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

+ **BAIL APPLN. 1404/2023**

SONU BANJARA

..... Petitioner

Through: Mr. L.S. Saini, Mr. Sarthak Mann and
Mr. Vikram P. Singh, Advs.

versus

NCT OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP for State
with SI Surender Rana ISC / Crime
Branch Chanakaya Puri, Delhi

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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02.02.2024

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No. 124/2016 under Sections 18/29 NDPS Act registered at PS Crime Branch.
2. The case of the prosecution is that 3 Kg *Afeem* (Opium) was recovered from the petitioner during the raid conducted on a secret information.
3. The learned counsel for the petitioner submits that the petitioner is in custody for almost 06 ½ years and he was aged about 19 years when the alleged offence was committed.



4. He further submits that charges were framed in the case as early as in the year 2017 but till date out of 17 witnesses cited by the prosecution only 3 witnesses have been examined fully whereas 4th witness is still under examination, thus, inevitably the trial is going to be a protracted one. He places reliance on the decision in ***Rabi Prakash Vs. State of Odisha, 2023 SCC OnLine SC 1109*** wherein the Hon'ble Supreme Court has held that fundamental right guaranteed by Article 21 will have precedence over the provisions of Section 37 of the NDPS Act. The relevant part of the said decision reads as under:

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

*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.**”*

(Emphasis supplied)

5. The learned counsel further submits that for the offence alleged against the petitioner, the maximum sentence is 20 years and the minimum sentence prescribed for the same is 10 years. Placing reliance on the decision of the Supreme Court in ***Legal Aid Committee (Representing Undertrial***



Prisoners) Vs. Union of India, (1994) 6 SCC 731, wherein various facets of the NDPS Act were dealt with, the learned counsel submits that the petitioner is entitled to be released on bail as he has already spent more than 05 years in jail. The relevant paragraphs of the said decision reads thus:

“(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

6. He further submits that the petitioner was released on interim bail on three occasions and on two occasions he had timely surrendered, however, on the third occasion it was COVID time and the petitioner was under *bona fide* belief that the interim bail so granted to him has been extended by the orders of the Hon’ble Supreme Court. However, it is not in dispute that on the third occasion also the petitioner later surrendered before the Court on his own.

7. He submits that there is one more case pending against the petitioner *vide* FIR 124/2016 under Section 8/18 NDPS Act registered at Police Station Nimbahera, Rajasthan and the petitioner has already been enlarged on bail in the said case.

8. He, therefore, urges the Court that the petitioner be enlarged on bail.

9. *Per contra*, the learned APP for the State has argued on the lines of status report.

10. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

11. A perusal of the nominal roll shows that the custody period of the



petitioner as on 03.07.2023 was 05 years 08 months and 09 days, thus it can be safely be presumed that as on date the petitioner has been incarcerated for 06 years and 03 months. The petitioner is, therefore, entitled to the benefit of the decision of the Hon'ble Supreme Court in **Legal Aid Committee** (supra).

12. Furthermore, since the trial has been going on from the year 2017 and till date only 03 out of 17 witnesses have been examined, the petitioner is also entitled to the benefit of the judgment of the Hon'ble Supreme Court in **Rabi Prakash (supra)** and accordingly, rigors of Section 37 of the NDPS Act will not apply.

13. Insofar as another case registered against the petitioner *vide* FIR No. 124/2016 under Section 8/18 NDPS Act registered at Police Station Nimbahera, Rajasthan is concerned, the petitioner has already been enlarged on bail in the said case.

14. Considering the aforesaid facts and circumstances of the case, I am of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs.50,000/- and one surety of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- b) Petitioner shall provide his permanent address, as well as, his mobile number to the IO concerned. The mobile number shall be kept in working condition at all times and he shall not change the mobile



number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the witnesses.

15. The petition stands disposed of.
16. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
17. Order *dasti* under signatures of the Court Master.
18. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

FEBRUARY 2, 2024/N.S. ASWAL