affects the personal liberty of a citizen who is yet to be tried. In support he places reliance on the judgments of the Supreme Court in *Narcotics Control Bureau v. Kishan Lal*, (1991) 1 SCC 705; *Intelligence Officer, Narcotics C. Bureau v. Sambhu Sonkar*, (2001) 2 SCC 562; *Bipin Shantilal Panchal v. State of Gujarat*, (2001) 3 SCC 1 ; *Union of India v. Rattan Mallik*, (2009) 2 SCC 624 ; and *Babua v. State of Orissa*, (2001) 2 SCC 566 .

9. He further submits that, in any case, this Court must take into account the reasons for the delay in completion of the trial. It could also be for reasons attributed to the Court itself. He submits that in the present case, Covid-19 also intervened, and with there being restricted functioning of the Courts due to the same, some delay has been caused in the conclusion of the trial. He submits that therefore, delay in



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completion of the trial cannot be a reason to release the applicant on bail. In support, he places reliance on the judgments of this Court in *Anil Kumar Gandhi v. N.C.B.*, 1991 SCC OnLine Del 344; *Gurbux Bhiryani v. J.K. Handa*, 1991 SCC OnLine Del 421, and of the High Court of Kerala in *Jaseer S.M. v. State of Kerala & Anr.*, in Bail Appl. No.7238/2023 decided on 08.01.2024.

10. He submits that the purpose of Section 52A of the NDPS Act is for the disposal of the case property after making inventory and keeping the samples of seized contraband. It is for the purpose of keeping representative samples for being exhibited during the course of the trial as primary evidence. He submits that the Standing Orders No.1/88 and 1/89 are merely advisory in nature and not mandatory. Their non-compliance is neither fatal to the case of the prosecution nor does it entitle the accused to be released on bail. The effect of such non-compliance can only be determined at the conclusion of the trial, where the accused would have to show the prejudice caused due to such non-compliance. In support, he places reliance on the judgment of this Court in *Masibur Khan v. State (Govt. Of NCT of Delhi)*, 2023 SCC OnLine Del 3326; *Shailender v. State of NCT of Delhi*, 2022 SCC OnLine Del 4896; and *Saddad Alam v. State (Govt. Of NCT Delhi)*, Neutral Citation No. 2023:DHC:7494, and of the High Court of Bombay in *Mukesh Rajaram Choudhari v. The State of Maharashtra*, Neutral Citation No.2023:BHC-AS:28549.

11. He submits that, in the present case, there was a substantial compliance with the said Standing Orders and therefore, the accused be not released on bail.



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Analysis

12. I have considered the submissions made by the learned counsels for the parties.

13. There can be no doubt on the proposition that for being released on bail, the accused/appellant must satisfy the conditions as stipulated in Section 37 of the NDPS Act. There can also be no dispute that keeping in view the nature of offence, there is no occasion for applying the more liberal principles for grant of bail to the accused under the NDPS Act where the offence involves commercial quantity.

Error in procedure of sampling:

14. In the present case, however, as is evident from the case of the prosecution itself, 13 packets allegedly containing Cannabis/Ganja were recovered from the car driven by the applicant. The contents of these 13 packets was mixed together to form a uniform whole before drawing the samples. Recently, this Court in its judgment in **Sandeep @ Chiku v. State (NCT of Delhi)**, Neutral Citation No.2024:DHC:528, in similar circumstances, on analysing the prior judgments on the issue, has held as under:-

“18. A reading of the Standing Order No.1/89 would show that all packages/containers are to be serially numbered and kept in lots for sampling. In cases where more than one package/container is seized, it is advisable to draw one sample (in duplicate) from each of such packets/containers. Clause 2.5 of the Standing Order, however, states that where the packages/containers seized together are identical in size and weight, bearing identical marking, and the content of each packets gives identical result on colour testing by Drug



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Identification Kit, conclusively indicating that the packages/containers are identical in all respects, the packages/containers may be bunched together in lots of 10 packages/containers (in case of ganja and hashish lots of 40 packages/containers) and for each of such lots of packages/containers, one sample (in duplicate) may be drawn. Clause 2.8 states that, while drawing the samples from a particular lot, it must be ensured that representative samples in equal quantity are taken from a package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot. Therefore, the identity of the packages/containers including their contents has to be preserved while drawing the samples. They cannot all be mixed together to thereafter draw samples. The Standing Order only allows that where the lots of such packages/containers are prepared, samples in equal quantity are taken from each packages/containers of that lot, mixed together, and thereafter sample drawn from such composite whole of samples.

19. In the present case, the above procedure has been completely violated and not adhered to by the prosecution. As noted hereinabove, the prosecution emptied all the packages that were recovered from the trolley bag of the accused persons into one composite whole and thereafter, samples from such composite whole were drawn before the learned Metropolitan Magistrate. Similar exercise was done for the packages recovered from the backpacks carried by the accused. This is clearly is not in compliance with the Standing Orders.

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*27. The High Court of Bombay in **Mukesh Rajaram Choudhari** (supra) has held that non-compliance with the procedure under Section 52A of the NDPS Act cannot mean that*



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the accused automatically becomes entitled to bail as a matter of right. In my view, however, the non-compliance with the provisions of Section 52A of the NDPS Act would need to be explained by the prosecution at the trial and till then, the cardinal rule that the accused is presumed to be not guilty shall get attracted for holding that “there are reasonable grounds for believing that he is not guilty of such offence” and that the accused meets the pre-condition for release on bail as prescribed in Section 37 of the Act. It is settled law that when a thing is prescribed to be done in a particular manner, it must be done in that manner or not at all. As the manner of sampling has been prescribed in the above two Standing Orders, non-compliance thereof would give rise to reasonable grounds for believing that the accused is not guilty of the offence alleged against him based on the alleged seizure and sampling.”

15. In the present case, therefore, as there is a non-compliance with the procedure prescribed for sampling, the applicant is entitled to be released on bail.

Delay in trial:

16. In addition to the above, only 2 (two) out of 22 witnesses have been examined by the prosecution, and that too partially, though more than three and a half years have passed since the arrest of the applicant. It may be true that the reason for the delay in the conclusion of the trial may be for various factors, may be not even attributable to the prosecution, like Covid 19 pandemic and restricted function of the Courts, however, as long as they are not attributable to the applicant/accused, in my view, the applicant would be entitled to protection of his liberty under Article 21 of the Constitution of India.



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Delay in trial would, therefore, be one of the consideration that would weigh with the Court while considering as application filed by the accused for being released on bail.

17. In **Mohd. Muslim @ Hussain** (Supra), the Supreme Court considering the application filed by the accused therein for being released on bail, observed as under:-

“12. This court has to, therefore, consider the appellant's claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, this court made certain crucial observations, which have a bearing on the present case while dealing with denial of bail to those accused of offences under the NDPS Act:

“On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by



a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.”

13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is



concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly. The court said that Parliamentary intervention is based on:

“a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

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19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the



court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences



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such as those enacted under Section 37 of the NDPS Act.

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 Malik). 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. Staten 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.”

18. In ***Rabi Prakash*** (Supra), the Supreme Court reiterated the above principles, 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



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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.”

19. In ***Bashah*** (Supra), the accused therein had been in custody for more than two years and four months with the trial yet to be begun. The Court released the accused on bail.

20. Similarly, in ***Manmandal*** (Supra), the accused therein had been in custody for almost two years and the Court found that the trial is not likely to be taken up for hearing in the immediate near future. The accused was, therefore, released on bail.

21. In ***Dheeraj Kumar Shukla*** (Supra), the Supreme Court again released the accused therein on bail, observing 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.”

22. A learned Single Judge of this Court in ***Anil Kumar Gandhi*** (supra) has held that merely because the trial has not been concluded,



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in view of Section 37 of the NDPS Act, would not be a ground for release of the accused on bail.

23. In *Jaseer S.M.* (supra), the accused had been in custody for eighteen months. The Court held that there is no rule of thumb or principle of universal application laying down the time period within which the trial is to commence and to be concluded. The Court considering the prosecution's concern regarding the element of flight risk of the accused, declined to release him on bail.

24. In the present case, however, keeping in view the above referred judgments of the Supreme Court; the applicant being in custody since 08.6.2021; and only 2 out of 22 witnesses having been examined in the trial, that too only partially; coupled with the other factors as have been discussed in this judgment, the applicant is entitled to be released on bail on account of the delay in trial and there being no likelihood of it being concluded in the near future.

Delay in sampling and compliance of Section 52A of the NDPS Act:

25. The applicant has also made out a case for being released on bail on the grounds of delay in the sampling procedure being carried out under Section 52A of the NDPS Act. As noted hereinabove, the alleged recovery has been made from the applicant on 08.06.2021; the application under Section 52A of the NDPS Act was filed by the prosecution only on 30.07.2021; and the samples were drawn only on 04.09.2023, that is, with a delay of almost three months.

26. In *Kashif* (Supra), a Coordinate Bench of this Court considered the effect of delay in the sampling procedure, held that even a delay of one and a half months, as was the case therein, raises a doubt



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sufficient enough to entitle the accused to be released on bail. The Court observed as under:-

“24. Hence, I am of the view that non-compliance of section 52A within a reasonable time gives rise to the apprehension that sample could have been tampered with and in case of a wrongly drawn sample, the benefit of doubt has to accrue to the accused. The prosecuting agency has to prove at the time of trial that the sample was immune from tampering.

25. In the present case, the sample was kept in the custody of the prosecuting agency for more than one and a half month, thus, raising doubt with regards to tampering of the same.

*26. Another reason which persuades me to take this view is that once the Apex Court has held in **Mohanlal** (supra) that the application under 52A has to be made without any undue delay, there should not be any reason for delaying the filing of application.*

27. The application for sample collection under section 52A is not a technical application wherein elaborate reasons, principles of law or detailed facts are required. It is more of a clerical application and should mandatorily be made within a reasonable time under section 52A NDPS. The application has to be moved at the earliest and in case, the same has not been moved, the reasons for delay must be explained by the authorities.

Reasonable time under section 52A

28. What is reasonable time depends on the facts and circumstances of each case. However, it cannot be the intention of the legislature that an application for sample collection can be moved at the whims and fancies of the prosecuting agency. Therefore, taking cue from the Standing Order 1/88, it is



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desirable that the application under 52A should be made within 72 hours or near about the said time frame.

29. In the present case, the application for drawing of sample and certification of seizure memo under section 52A NDPS was filed on 22.04.2022 i.e., after 51 days from the period of last seizure on 02.03.2022.

30. A period of 51 days, by no stretch of imagination, can be called a reasonable period for filing an application under section 52A NDPS for drawing the sample. It cannot be that the contraband lying in the custody of the Narcotics Department for 51 days, in their power and possession, is immune from tampering and mischief. Furthermore, no reasons have been furnished by the Respondent for the delay of 51 days for moving an application under section 52A NDPS.

31. In view of the above discussion, I hold that violation of Section 52A vitiates the sample collection procedure and the benefit of the same must accrue to the Applicant.

32. The application by the respondent under section 52A was filed after a delay of 51 days. At that time, the applicant did not object. However, the same being a legal objection can be raised at any stage."

27. The same Bench followed its above view in ***Tamir Ali*** (supra).

CONCLUSION:-

28. In view of the above, in my opinion, the applicant has been able to make out a case for being released on bail on application of the test prescribed under Section 37 of the NDPS Act.

29. Accordingly, it is directed that the applicant be released on bail



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in FIR No.0285/2021 registered at Police Station: Sagarpur, South-West District, Delhi, under Sections 20/61/85 of NDPS Act in SC No.420/2022 on furnishing a personal bond in the sum of Rs.50,000/- with one local surety, each, of the like amount, subject to the satisfaction of the Ld. Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the Ld. Trial Court.
- ii. The Applicant shall provide his permanent address to the Ld. Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- iii. The Applicant shall appear before the Ld. Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the Ld. Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his bail in



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the present case as well.

30. Needless to state, 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.

31. The bail applications are disposed of in the above terms.

32. Copy of this judgment be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J.

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Click here to check corrigendum, if any