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

+ **BAIL APPLN. 1239/2024**

ABDUL HAMID TURKMAN

.....Petitioner

Through: Mr. Saurav Sharma, Mr. Siddharth
Sirvastava, Mr. Sidak Singh Kalra,
Ms. Khushi Gupta, Advs.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Shashwat Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

25.10.2024

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1. The present bail application has been filed under Section 439 Cr.P.C. seeking regular bail in NCB Case No. VIII/05/DZU/2020 under Section 21(B)/23(B) of NDPS Act pending trial in SC NO. 85/2020 titled as '*Narcotics Control Bureau Vs. Abdul Hamid Turkman*'.
2. Learned counsel for the petitioner submits that the petitioner is in custody since 03.01.2020. Learned counsel submits that as of now even the prosecution evidence has not been completed. Learned counsel further submits that the alleged recovery falls within the intermediate quantity and conviction under Section 37 NDPS is not applicable.
3. Learned counsel for NCB opposed the bail application on the ground that the petitioner is a foreign national who arrived in India via Flight No. FG-313 of Ariana Airline at Terminal-3, IGI Airport from



Afghanistan. It has been submitted that the petitioner was intercepted and he voluntarily disclosed that he had swallowed capsules of Heroine. Upon which he was taken to the hospital and in the presence of independent witness, the capsules were taken out from the body of the petitioner. It has been submitted that the matter is at the stage of trial and crucial witnesses are yet to be examined.

4. As per the Nominal Roll dated 23.04.2024, the applicant is stated to be around 27 years of age and is in JC since 04.01.2020 i.e., from last around 4 years and 9 months till today.
5. Coordinate bench of this court in ***Hussain Zaheer v. State of NCT of Delhi*** inter-alia held that if a timely trial is not possible, courts are obligated to release the undertrial on bail. Further, in ***Jitendra Jain v. Narcotics Control Bureau*** 2022 SCC OnLine SC 2021, the Supreme Court observed as under:-

“xxx

Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

4. The petitioner is , accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of trial court.

xxx”

6. In ***Rabi Prakash v. State of Odisha***, 2023 SCC OnLine SC 1109, where the accused had remained incarcerated for more than three and a half years, 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.

xxx

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”

7. Similarly, in ***Man Mandal and Anr. v. State of West Bengal*** reported as 2023 SCC OnLine SC 1868, while taking into account continued custody of more than two years, the accused was granted bail. Keeping the applicant in further incarceration would cause deprivation of his right to legal defence. The object of jail is to secure the accused person's appearance during the trial. The object is neither punitive nor preventive, and the deprivation of liberty is considered a punishment. The applicant cannot be made to spend the entire period of trial in custody especially when the trial was likely to take a considerable time.
8. In the peculiar facts and circumstances, the Applicant is admitted to regular bail upon furnishing a personal bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the concerned learned trial court subject to the following further conditions:
 - a) the applicant shall appear before the Investigating Officer/Trial Court of the case as and when required;
 - b) the applicant shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;



- d) the applicant shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times;
 - e) In case of change of residential address and/or mobile number, the applicant shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
9. With the above directions, the application is disposed of.
10. A copy of this order be sent to concerned Jail Superintendent for information and necessary compliance.

DINESH KUMAR SHARMA, J

OCTOBER 25, 2024/AR/HT..