



2024:DHC:5010



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:08.07.2024

+ **BAIL APPLN. 1161/2023**

MOHD. MINTOO @ MINTOO

..... Applicant

versus

THE STATE GNCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Gaurav Kochar & Mr. Bharat Sharma,
Advocates.

For the Respondent : Mr. Amol Sinha (ASC-CRL) for the State
alongwith Mr. Kshitiz Garg, Mr. Ashvini
Kumar & Ms. Chavi Lazarus, Advocates.

SI Pankaj Kumar (P.S.Hazrat Nizamuddin).

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') read with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), seeking regular bail in FIR No. 194/2019 dated 29.07.2019, registered at Police Station Hazarat Nizamuddin, for offence under Section 20 of the NDPS Act.



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2. According to the prosecution, on 28.07.2019, the police officials were deployed at ITI Mathura Road for checking vehicles from 9:30 P.M. to 11:30 P.M. It is alleged that about 11:00 P.M., one white coloured car approached them and stopped a few meters away from the picket and started going back. On suspicion, the police officials intercepted the driver. The said car (white coloured Accent bearing no. DL 11 CA 6930) was checked and two suitcases containing a total of 26 kgs of *Ganja* was allegedly recovered from the rear boot of the car. The driver of the said vehicle was identified as Mohd. Mintoo/applicant.

3. During the investigation, the applicant disclosed that he was looking for a job and had met one person namely, Salim (co-accused) who was engaged in the business of supplying *ganja* and that the applicant was employed by him.

4. It is alleged that before the search and seizure proceedings, few passersby were informed about the situation and were asked to join the police action, however, all of them refused and left without disclosing their names.

5. Subsequently, the applicant was arrested on 29.07.2019 and has remained in judicial custody since then.

6. Upon completion of the investigation, the chargesheet in the present case was filed for offence under Section 20 of the NDPS Act.

7. By an order dated 21.03.2023, the learned Trial Court rejected the applicant's bail application. It was observed that the applicant was found to be in possession of commercial quantity of the alleged contraband and was previously involved in an offence of similar



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nature bearing FIR No. 354/2013. Accordingly, the bail application was rejected owing to the embargo of Section 37 of the NDPS Act.

8. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case and chargesheet has been filed. The applicant is in custody since 29.07.2019 and no purpose would be served by keeping him in further incarceration.

9. It is argued by the learned counsel that the applicant is the sole bread winner, and insofar as his involvement in an offence of similar nature is concerned, he was acquitted in FIR bearing 354/2013 by judgment dated 31.05.2018. Thus, it is submitted that the applicant has clean antecedents.

10. He submitted that the co-accused, namely, Mohd. Saleem, the owner of the car from which the alleged recovery was made, has been granted regular bail by this Court *vide* order dated 21.12.2020.

11. The learned counsel submitted that there has been no compliance with mandatory requirements stipulated under Section 50 of the NDPS Act. He relied upon the judgment passed by the Hon'ble Apex Court in the case of *Dilip & Ors. v. State of MP : (2007) 1 SCC 450*, wherein it was held that notice under Section 50 of the NDPS Act was mandatory to be served upon the applicant despite the fact that the alleged contraband was recovered from the vehicle.

12. He submitted that there are no independent witnesses in the present case and thus the story of prosecution comes under the shed of suspicion.



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13. He submitted that despite four years, only 1 out of the 14 prosecution witnesses mentioned in the chargesheet and supplementary chargesheet have been examined during the trial and therefore, the trial is likely to take a long time. He relied upon the observations of the Hon'ble Supreme Court in *Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352*. He submitted that the applicant has clean antecedents and deep roots in the society and there is no possibility of the applicant influencing the witnesses.

14. He submitted that Section 37 of NDPS is not attracted in the present case and the Bail Application ought to be considered without applying the rigours thereof.

15. In support of his contentions, the learned counsel had further placed reliance on the following judgments :

- a) *Akhilesh Bhartiya v. State: 2020 SCC Online Del 206*
- b) *Kamruddin v. State (NCT of Delhi) : 2022 SCC OnLine Del 3761*
- c) *Deep Raj @ Neetu v. State of Himachal Pradesh : Cr.M.P(M) No. 2822/2022*
- d) *Hussain & Anr. v. UOI : (2017) 5 SCC 702*
- e) *Dheeraj Kumar Shukla v. State of U.P. : 2023 SCC OnLine SC 918*

16. The learned Additional Public Prosecutor (**APP**) for the State submitted that the learned Trial Court has rightly dismissed the applicant's bail application *vide* order dated 21.03.2023. He stated that all grounds of the applicant have been considered by the learned Trial Court as well as this Court on an earlier occasion.



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17. He submitted that Section 50 of the NDPS Act is not applicable as the search and checking was being conducted of the vehicle when a suspicion was created by the applicant and it was during the course of this general search that the applicant was found travelling with commercial quantity of contraband and hence Section 50 of the NDPS Act is not applicable. In support of the said contention, the learned APP placed reliance upon the judgment passed by the Hon'ble Apex Court in ***Ranjan Kumar Chadha v. State of Himachal Pradesh: 2023 SCC OnLine SC 1262.***

18. He submitted that the rigours of Section 37 of the NDPS Act would apply in the present case for the reason that a commercial quantity of the alleged contraband has been recovered from the applicant. The contents of the contraband seized from the applicant was found to be Ganja as per the FSL Report. Further, the previous bail applications filed by the Applicant before the learned Trial Court and this Court had been dismissed.

Analysis

19. I have heard the submissions made by the learned counsel for the parties.

20. 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.

21. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfill the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail.”

22. The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail – (1) The court



must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

23. The learned counsel for the applicant submitted that a liberal interpretation of Section 37 of the NDPS Act must be taken into account by the Court in the present case on the following grounds :

- a) Non- compliance with Section 50 of the NDPS Act inasmuch as notice under Section 50 of the NDPS Act was not given the applicant.
- b) Non-joinder of independent witnesses by the prosecution and no photography and videography; and
- c) Delay in trial.

24. It is true that the search and seizure of the contraband so seized is a serious aspect during the investigation and if there is any violation of the mandatory requirements as prescribed under the NDPS Act as to the manner in which search and seizure is effectuated, the courts ought to take a serious view and the benefit is to be extended to the accused.

25. The learned Additional Public Prosecutor for the State argued that adherence to Section 50 of the NDPS Act is obligatory during the personal search of a suspect. However, it was contended that this provision does not apply where the search involved the car driven by the applicant.

26. Furthermore, it was contended that compliance with Section 50 of the NDPS Act should be determined during the trial and is not appropriate for consideration at the preliminary stages, particularly in



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situations where a commercial quantity of contraband is recovered, thus invoking the stringent provisions of Section 37 of the NDPS Act.

27. Recovery of contraband in the present case was made from the car of the applicant and not directly from the person. The compliance with Section 50 of the NDPS Act in such circumstances is not necessary. This position finds support in the judgment of this court in ***Bantu vs. State Govt of NCT of Delhi : 2024: DHC: 5006***, wherein this Court while placing reliance on the judgment passed by the Hon'ble Apex Court in ***Ranjan Kumar Chadha v. State of Himachal Pradesh*** (*supra*), held that the applicability of Section 50 of the NDPS Act is limited to instances where the recovery is made directly from the person of the accused. It was observed that the extension of Section 50 to objects closely associated with the person, such as a bag or vehicle, would unduly broaden the scope of the provision beyond the clear legislative intent. This interpretation aligns with the principle that the legislative intent must be discerned from the clear and unambiguous language of the statute itself, without inferring intentions not explicitly stated. Therefore, in the present case, the requirement to comply with the procedural specifics of Section 50 is circumvented by the nature of the recovery, highlighting the statute's application to personal searches rather than associated objects.

28. The ruling of Constitutional Bench judgment in the case of ***State of Punjab v. Baldev Singh : (1999) 6 SCC 172*** firmly established that the mandate of Section 50 of the NDPS Act does not extend to scenarios where the search and recovery involve areas beyond the physical body of a suspect, such as vehicles. Thus, in light



of the binding precedent set by the Constitutional Bench, this Court finds that any argument suggesting that the Section 50 of the NDPS should apply to vehicle searches not only misconstrues the statutory framework but also stands in direct opposition to the authoritative interpretation of the law in the recent judgment by the Hon'ble Supreme Court in *Ranjan Kumar Chadha v. State of Himachal Pradesh* (*supra*).

29. It is also contended by the learned counsel for the applicant that though the recovery was allegedly made at a busy place, the same is not supported by any public witness. This Court in the case of *Bantu vs. State Govt of NCT of Delhi* (*supra*), has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case.

30. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence. The present case is allegedly based on a chance recovery and it is possible that the Investigating Agency did not get sufficient time to prepare. However, given the crowded nature of the place from where the recovery was made, it is peculiar that no public witness has joined the search. A bald statement has been made, as stated in the chargesheet filed, that certain persons were asked, however, they refused to join. It would be tested during the course of the trial whether efforts were made by the



prosecution to have the search conducted in front of the independent witnesses. However, nothing has been pointed out to show that any notice under Section 100(8) of the CrPC was given to any person on the refusal to support the Investigating Agency during the search procedure. This Court is, however, of the opinion that the same ought not to be commented upon at this stage and the same would be tested during the course of trial.

31. In the present case, the matter is at the stage of examination of prosecution evidence. The applicant has been in custody since 29.07.2019. There is no likelihood of the trial being completed in the near future.

32. 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)*** (*supra*) 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. State*²¹ 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)

33. The Hon’ble Apex Court in ***Rabi Prakash v. State of Odisha*** : **2023 SCC OnLine SC 1109**, while granting bail to the petitioner therein 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.”



34. The Hon'ble Apex Court in ***Badsha SK. v. The State of West Bengal*** (order dated 13.09.2023 passed in **Special Leave Petition (Crl.) 9715/2023**), granted bail to the petitioner wherein who had been in custody for more than two years with the trial yet to begin.

35. Similarly, in ***Man Mandal &Anr. v. The State of West Bengal*** (**Special Leave Petition (Crl.) 8658/2023** decided on 14.09.2023), the petitioner therein had been in custody for almost two years and the Hon'ble Apex Court found that the trial is not likely to be completed in the immediate near future. The petitioner was, therefore, released on bail.

36. In ***Dheeraj Kumar Shukla v. State of U.P. : 2023 SCC OnLine SC 918***, the Hon'ble Apex Court released the petitioner therein on bail, and observed 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.”

37. A Coordinate Bench of this Court in ***Gurpreet Singh v State of NCT of Delhi : 2024:DHC:796***, considered the effect of delay and observed as under:

“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. 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."

38. From the foregoing, it is evident that despite the stringent requirements imposed on the accused under Section 37 of the NDPS Act for the grant of bail, it has been established that these requirements do not preclude the grant of bail on the grounds of undue delay in the completion of the trial. Various courts have recognized that prolonged incarceration undermines the right to life, liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedents over the statutory restrictions under Section 37 of the NDPS Act.

39. It was also not denied that the car from which the recovery was made belonged to the co-accused, Mohd. Salim, who has already been released on regular bail by the order passed by a coordinate Bench of this Court. The order granting bail has not been challenged by the prosecution.

40. 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 grounds of absence of independent witnesses and prolonged delay in the trial.

41. The applicant is also stated to be of clean antecedents. Therefore, I am satisfied that are reasonable grounds for believing that the applicant is not likely to commit any offence while on bail.



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42. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- 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 country without the permission of the learned Trial Court;
- c. The applicant shall report to the local police station once in every week;
- d. The applicant shall appear before the learned Trial Court as and when directed;
- e. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. 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.

43. 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.



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44. 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.

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

AMIT MAHAJAN, J

JULY 8, 2024
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