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

+ **BAIL APPLN. 1656/2023**

DHIRAJ KUMAR

..... Petitioner

Through: Mr. Sunil Mehta, Adv.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with SI Sumit, PS. Special
Cell/SR, Saket, Delhi.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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18.03.2024

1. The present petition has been filed under Section 439 CrPC read with Section 482 CrPC seeking the regular bail in connection with FIR No.36/2019 under Sections 21/29 of NDPS Act registered at Police Station Special Cell.
2. The case of the prosecution is that on 07.03.2019, a secret information was received by SI Jitender that Dhanji Gupta s/o Sarau Sah and his son, both are indulging in an illegal trade of Heroin and they would be delivering a big consignment of Heroin to their conduits in Delhi near Inderprastha Park, Ring Road towards ITO. After the formalities, a raiding team was constituted and the police apprehended the petitioner, as well as, his father. Heroin weighing 15.5 kg was recovered from the co-accused Dhanji Gupta whereas from the present petitioner Heroin weighing about 5.5 Kg was



recovered.

3. The learned counsel for the petitioner invites the attention of the Court to the nominal roll dated 15.03.2024 to contend that as on 14.03.2024 the petitioner has already spent 05 years and 07 days in judicial custody.

4. He relies upon the decision of the Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India, 1994 (6) SCC 731***, to contend that since the petitioner has already spent 5 years in custody, therefore, he is entitled to grant of bail, in terms of the law laid down therein.

5. He further submits that the prosecution has cited as many as 21 witnesses and only 02 witnesses has been examined till date, therefore, the conclusion of trial is nowhere in sight. He submits that the petitioner is squarely covered by the decision of ***Rabi Prakash vs. The State of Odisha, 2023 SCC OnLine SC 1109***.

6. He further submits that the co-accused Dhanji Gupta from whom 15.5 kg of Heroin was recovered has already been granted bail by the Court of Additional Sessions Judge, Special Judge (NDPS Act), Patiala House Courts, New Delhi vide order dated 04.12.2023.

7. *Per contra*, the learned APP has argued on the lines of the Status Report.

8. A perusal of the nominal roll shows that the petitioner has spent more than five years in custody and his overall jail conduct has also been shown to be satisfactory. Therefore, the petitioner is entitled to the benefit of the judgment of the Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra)***, the relevant part of which reads as under:-



“(iii) Where the under trial 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.”

9. Further, the trial is still underway and out of 21 witnesses cited by the prosecution only 02 witnesses have been examined, therefore, the conclusion of trial is likely to take long time. In this backdrop, the petitioner is also entitled to the benefit of the judgment of the Hon’ble Supreme Court in ***Rabi Prakash (supra)***, the Supreme Court 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.**”*

(Emphasis supplied)

10. That apart the co-accused Dhanji Gupta, who is father of the petitioner and from whom 15.5 kg of Heroin was recovered, has already been enlarged on bail.

11. Considering the aforesaid circumstances in entirety, this Court is 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 Bond 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 mobile number to the IO concerned which 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 the witnesses.
12. The petition stands disposed of.
 13. It is made clear that nothing stated above is to be construed as an expression of opinion on the merits of the case.
 14. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
 15. Order *dasti* under signatures of the Court Master.
 16. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MARCH 18, 2024/dss