



2024:DHC:7582



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 18th September, 2024***

+ **BAIL APPLN. 838/2024**

MOHD. TABREZ

.....Petitioner

Through: Mr. Kundan Kumar and Mr.
Trilochan Prakash, Advocates

versus

STATE

.....Respondent

Through: Ms. Richa Dhawan, APP for the State
with SI Vishan Kumar

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Petition under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking regular bail in case FIR No. 94/2021 under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act, 1985"*) registered at Police Station Crime Branch, North, Delhi.
2. The petitioner has stated that he was arrested by the Police on 23.05.2021 and the present FIR was registered against him, in which the Chargesheet had been filed before the learned Trial Court on 15.11.2021, after which the Charges had been framed on 28.06.2022. It is submitted that only one or two, out of 21 prosecution witnesses, have been examined over a period of two years and nine months since the date of arrest of the petitioner. There is no likelihood of the trial getting concluded in near future.
3. The petitioner approached the Trial Court for expeditious trial, but all



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the requests had gone in vain. Despite repeated requests, there is no progress in the trial.

4. As per the case of the prosecution, initially the recovery was of 20 gms of Heroin which was found lying on the ground which was asserted to have been thrown by co-accused Bilal. Nothing was recovered from the possession of the petitioner. The alleged recovery of Heroin from the grounds near him cannot be attributed to him.

5. The second recovery of 500 gms, was the joint recovery allegedly made from beneath the bed of the ground floor of the house of the petitioner and his wife, co-accused-Moshima. The alleged recovery of 500 gms of Heroin was a joint recovery which is illegal as has been held by this Court and thus co-accused-Moshima has already been released on regular bail *vide* Order dated 04.01.2023 passed in Bail Application No. 9/2022.

6. The prosecution has asserted that the Notice under Section 50 of NDPS Act, 1985 was handed over to all three accused persons independently, but the perusal of the same discloses that there was no information with the police that the narcotic substance was to be recovered from the house of the petitioner.

7. Moreover, the co-accused-Bilal has also been released on bail by this Court *vide* Order dated 06.02.2023 passed in Bail Application No. 1578/2022.

8. The petitioner has claimed parity to be released on bail. The petitioner has placed reliance on the decisions in Vishwajeet vs. State of NCT of Delhi, Bail Application No. 3148 of 2021, Dev Kumar @ Golu vs. State of Delhi, Bail Application No. 2382 of 2023 decided on 28.02.2024 and Gurpreet Singh vs. State of NCT of Delhi; Bail Application No. 857 of 2023;



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decided on 05.02.2024.

9. It is submitted that the petitioner is not a flight risk nor would he tamper with the evidence or influence the witnesses in any manner.

10. Therefore, the petitioner has sought the regular bail.

11. **The Status Report** has been filed on behalf of the State, wherein it is submitted that on 23.05.2021 at 06:45 AM, the secret information was received by Sub-Inspector Ravi Saini that one lady, namely, Moshima, who is the supplier of Heroin in JJ Colony, Bawana, would be coming to supply Heroin to someone between 08:30 AM and 10:30 AM in Gali near E-Block, Sabzi Mandi Road, Bawana, Delhi and if the raid is conducted, she can be apprehended. The raiding team was accordingly constituted and the trap was laid at the place of information where about 08:40 AM, one lady sitting on the chair, was identified by the secret informer as a Drug supplier and one boy was standing near her. Sensing the presence of police party, the boy started running but he was intercepted by the police team. The boy took out a cloth thaeli from his pocket and threw it on the ground. On further inquiry, both the persons disclosed their identity as Mohd. Bilal and Moshima, wife of the present petitioner, respectively. In the meanwhile, one person came out from the House bearing No. E-192, JJ Colony, Bawana, Delhi, about whom also the secret information was given to the police team. The inquiry revealed his identity as Mohd. Tarbez, the petitioner herein.

12. It is submitted that the public persons were requested to join the investigation proceedings, but none is forthcoming.

13. It is also submitted that upon checking thaeli thrown by the accused Bilal, it was found to contain a light brown colour powder which on checking was found to be Heroin. The cloth thaeli was duly seized. The co-



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accused Bilal revealed that Moshima and her husband Mohd. Tarbez used to give Rs. 1,200/- daily for the work. The recovery of Rs. 3,500/- was also made which was the sale proceed of smack *pudiyas* sold to addicts.

14. The separate Notice under Section 50 of the NDPS Act, 1985 was served upon the three apprehended persons and were informed about their right to get personal search taken before a Gazetted Officer or a Magistrate. However, they refused to get themselves searched. The police team then reached the spot and the personal search of the apprehended accused persons was done, but no contraband was recovered from the clothes that they were wearing. The petitioner and the co-accused-Moshima voluntarily led the police team to the residence House bearing No. E-192, JJ Colony, Bawana, Delhi, at their instance, one red colour thaeli was recovered. On checking, it was found to be containing Heroin which was seized in accordance with law. Further search led to recover Rs. 1,89,000/- which was the sale proceeds of Heroin.

15. The investigations were completed and the Chargesheet was filed in the Court.

16. It is submitted that the petitioner was previously involved in 13 cases, out of which, 5 cases were under the NDPS Act, 1985. Though he has been acquitted in four cases but has been convicted in one case.

17. The present petition has been opposed on the ground that the recovery made from the petitioner is of commercial quantity. The petitioner has been involved in 13 cases reflecting his propensity to commit crime. Also, petitioner is a previous convict under the NDPS Act, 1985 and is likely to commit the same crime in case he is released on bail.

18. **Submissions heard.**



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19. As per the case of the prosecution, the petitioner along with his wife Moshima, who is the co-accused, had led the raiding team to their house and got recovered a red thaeli showing Heroin weighing 500 gms, which is a commercial quantity. The petitioner and his wife are the suppliers of the Heroin. Moreover, even Rs. 1,89,000/- which was the proceed from sale of Heroin, had also been recovered from the house of the petitioner.

20. The main ground on which the bail has been sought is delay in concluding the trial. The Apex court in the decision of Gurpreet Singh (supra), observed that while considering that the trial may take a long time to get concluded, a reference was also made to the other factors before admitting the accused to bail.

21. While consistently the delay has been considered as a ground for grant of delay, it has also been observed in this judgment that the delay has to be considered with the accompanying factors. Moreover, those judgments pertain to recovery of Cannabis, while the present case involves recovery of commercial quantity of Heroin.

22. Furthermore, Heroin (a hard drug), an opioid directly impacts the central nervous system, leading to rapid addiction, severe withdrawal symptoms, and has a high propensity for overdose, often resulting in death. It presents a significantly graver threat to public health and individual well-being as compared to cannabis (a soft drug). Moreover, the risk of fatal overdose associated with heroin use is markedly higher. Conversely, while cannabis is not devoid of potential for harm, particularly with prolonged and heavy use, its effects are generally less severe and less acute. The absence of documented fatalities directly attributable to cannabis overdose further underscores this distinction.



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23. Consequently, while delay in trial proceedings may be considered a factor in bail applications involving less severe substances, in cases pertaining to recoveries of huge quantities of heroin, as in the present matter, these considerations have to be weighed against the grave and immediate risk posed to public welfare.

24. In the present case, while the recovery of 500 gms of Heroin i.e., the commercial quantity has been recovered from the house of the petitioner but it is also to be noted that he is allegedly the supplier of Heroin and Rs. 1,89,000/- was also recovered. The other factor in addition to these major factors which tilt against him, is that he has 13 previous cases registered against him, out of which, 5 are under NDPS Act, 1985 and has been convicted in one such NDPS Act case, though acquitted in other four cases.

25. Looking at the petitioner's antecedents and the allegations of recovery of commercial quantity of Heroin, this is not a fit case for grant of bail. Therefore, the present petition is hereby dismissed. However, the Trial Court is directed to make an endeavour to conclude the trial within one year.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 18, 2024/PT