



2024:DHC:1097



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16.01.2024
Pronounced on: 14.02.2024

+ **BAIL APPLN. 1688/2022 & CRL.M.A. 20344/2022**

SUNIL

.....Applicant

Through: Mr.B.S.Arora and Mr.Naveen
Malhotra, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP with
Insp. Rajnikant, PS Bhajanpura
and SI Abhishek.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This application has been filed by the applicant under Section 439 read with 167(2) of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') and Section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act') praying for release on bail in FIR No.0246/2019 registered with Police Station: Khajoori Khas, East-District, Delhi, under Sections 22/29 of the NDPS Act.

Case of the prosecution:

2. In short, it is the case of the prosecution that on 16.05.2019, at about 9:20 PM, a checking of the vehicles was being conducted by the Police near Service Road, DLF Pushta Road, Near Government

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Signing Date: 14.02.2024

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BAIL APPLN. 1688/2022

Page 1 of 20



2024:DHC:1097



School, Khajoori Khas, Delhi. Two boys, namely, Sunil, the applicant herein, and the co-accused-Vicky @ Harminder, who were riding on a scooty and carrying two cartons in the middle of the seat of the scooty, were seen approaching the Police Picket. They were stopped for checking and it was found that they were carrying the drug, namely, 'Tramadol' in the cartons, which is a prohibited drug under the NDPS Act. Both the cartons were checked and it was found that in each carton there were 65 small boxes. Each small box contained 10 strips of 30 capsules of 'Tramadol Hydrochloride Capsules IP 50 mg' in each strip, making it a total of 39000 capsules.

3. The accused, including the applicant, disclosed that they had purchased the recovered contrabands from one Ankit, a resident of Loni, Ghaziabad. Ankit was arrested at the instance of the applicant herein on 17.05.2019, and a total of seven cartons of contrabands drugs (three cartons having total of 25200 capsules of 'Spasmo Proxyvon R Plus', two cartons having total of 27300 capsules of 'Simplex', one carton having total of 24000 capsules of 'Spasme Pievon Plus', and one carton having total 5400 capsules of 'Foridol') were recovered and seized at the instance of accused Ankit.

4. It is further alleged that Ankit, in turn, disclosed that he had purchased the recovered contrabands from one Gaurav Arora and one Rupesh Gupta. On such disclosure, Gaurav Arora was arrested on 22.05.2019, while the other co accused, Rupesh Gupta was arrested on 11.06.2019. No further recovery of contrabands was, however, made at their instance.

5. It is alleged that as per the FSL report, the recovered substance

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Signing Date: 14.02.2024

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BAIL APPLN. 1688/2022

Page 2 of 20



2024:DHC:1097



from the applicant was found to contain 'Tramadol', 'Dicyclomine' and 'Acetaminophen'.

6. The CDRs analysis of the mobile phones also showed that accused Ankit was in continuous touch with accused Rupesh Gupta.

7. Accordingly, charge-sheet was filed by the prosecution on 14.08.2019. The first supplementary charge-sheet regarding the mobile phones of the accused persons was filed on 16.06.2021; and the second supplementary charge-sheet regarding contraband was filed on 15.01.2022. It is further alleged that the third supplementary charge-sheet regarding voice samples of accused persons, Ankit and Rupesh, has been filed before the learned Trial Court on 28.03.2023.

8. Charges under Sections 22(c) and 29 read with Section 22(c) of the NDPS Act have been framed against the applicant herein, vide order dated 15.05.2023.

9. The Status Report further discloses that accused Gaurav Arora and Rupesh Gupta have been discharged.

10. The Status Report indicates that the accused Ankit was released on bail vide order dated 24.12.2021 passed by the learned Additional Sessions Judge (Special Court NDPS), Karkardooma Courts, Delhi.

Submissions of the learned counsel for the applicant

11. The learned counsel for the applicant submits that the applicant has been in custody since 17.05.2019; Charges against the applicant were framed only on 15.05.2023, and till date, no witness has been examined, though the applicant has been in custody for more than three years and ten months, as reflected in his nominal roll. Placing

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Signing Date: 14.02.2024

12:46:11

BAIL APPLN. 1688/2022

Page 3 of 20



2024:DHC:1097



reliance on the judgments of the Supreme Court in *Mohd. Muslim v. State (NCT of Delhi)*, 2023 SCC OnLine SC 352; *Badsha SK. v. The State of West Bengal* (order dated 13.09.2023 passed in Special Leave Petition (Crl.) 9715/2023 ; *Dheeraj Kumar Shukla v. State of U.P.*, 2023 SCC OnLine SC 918; *Rabi Prakash v. State of Odisha*, 2023 SCC OnLine SC 1109; *Man Mandal & Anr. v. The State of West Bengal* (Special Leave Petition (Crl.) 8658/2023 decided on 14.09.2023); and of this Court in *Suraj v. State (NCT of Delhi)*, 2023 SCC OnLine Del 5323, the learned counsel for the applicant submits that only on the ground of delay in the trial, the applicant is entitled to be released on bail.

12. The learned counsel for the applicant further submits that, in the present case, the samples were not drawn before the learned Magistrate in compliance with Section 52 of the NDPS Act. Placing reliance on the judgments of the Supreme Court in *Yusuf @ Asif v. State*, 2023 SCC OnLine SC 1328; *Bothilal v. Narcotics Control Bureau*, 2023 SCC OnLine SC 498; and *Simarnjit Singh v. State of Punjab*, 2023 SCC OnLine SC 906, he submits that the same would be fatal to the case of the prosecution and, in any case, entitles the applicant to be released on bail.

13. Placing reliance on the judgment of the Supreme Court in *State of Rajasthan v. Gurmail Singh*, (2005) 3 SCC 59, he submits that the FSL report also cannot be relied upon in the present case inasmuch as the sample of the seal was not sent to the FSL. He submits that this would also be a ground to release the applicant on bail.

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Signing Date: 14.02.2024

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 BAIL APPLN. 1688/2022

Page 4 of 20



Submissions of the learned APP

14. On the other hand, the learned APP submits that Section 37 of the NDPS Act is an exception to the general principle of law, and where the offence is in relation to a commercial quantity, the accused can be released on bail only if the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence while being released on bail. He submits that the offence under the NDPS Act is very serious and affects the entire society, including lives of a number of persons. Stringent provisions have therefore, been made for releasing the accused on bail. He submits that Section 37 of the NDPS Act cannot be given a liberal interpretation on the justification that it affects the personal liberty of a citizen who is yet to be tried. In support, he places reliance on the judgments of the Supreme Court in *Narcotics Control Bureau v. Kishan Lal*, (1991) 1 SCC 705; *Intelligence Officer, Narcotics C. Bureau v. Sambhu Sonkar*, (2001) 2 SCC 562; *Bipin Shantilal Panchal v. State of Gujarat*, (2001) 3 SCC 1; *Union of India v. Rattan Mallik*, (2009) 2 SCC 624; and, *Babua v. State of Orissa*, (2001) 2 SCC 566.

15. He further submits that, in any case, this Court must take into account the reasons for the delay in completion of the trial. It could also be for reasons attributed to the Court itself. He submits that in the present case, Covid-19 also intervened, and with there being restricted functioning of the Courts due to the same, some delay has been caused in the conclusion of the trial. He submits that therefore, delay in completion of the trial cannot be a reason to release the applicant on



2024:DHC:1097



bail. In support, he places reliance on the judgments of this Court in *Anil Kumar Gandhi v. N.C.B.*, 1991 SCC OnLine Del 344; *Gurbux Bhiryani v. J.K. Handa*, 1991 SCC OnLine Del 421, and of the High Court of Kerala in *Jaseer S.M. v. State of Kerala & Anr.*, in Bail Appl. No.7238/2023 decided on 08.01.2024.

16. He further submits that, in the present case, merely because the samples have not been drawn before the learned Magistrate in compliance with Section 52A of the NDPS Act, the applicant cannot be released on bail, nor can it be said that the same will be fatal to the case of the prosecution. He submits that the effect of such non compliance can only be determined at the conclusion of the trial, where the accused would have to show the prejudice caused due to such non compliance. In support, he places reliance on the judgments of this Court in *Masibur Khan v. State (Govt. Of NCT of Delhi)* 2023 SCC OnLine Del 3326; *Shailender v. State of NCT of Delhi* 2022 SCC OnLine Del 4896; and *Saddad Alam v. State (Govt. Of NCT Delhi)* NC 2023:DHC:7494, and of the High Court of Bombay in *Mukesh Rajaram Choudhari v. The State of Maharashtra*, 2023:BHC-AS:28549.

Analysis and Findings

17. I have considered the submissions made by the learned counsels for the parties.

Delay in trial:

18. In *Mohd. Muslim @ Hussain* (Supra), the Supreme Court

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BAIL APPLN. 1688/2022

Page 6 of 20



considering the application filed by the accused therein for being released on bail, observed as under:-

“12. This court has to, therefore, consider the appellant's claim for bail, within the framework of the NDPS Act, especially Section 37. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, this court made certain crucial observations, which have a bearing on the present case while dealing with denial of bail to those accused of offences under the NDPS Act:

“On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569]. Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225], release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been



delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.”

13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be



concluded swiftly. The court said that Parliamentary intervention is based on:

“a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an undertrial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

xxxx

19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In



cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

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.

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 country. 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. Staten 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"(also see Donald Clemmer's 'The Prison Community' published in 1940). 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.”

19. In **Rabi Prakash** (Supra), the Supreme Court reiterated the above principles, 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.”

20. In **Badsha SK** (Supra), the accused therein had been in custody for more than two years and four months with the trial yet to begin. The Court therefore, released the accused on bail.

21. Similarly, in **Manmandal** (Supra), the accused therein had been in custody for almost two years and the Court found that the trial is not likely to be taken up for hearing in the immediate near future. The accused was, therefore, released on bail.



22. In ***Dheeraj Kumar Shukla*** (Supra), the Supreme Court again released the accused therein on bail, observing 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.”

23. A learned Single Judge of this Court in ***Anil Kumar Gandhi*** (supra) has held that merely because the trial has not been concluded, in view of Section 37 of the NDPS Act, it would not be a ground for release of the accused on bail.

24. In ***Jaseer S.M.*** (supra), the accused had been in custody for eighteen months. The Court held that there is no rule of thumb or principle of universal application laying down the time period within which the trial is to commence and to be concluded. The Court considering the prosecution’s concern regarding the element of flight risk of the accused, declined to release him on bail.

25. In ***Gurpreet Singh v State of NCT of Delhi***, Neutral Citation No.2024:DHC:796, this Court has considered the effect of delay in trial, observing 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.”

26. From the above, it is apparent that inspite of the stringent test to be met by the accused under Section 37 of the NDPS for being released on bail, it has been held that the same does not fetter grant of bail to the accused on the ground of undue delay in the completion of trial. It has been held that prolonged incarceration generally militates against the right to life and liberty guaranteed under Article 21 of the Constitution of India and therefore, the conditional liberty must override the statutory embargo under Section 37 of the NDPS Act.

27. As is evident from the above, the accused has been in custody since 17.05.2019; charges were framed against him only on 15.05.2023. It is stated that till date, no witness has been examined. The Nominal Roll of the applicant shows that he has been in custody for over three years and ten months. His conduct in jail has been reported to be satisfactory and no involvement in any other criminal case has been reported against him. The applicant was earlier released on *interim* bail from 17.06.2020 to 23.03.2021, and it is not reported



that he had, in any manner, violated the terms of his release or misused the same.

28. The above would, therefore, be sufficient ground to release the applicant on bail.

Non compliance with Section 52A of the NDPS Act and failure to send the seal to FSL:

29. Even otherwise, in *Yusuf @ Asif* (Supra), the Supreme Court emphasised the mandatory compliance with Section 52A of the NDPS Act by observing as under:-

“12. A simple reading of the aforesaid provisions, as also stated earlier, reveals that when any contraband/narcotic substance is seized and forwarded to the police or to the officer so mentioned under Section 53, the officer so referred to in sub-section (1) shall prepare its inventory with details and the description of the seized substance like quality, quantity, mode of packing, numbering and identifying marks and then make an application to any Magistrate for the purposes of certifying its correctness and for allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the correctness of the list of samples so drawn.

13. Notwithstanding the defence set up from the side of the respondent in the instant case, no evidence has been brought on record to the effect that the procedure prescribed under sub-sections (2), (3) and (4) of Section 52A of the NDPS Act was followed while making the seizure and drawing sample such as preparing the inventory and getting it certified by the Magistrate. No evidence has also been brought on record that the samples were drawn in the presence of the Magistrate and the list of the samples so drawn were certified



by the Magistrate. The mere fact that the samples were drawn in the presence of a gazetted officer is not sufficient compliance of the mandate of sub-section (2) of Section 52A of the NDPS Act.

14. It is an admitted position on record that the samples from the seized substance were drawn by the police in the presence of the gazetted officer and not in the presence of the Magistrate. There is no material on record to prove that the Magistrate had certified the inventory of the substance seized or of the list of samples so drawn.

15. In Mohanlal's³ case, the apex court while dealing with Section 52A of the NDPS Act clearly laid down that it is manifest from the said provision that upon seizure of the contraband, it has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who is obliged to prepare an inventory of the seized contraband and then to make an application to the Magistrate for the purposes of getting its correctness certified. It has been further laid down that the samples drawn in the presence of the Magistrate and the list thereof on being certified alone would constitute primary evidence for the purposes of the trial.

16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated."

(Emphasis added)

30. In **Bothilal** (Supra), the Supreme Court reiterated the same as under:-

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 BAIL APPLN. 1688/2022



“16. In paragraphs 15 to 17 of the Mohanlal's case, it was held thus:

“15. It is manifest from Section 52-A(2)include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of



samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with sub-sections (2) and (3) of Section 52-A above constitute primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

(emphasis added)

17. Thus, the act of PW-2 of drawing samples from all the packets at the time of seizure is not in conformity with what is held by this Court in the case of Mohanlal². This creates a serious doubt about the prosecution's case that the substance recovered was contraband.”

(Emphasis added)

31. In **Simarnjit Singh** (Supra), again, placing reliance on its earlier judgment in **Union of India v. Mohanlal**, (2016) 3 SCC 379, the Supreme Court reiterated that where the samples were not drawn in conformity with Section 52A of the NDPS Act, it creates a serious doubt on the prosecution case about the substance recovered to be a contraband.

32. In **Gurmail Singh** (Supra), the Supreme Court held that where the sample of the seal was not sent with the samples to the FSL, it was sufficient to cast a doubt on the case of the prosecution and to acquit the accused therein.



2024:DHC:1097



Conclusion:

33. Though the learned APP has submitted that these would be matters to be determined in the trial, in my view, they are also relevant while considering the pre-requisites of Section 37 of the NDPS Act. They cast a doubt on the case of the prosecution giving reasonable ground for this Court to believe that the accused is not guilty of the offence charged.

34. Keeping in view the clean antecedents of the applicant and the above circumstances, and the fact that the co-accused has already been released on bail, this Court considers that the applicant is not likely to commit any offence while being released on bail.

Directions:

35. Accordingly, it is directed that the applicant be released on bail in FIR No.0246/2019 registered with Police Station: Khajoori Khas, East-District, Delhi, under Sections 22/29 of the NDPS Act on furnishing a personal bond in the sum of Rs.50,000/- with one local surety of the like amount to the satisfaction of the Ld. Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the Ld. Trial Court.
- ii. The Applicant shall provide his permanent address to the Ld. Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.

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BAIL APPLN. 1688/2022



- iii. The Applicant shall appear before the Ld. Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the Ld. Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his bail in the present case as well.

36. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

37. The Bail Application is disposed of in the above terms. The pending application is also disposed of.

38. Copy of this judgment be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J.

FEBRUARY 14, 2024/rv/ss

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