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

+ **BAIL APPLN. 2130/2023**

RAVI THAKUR

.....Petitioner

Through: Mr. Nikhil Tyagi & Ms. Kirti
Sharma, Advocates

versus

STATE OF N.C.T OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
SI Yogender & SI Ravi Thakur, PS
Timarpur

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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01.10.2024

1. This petition seeks bail in FIR No368/2020 PS Timarpur under Sections 20/25/29 NDPS Act. Petitioner was arrested on 23rd October 2021 on basis of alleged seizure of 51.15 kgs of *ganja* from his car.
2. Against dismissal of his bail application the High Court, petitioner preferred an SLP No.5897/2022 before the Supreme Court wherein the Supreme Court by directions dated 30th June 2022, granted him liberty to withdraw the SLP with liberty to file fresh bail application before Trial Court / High Court after completion of 2 years of custody.
3. The order which was impugned before the Supreme Court was passed by this Court on 4th April 2022 in BAIL APPL. No.1941/2021. Various aspects which petitioner's counsel seeks to argue, had been traversed in the said order.



4. This Court has noted para 19 of the said order that “*petitioner has been in custody since October 2020 the trial is moving at a snail's pace, this Court directs Ld, Trial Court to hear and conclude the matter within a period of 6 months from the date of this Order.*”

5. It is noted that the trial has still not concluded; 4 more prosecution witnesses are yet to be examined and defence witnesses will be examined thereafter.

6. Counsel for petitioner has raised the following submissions

a. *Firstly*, the notice under Section 50 NDPS Act was defective to the extent that it provided a 3rd option of search by an officer from the raiding party itself, which cannot be permitted under the provisions of law. For this, he has relied on decision of Single Judge of Punjab & Haryana High Court in ***Akash Garg v. State of Punjab*** in CRA-S-1411/2021, where in para 13, it is held that there is no option of IO offering search of accused by himself, in absence of any gazetted officer. APP for the State however points out that in the facts of ***Akash Garg***, no option was given to the accused for being searched by Gazetted Officer or a Magistrate, unlike the notice in this matter, where the option was categorically given.

b. *Secondly*, it is argued that as per prosecution, raid was from *Mahindra Xylo* car, as recorded by the first IO in the seizure memo. However, the second IO in the charge-sheet recorded that it was *Chevrolet Enjoy* car, which discrepancy cannot be explained away, since raiding team comprising of



9 members, was present at the spot for about 6 hours.

- c. *Thirdly*, it is stated CDRs of the accused persons were only taken from 10th October 2020 to 22nd October 2020, whereas the seizure memo is dated 24th October 2020. It is alleged that there was no call or mobile network on 23rd October 2020 since the mobile of petitioner was confiscated by the police on 23rd October 2020 itself.
- d. *Fourthly*, it is stated that petitioner is in custody for the last more than 3 ½ years and the Supreme Court had given liberty to him to move fresh bail application after 2 years, by order dated 30th June 2022.

7. APP for the State, in response, has argued that as far as description of *Mahindra Xylo* car is concerned, it was inadvertent; however registration number and chassis number was the same. Further, as regards, CDR records of 23rd and 24th October 2020 had been provided subsequently.

8. Though the contention of petitioner of the 3rd option being given notice under Section 50 NDPS Act, does not appeal to this Court, the issue of description of car and CDR, are contentions which may accrue to benefit of petitioner, subsequently post-trial.

9. CDR records have been drawn attention to by the petitioner's counsel, in that the phone was switched off on 23rd October 2020 till 24th October 2020, when the alleged seizure was made. He contends that even assuming prosecution's allegation that petitioner was supplying *ganja* was correct, it would not be possible that his phone would be switched off.



10. Notwithstanding that these are the issues that will ultimately be argued on the basis of evidence recorded, the Court cannot discount the fact that the Supreme Court has consistently, in its various decisions, noted that the delay in trial, prolonged custody of accused militates against his rights under Article 21 of the Constitution of India and conditions imposed by the statute under Section 37 of the NDPS Act remain subservient to the dominant right under the Constitution.

11. The Supreme Court had consistently held that the benefit of delay in trial will accrue to the accused and in this regard the decisions of **Rabi Prakash v State of Odisha** 2023 SCC OnLine SC 1109, **Dheeraj Kumar Shukla v State of U.P.** 2023 SCC OnLine SC 918, **Man Mandal & Anr. v State of West Bengal** 2023 SCC OnLine SC 1868, **Badsha Sk. v State of West Bengal** 2023 SCC OnLine SC 1867 and **Mohd. Muslim alias Hussain v State (NCT of Delhi)** 2023 SCC OnLine SC 352 are relevant.

12. In SLP (Crl) 4648/2024 titled **Ankur Chaudhary v State of Madhya Pradesh** order dated 28th May 2024, it was held by the Supreme Court as under:

“It is to observe that failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India, and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered.”

(emphasis added)

13. It is also noted that as per the nominal roll, jail conduct of petitioner has been satisfactory and has no previous involvement.

14. Accordingly, the petition is allowed and petitioner be released on



bail, if not required in any other matter. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 100,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically before the concerned I.O. every first and third Monday of every month at 4 p.m. and will be not kept waiting for more than an hour.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

15. Needless to state, but 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.

16. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.



17. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
18. *Dasti*.
19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 1, 2024/sm