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

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+ BAIL APPLN. 901/2024
SAMEER BEG

.....Petitioner

Through: Mr. Mritunjay Kumar Singh, Mr.
Arvind Kumar, Mr. Subit Kumar
Singh, Mr. Ankit Kumar Vats, Mr.
Gulshan Kumar and Mr. Rajeev
Basista, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC for
State with
SI Nagendra Kumar, Anti Narcotics
Squad, South-East.

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+ BAIL APPLN. 3704/2024
VISHAL @ GOLU

.....Petitioner

Through: Mr. Mritunjay Kumar Singh, Mr.
Arvind Kumar, Mr. Subit Kumar
Singh, Mr. Ankit Kumar Vats, Mr.
Gulshan Kumar and Mr. Rajeev
Basista, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
with SI Nagendra Kumar, Anti
Narcotics Squad, South-East.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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25.10.2024

BAIL APPLN. 901/2024& BAIL APPLN. 3704/2024

1. By way of present bail applications, the applicants seek regular bail in



FIR No. 0146/2023 registered under Sections 21/29 NDPS Act at Police Station Okhla Industrial Area, Delhi.

2. The recovery of *smack/heroin* shown at the instance of applicant *Sameer Beg* is 86 grams and at the instance of applicant *Vishal @ Golu* is 260 grams.

3. Learned counsel for the applicant *Sameer Beg* submits that the applicant was arrested on 11.03.2023 and the chargesheet was filed on 08.09.2023, however, the charges are yet to be framed. To the similar extent are the contentions raised by learned counsel for the applicant *Vishal @ Golu*. Additionally, it is contended that the notice issued under Section 50 NDPS Act to the applicants did not use the word “*nearest*” and in this regard, reliance has been placed on a judgement of a Coordinate Bench of this Court in Aabid Khan vs. State Govt of NCT Delhi, in **Bail Application No. 1156/2023**, decided on 05.12.2023.

Learned counsel for the applicant *Sameer Beg* further contends that the quantity of *smack* recovered at his instance is intermediate in nature. Furthermore, it is submitted that the grant of bail to the applicants should not be fettered by Section 37 NDPS Act in case of long period of incarceration and undue delay in trial. In support of his contentions, reliance has been placed on Mohd. Muslim v. State (NCT of Delhi), reported as **2023 SCC OnLine SC 352**.

4. Learned ASC as well as learned APP for the State, while contesting the applications, submit that on the basis of secret information, both the applicants were apprehended while walking and from their possession, the said recoveries were affected. It is further stated that the FIR was registered with the aid of Section 29 NDPS Act.



5. Learned ASC as well as learned APP for the State, on instructions, submit that while the applicant *Sameer Beg* is involved in another case in FIR No. 298/2011, registered under Sections 353/332/186/34 IPC at PS Govind Puri, applicant *Vishal @ Golu* is an accused in FIR No. 113/2023 registered under Sections 21/29 NDPS Act, at PS Kalandi Kunj.

6. At this stage, learned counsel for the applicant *Sameer Beg* submits that the applicant is rather the complainant in the FIR cited against him. Insofar as applicant *Vishal @ Golu* is concerned, it is stated that there was no recovery made in the said case and that the applicant has already been granted regular bail in the aforesaid case by this Court vide order dated 24.04.2024 in Bail Appln. No. 899/2024.

7. I have heard learned counsels for the parties and perused the material on record.

8. For appreciation of the said contentions, 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:-



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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.

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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.

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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. In Rabi Prakash v. State of Odisha reported as **2023 SCC OnLine SC 1109**, 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.

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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”

11. With regard to consideration of undue delay in completion of trial, while granting bail under NDPS Act, the Supreme Court has held, in Mohd. Muslim (Supra), as under:

“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 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.”

12. It is noted that in the present case, the FIR came to be registered on 11.03.2023. The applicants are stated to be in judicial custody since 12.03.2023. Even though the chargesheet was filed on 06.09.2023, till date no charge has been framed.

13. Considering the totality of the facts and circumstances, especially the period of custody and the fact that even charges are yet to be framed and thus, the trial is likely to take time to conclude, and considering the import of the above-cited legal position, it is directed that the applicants namely Sameer Beg and Vishal @ Golu be released on regular bail subject to their



furnishing a personal bond in the sum of Rs.25,000/- each with one surety each of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty J.M. and subject to the following further conditions :-

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

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

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

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

17. Needless to state that this Court has not expressed any opinion on the merits of the case and have made the observations only with regard to present bail applications and 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 applications.

OCTOBER 25, 2024
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MANOJ KUMAR OHRI, J