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

+ **BAIL APPLN. 1849/2023**

PARVEEN YADAV

..... Petitioner

Through: Mr. Vijay Kinger, Mr. Ashwani
Gehlot & Ms. Roopa Nagpal,
Advocates.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Yasir Rauf Ansari, ASC (Crl.) for
the State with Mr. Alok Sharma &
Mr. Vasu Agarwal, Advocate.
ASI Pawan Kumar, P.S. Kanjhwala.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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05.03.2024

1. The present application under Section 439 of the Cr.P.C. read with Section 482 Cr.P.C. seeks regular bail in case FIR no. 125/2018 under Sections 20/25/29 of NDPS Act, registered at PS Crime Branch, District North-East, Delhi.
2. As per the status report dated 17.07.2023 authored by Sh. Prabhat Sinha, Assistant Commissioner of Police, ANTF, Crime Branch, the case of the prosecution is that on 10.05.2018, based on secret information regarding supply of ganja, a raid was conducted. A car bearing registration no. OR-O2-BF-6450 was intercepted. Two persons were sitting in the said car namely Praveen Yadav (the applicant) and co-accused Harender Mondal. After being served a notice under Section 50 of the NDPS Act, a personal search was conducted; however, no contraband was recovered. Thereafter,



from the search of the intercepted car, 25 packets were recovered from the *dickey* of the car which were found to contain *ganja*. A total recovery of 50.550 kg of contraband was effected. Accordingly, the present FIR was registered on 10.05.2018. The applicant was arrested and remanded to judicial custody on 11.05.2018.

3. Learned counsel for the petitioner submits that the latter has been in judicial custody since 11.05.2018 and has undergone more than 05 years of incarceration. It is submitted that in view of the prolonged period of custody, the applicant be granted bail.

4. *Per contra*, learned ASC for the state submits the present case involves recovery of a commercial quantity of contraband and therefore, the rigors of Section 37 of the NDPS Act would have to be satisfied. It is submitted that the applicant's active involvement in commission of the alleged offence is apparent from the fact that he was driving the car from which the contraband was recovered.

5. Heard learned counsel for the parties and perused the record.

6. It is pertinent to note that on a pointed query from this Court, the Investigating Officer submits that the car from which the recovery was effected, belonged to Harendra Mandal (co-accused) and the applicant was only driving the said car. The material relied upon by the prosecution to demonstrate conscious possession is the presence of the applicant in the car and his disclosure statement. It is pertinent to note that the recovery was effected from the *dickey* of a car which did not belong to the applicant.

7. It is an admitted position that the applicant was arrested on 11.05.2018 and has been in custody ever since. A perusal of the nominal roll



dated 15.09.2023 received from the concerned Jail Superintendent reflects that the applicant has been in custody for 05 years 04 months and 04 days.

8. The Hon'ble Supreme Court, in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, 1994 6 SCC 731**, has directed as under:

“(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.”

9. It is pertinent to note that a coordinate bench of this Court in **Anil Kumar @ Nillu v. State, 2022 SCC Online Del 778**, while following the judgment of the Hon'ble Supreme Court in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (supra)** observed that while remaining cognizant of the impact that drugs have on society, Courts must also remain conscious of the fact that prolonged deprivation of one's personal liberty, without the assurance of a speedy trial runs contrary to principles of the Constitution. It was held as under:

“14. In view of the above, this Court believes that achievement of universal equality before the law requires the tenets of personal liberty to be applicable to all similarly circumstanced individuals and must not be restricted unless according to procedure established by law. This Court does not find any weight in the submission of the learned APP that the aforementioned judgment of the Supreme Court does not apply to the instant case and that the judgment of this Court in *Atul Agarwal v. Directorate of Revenue Intelligence (supra)* must be referred to a larger Bench due to the incorrect application of the Supreme Court's judgment. Furthermore, in *Atul Agarwal v. Directorate of Revenue Intelligence (supra)*, this Court had not solely



granted bail on the footing of the inordinate delay in trial, but had also considered the twin requirements stipulated under Section 37 of the NDPS Act. Therefore, this Court is of the opinion that the Petitioner herein is squarely covered by judgment of the Supreme Court and is entitled to release on account of inordinate delay in trial and prolonged judicial custody.

8. Therefore, fair, just and reasonable procedure is implicit in Article 21 and it creates a right in the accused to be tried speedily. This Court has consistently observed that while Courts must remain cognizant of the deleterious impact of drugs on society, it is also important to keep in mind that deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution. In the instant case, the Petitioner has been incarcerated for almost eight years now, i.e. since 27.03.2014, for an offence that is punishable with a minimum imprisonment of ten years. This is an egregious violation of an accused's right to personal liberty and right to speedy trial as, in the off-chance that the Petitioner is acquitted, it would entail an irretrievable loss of eight years of his life that cannot be compensated. Whether or not the Petitioner played an active role in the commission of the offence of drug trafficking and supply is a matter of trial and cannot justify the prolonged incarceration of the Petitioner.”

10. It is pertinent to note that the decision in **Anil Kumar @ Nillu (supra)** was challenged in appeal before the Hon’ble Supreme Court and vide order dated 14.10.2022, SLP (Criminal) 25615/2022, was dismissed.

10. The Hon’ble Supreme Court, in **Union of India v. K.A. Najeeb, (2021) 3 SCC 713** took note of the law laid down in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (supra)** and observed 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. It was held as under:

“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* [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , 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.

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.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in



custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

11. The present applicant was arrested on 10.05.2018 and has been in custody ever since. A perusal of the nominal roll dated 15.09.2023 reflects that the applicant has been in custody for 05 years 04 months and 04 days. The applicant has been chargesheeted for offences related to commercial quantity under Sections 20/25/29 of the NDPS Act, and will therefore be covered under direction (iii) in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (supra)**, which is as under:

“(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.”

Sections 20, 25 and 29 of the NDPS Act provide for a punishment of rigorous imprisonment for a term which shall not be less than 10 years but which may extend to twenty years and a fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Since, in the present case, the applicant has been in custody for more than 05 years, his case is squarely covered by the aforesaid judgment of the Hon’ble Supreme Court.

12. In view of the facts and circumstances of the present case, the application is allowed and the applicant is admitted to bail upon his



furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith two sureties of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The applicant shall deposit his passport (if not already seized) with the Court of the learned Additional Sessions Judge (Special Judge, NDPS), Patiala House Courts.
- ii. The applicant, shall on being released on bail present himself at PS Crime Branch, once in a week, on every Friday at 04:00 PM, unless leave of absence is obtained in advance from the learned Special Judge concerned. The concerned officer is directed to release the applicant by 05:00 PM after recording his presence and completion of all necessary formalities.
- iii. The applicant shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge.
- iv. The applicant shall appear before the learned Trial Court, as and when the matter is taken up for hearing.
- v. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- vi. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
- vii. The bail granted to the applicant shall be cancelled forthwith if any of the above conditions are violated or a case for cancellation of bail is otherwise made out.

13. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.



14. The application stands disposed of along with all the pending application(s), if any.

15. Let a copy of this order be communicated to the concerned Jail Superintendent.

AMIT SHARMA, J

MARCH 5, 2024/bsr