



2024:DHC:5773



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IN THE HIGH COURT OF DELHI AT NEW DELHI*Judgment delivered on: 05.08.2024***+ BAIL APPLN. 2059/2023****RAMESH KUMAR**

..... Petitioner

Through: Mr. N.S. Dalal, Mr Devesh Pratap Singh, AOR, Mr C. M. Grover, Ms Nidhi Dalal, Ms Jyoti Nambiar, Ms Rachana Dalal and Mr Alok Kumar, Advocates.

versus

D.R.I

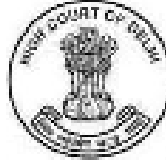
..... Respondent

Through: Mr. Satish Aggarwala, Sr. Standing Counsel for the DRI with Mr. Gagan Vaswani, Advocate for DRI.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present bail application has been filed under Section 439 read with Section 482 CrPC seeking regular bail in Sessions Case No.130/2020 pending before the court of learned Special Judge (NDPS), South, Saket Courts, Delhi.

2. The case of the prosecution is that on the basis of the intelligence report through reliable sources, information was received to the effect that one Tata Truck bearing registration No. HR 55K 3687 had left from Lamtaput forest area of Odisha for Ludhiana (Punjab) on 18.12.2019,



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carrying approximately 4.5 quintals of *ganja*, concealed in specially made cavities in the truck.

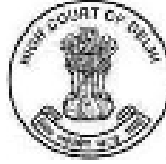
3. The said truck was likely to enter Delhi at around 10.00 P.M. onwards, from Gurgaon side via NH48 for part delivery somewhere in Delhi and the driver was accompanied by one person.

4. In view of the above intelligence report two independent witnesses namely Sh. Om Prakash S/o Sh. Dulo Ram and Sh. Deep Kumar @ Deepak Kumar S/o Sh. Vijay Kumar were called to the DRI office at CGO Complex, New Delhi at around 09.00 P.M. on 23.12.2019.

5. The DRI officers requested the two persons to witness the search proceedings of the said truck to which they agreed. Thereafter, the DRI officials alongwith the said two *panch* witnesses left for Kapashera (Haryana-Delhi Border) via NH-48 and around 11:00 PM when they were waiting for the said truck, they noticed the truck bearing registration no. HR 55 K 3687 coming from Gurgaon side, which was intercepted. The truck was found to be occupied by the driver and one person, who introduced themselves as Roop Singh and Ramesh Kumar (petitioner herein).

6. On questioning, Ramesh Kumar disclosed that he was the owner of the said truck and he was carrying approximately 450 kgs. of *ganja* in the said truck, concealed in hood and specially created cavity of the truck. Thereafter, the truck was brought to CGO Complex with the consent of two occupants, at around 11:45 P.M. on 23.12.2019.

7. On search being conducted, 111 packets of *ganja* were recovered from the said truck, the total gross weight of which was found to be 469.36 kg. whereas the net weight was recorded as 457 Kgs.



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8. It is further the case of the prosecution that *panchnama* proceedings were conducted which were signed by the *panch* witnesses. The statements of accused persons were recorded under Section 67 of NDPS Act and subsequently, they were arrested on 24.12.2019.

9. Learned counsel for the petitioner, at the outset submits that there is no compliance of provisions of Section 52A of the NDPS Act, inasmuch as, the samples ought to have been drawn within 72 hours in terms of the standing order nos. 1/88 and 1/89, whereas in the present case the samples were drawn after 56 days.

10. Elaborating on his submission, he submits that the incident is of 24.12.2019 whereas the sampling was started only on 18.02.2020 and the same was concluded on 07.03.2020 and, thereafter the samples were sent to the FSL on 22.04.2020. In support of his contention, the learned counsel places reliance on the decision of the Coordinate Bench of this Court in ***Kashif vs. Narcotics Control Bureau: 2023 SCC OnLine Del 2881***, wherein there was a delay of 51 days in sending the samples to the FSL after the date of seizure and this court held that the violation of Section 52A of NDPS Act vitiates the sample collection procedure and the benefit of the same must enure to the accused.

11. He further submits that the petitioner is in custody since 24.12.2019 and the prosecution has cited as many as 26 witnesses and only 09 witnesses have been examined till date. He submits inevitably the conclusion of trial is likely to take long time. According to the learned counsel, an inordinate delay in the conclusion of trial will also enure to the benefit of the petitioner and the fundamental right guaranteed to the petitioner under Article 21 of the Constitution of India shall have



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precedence over the rigors of Section 37 of the NDPS Act. In support of his contention, he places reliance on the decision of the Supreme Court in ***Rabi Prakash vs. State of Odisha: 2023 SCC OnLine SC 1109.***

12. He submits that the independent/*panch* witness, namely, Deepak Kumar, who was examined by the prosecution as PW-8 has not supported the case of the prosecution, inasmuch, as he could not identify the present petitioner in court. Inviting the attention of the Court to the testimony of the said witness, the learned counsel submits that the said witness had stated that he is an illiterate person and he had put his signatures on the documents as the DRI officers had asked him to sign on the same.

13. Referring to the cross-examination to the said witness (PW-8), he submits that the said witness has also admitted the fact that he is a witness in number of cases of DRI. Further, referring to the cross-examination of the witness, he submits that the said witness has admitted that he had reached the DRI office at about 8:30 AM whereas the secret information was admittedly received by the DRI in the night and the raid was also conducted during the night hours. This according to the learned counsel falsifies the entire case of the prosecution.

14. Inviting attention of the Court to the testimony of another *panch* witness i.e., PW11, the learned counsel contends that the testimony of said witness does not inspire confidence. He has admitted that no packets of contraband were opened or tested in his presence and that he does not know the contents of the papers which bears his signatures. Further, the witness also admitted that he is a witness in other cases of DRI.



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15. He submits both the *panch* witnesses are stock witnesses of the DRI and much credence cannot be given to their testimonies. Further, there are discrepancies and material contradictions in their statements which makes the recovery doubtful.

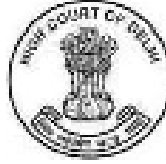
16. He submits that the petitioner is not involved in any other case under NDPS Act. Only other involvement of the petitioner is under the Excise Act and in that case as well, the petitioner is on bail. He, therefore, urges the court to enlarge the petitioner on bail.

17. *Per contra*, learned senior standing counsel for the DRI submits that the recovery in the present case is of commercial quantity, therefore, the rigors of Section 37 of the NDPS Act would apply.

18. He further submits that apart from the present case there are two more cases registered against the present petitioner one being FIR No. 113/2008 under Section 19/54, Rajasthan Excise Act registered at PS Sanriya, Rajasthan and the other case is registered in Andhra Pradesh, the details of which could not be procured by the department.

19. He submits that the petitioner has not cooperated in the investigation. He further submits that the truck from which contraband was seized is registered in the name of petitioners' wife and the petitioner's mala-fide can be gauged from the fact that in the said truck a cavity was created by him to carry the contraband.

20. He submits that the department is not in any manner responsible for the delay in the trial. He further submits that the case of the ***Rabi Prakash vs. The State of Odisha, 2023 SCC OnLine SC 1109*** is not applicable to



the facts of the present case inasmuch as in **Rabi Prakash** (*supra*) total 19 witnesses were cited by the prosecution but only one witness had been examined whereas in the present case out of 26 witnesses cited by the prosecution 09 witnesses have already been examined.

21. He also placed reliance on the decision of the Hon'ble Supreme Court in **NCB Vs. Mohit Aggarwal, 2022 SCC OnLine SC 891** to contend that in the said decision it has been laid down that the petitioner cannot be granted the concession of bail solely on the basis of period of incarceration, the relevant paragraph of which reads as under:

“18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act”

(emphasis supplied)

22. He further submits that the decision in **Mohit Aggarwal**(*supra*) is a decision of three judge bench of the Hon'ble Supreme Court whereas the decision in **Rabi Prakash** (*supra*) is a decision of two judge bench of the Hon'ble Supreme Court.

23. He, therefore, contends that the bail application of the petitioner be dismissed.



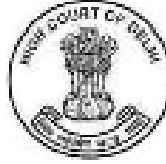
24. I have heard the learned counsel for the petitioner, as well as, learned senior standing counsel for DRI and have perused the record.

25. As far as the contention of the learned counsel for the petitioner in respect of violation of Section 52A of the NDPS Act on account of 56 days delay in sampling of contraband is concerned, suffice it to say that such a delay by itself is not a ground to grant the concession of bail to an accused absent serious prejudice being caused to him. Reference in this regard may be had to a decision of the Coordinate Bench of this Court in **Somdutt Singh @ Shivam vs. Narcotics Control Bureau: 2023 SCC OnLine Del 7580** decided on 01.12.2023 the Court held as under:

*“17. It is clear from a reading of the aforesaid judgments that there is no mandatory time duration prescribed for compliance of Section 52-A of the NDPS Act. **Though it is desirable that the procedure contemplated in Section 52-A of the NDPS Act be complied with at the earliest, mere delayed compliance of the same cannot be a ground for grant of bail. The applicant will have to show the prejudice caused on account of delayed compliance of Section 52-A of the NDPS Act.***

*18. In the present case, the sampling of the seized psychotropic substances was carried out in the presence of the Magistrate and the accused persons and the samples were directed to be sent for testing. **The applicant has failed to show the prejudice caused to him on account of the delayed compliance of Section 52-A of the NDPS Act.***

*19. At this stage, it is apposite to refer to the judgments relied on by the counsel for the applicant. In **Kashif (supra)** and **Tamir Ali (supra)** no recovery was effected from the possession or at the instance of the applicants therein. Further, in **Sarvothaman Guhan (supra)**, the recovery from the applicant was not of a commercial quantity. Therefore, reliance placed on the aforesaid judgments is misplaced as the*



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rigours of Section 37 of the NDPS Act were not applicable therein.”

(emphasis supplied)

26. In the present case, neither any prejudice has been pleaded nor argued. Further, the sampling of the seized contraband was carried out in the presence of the Magistrate, therefore, *prima facie*, there is no possibility of any tampering of the sample.

27. Insofar as the contention of learned counsel for the petitioner in respect of *panch* witness Deep Kumar @ Deepak Kumar (PW8) is concerned, it is not appropriate to delve deep into the testimony of the said witness while considering his bail plea, however, a cursory reading of the testimony of PW8 reveal the following facts - (i) the case of the prosecution is that the two *panch* / independent witnesses were called to the office of DRI on 23.12.2019 at about 9 PM but PW8 in his cross examination has stated that he was called to the DRI's office at about 08:30 AM and he also made entry in the entry register at about 09.15 AM; (ii) the documents which *panch* witness/PW8 was made to sign were not prepared in his presence, the same had already been prepared by the DRI officials; (iii) the witness/PW8 was not knowing about the contents of the exhibits which bears his signature; (iv) none of the packets containing contraband were opened by the officials in his presence; (v) all the packets were not weighed in his presence; (vi) he had been made independent witness in other cases of DRI also; (vii) PW8 did not state that he had accompanied the DRI officials to *Kapashera* border and that the offending truck was intercepted in his presence; and (vii) suggestions were put to this



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witness by the learned counsel for the DRI after seeking permission from the Court, but he denied all the suggestions.

28. The other *panch*/independent witnesses namely, Om Prakash who was examined as PW-11, has though supported the case of the prosecution to an extent but some conspicuous features in his testimony are also worth noting. The said witness has, *inter-alia*, stated – (a) one other independent witness joined for search proceedings but the said witness did not join others at the place of interception, which statement is contrary to the case of the prosecution in the complaint; (b) he also admitted that he is witness in some other cases of DRI as well; (c) no packets of contraband were opened in his presence; (d) no testing of substance was done in his presence; (e) he does not know English and does not know the contents of the papers which bears his signatures in this case and that those papers were not read over or explained to him in vernacular.

29. At this stage though the evidence is not to be weighed meticulously as weighing of evidence to find the guilt of the accused is the work of Trial Court, but the contention of the learned counsel for the petitioner that both the witnesses are stock witnesses of the DRI and there are discrepancies and material contradictions in their statements which makes the recovery doubtful does not appear to be wholly without substance. The striking features of the testimonies of PW8 and PW11, as noted above, have the potential of making dent into the case of the prosecution and tilts the balance in favour of the petitioner in the scheme of broad probabilities. Thus, there is a reasonable ground to believe that the accused is not guilty of the alleged offence.



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30. Insofar as the contention of the learned senior standing counsel DRI that the petitioner is involved in another case registered in Rajasthan is concerned, suffice it to note that the said case, as borne out from the nominal roll, is under the Rajasthan Excise Act and not under the NDPS Act. Further, the petitioner was granted interim bail in the present case four times and it is not the case of the prosecution that said liberty granted to the petitioner was misused by him or that he committed any offence under the Act. Thus, it can be said that the accused would not commit an offence if granted bail.

31. Another aspect that cannot be lost sight of is that the petitioner is in custody since 24.12.2019, thus, as on date the petitioner has spent more than 3 years and 08 months in custody. The trial is at an initial stage in as much as there are 26 witnesses cited by the prosecution, of which only 09 have been examined.

32. Accordingly, the trial is going to be a protracted one and the petitioner cannot be kept in custody till the conclusion of the trial. Reference in this regard may be had to the judgment of the Supreme Court in ***Mohd. Muslim vs. State (NCT of Delhi): 2023 SCC OnLine SC 352***, wherein the Supreme Court after taking into account the decision of a three Bench in ***KA Najeer vs. UOI: (2021) 3 SCC 713*** has held that the right of an accused person to a speedy trial as guaranteed by Article 21 of the Constitution cannot be circumscribed by the rigors of Section 37 of the Act. The relevant paragraphs of the judgment read as under:-

“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

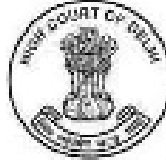


grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie 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. State 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.”

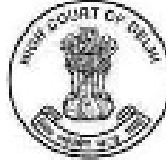
*24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer's ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects - where the 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.***

*25. **For the above reasons, the appellant is directed to be enlarged on bail, subject to such conditions as the trial court may impose. The appeal is allowed, in the above terms. No costs.”***

(emphasis supplied)

33. Likewise, in **Rabi Prakash (supra)**, the Hon’ble Supreme Court under somewhat similar circumstances held as under:

“2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No. EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the



driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

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.

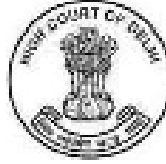
4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the 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)

34. Considering the aforesaid circumstances in entirety and the *dicta* of aforesaid decisions, this Court is of the opinion that the present petitioner has made out a case for grant of regular bail.

35. Accordingly, the petitioner is enlarged on regular 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 learned Trial Court as and when the matter is taken up for hearing.
- b) The petitioner shall not contact, nor visit, nor offer any



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inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

- c) He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SHO;
- d) He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

36. The petition stands disposed of.

37. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.

38. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

39. Order *dasti* under signatures of the Court Master.

40. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

AUGUST 05, 2024
N.S.ASWAL