



2024:DHC:4162



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20th May, 2024

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BAIL APPLN. 2393/2023**SHRADHA SURANA**

..... Applicant

versus

NARCOTICS CONTROL BUREAU & ANR.

..... Respondents

Advocates who appeared in this case:

For the Applicant : Mr. Pavan Narang, Ms. Neha T. Phookan,
Mr. Himanshu Sethi & Ms. Aishwarya
Chhabra, Advs.
For the Respondent : Mr. Subhash Bansal, SSC with Mr.
Shashwat Bansal, Adv.

CORAM**HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 seeking bail in NCB Case No. VIII/52/DZU/2021, for offences under Sections 20(ii)(b)/ 21(a)/ 22(b)/ 22(c)/ 23(c)/ 27A/ 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. The brief facts of the present case are as follows:

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2.1. On 23.09.2021, on the basis of secret information, a raid was conducted at the house of co-accused Shakti Agarwal's friend, where he was staying temporarily at that time. A recovery of 605 LSD Blots, 79 g of Hashish, 1.6 g of Cocaine and 18 g of MDMA was made from the bag of co-accused Shakti.

2.2. Co-accused Shakti disclosed that he had gotten addicted to drugs and then started selling drugs to support himself. He confessed that he purchased drugs through Wicker and Telegram. He disclosed the name of co-accused persons, namely, Jasbir, Dibyas and Rajat, and their involvement in the commission of the crime as well.

2.3. During investigation, consequent upon the recovery of the contrabands and on the basis of the statements of the co-accused Shakti, production warrants were issued against the applicant and co-accused Jasbir, who were both lodged in Tihar Jail in another case under the NDPS Act.

2.4. The applicant was thereafter arrested in the present case on 25.09.2021.

2.5. It is the case of the prosecution that the LSD Blots recovered from co-accused Shakti were ordered by co-accused Jasbir, the applicant and co-accused Raghunath. It is alleged that when the parcel order arrived for delivery, co-accused Shakti was supposed to collect and dispose off/sell the same. It is alleged that co-accused Shakti successfully collected the parcel with the LSD blots and sold off a



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considerable number of blots to various clients, while the remaining blots were seized from him.

2.6. On 26.09.2021, another recovery of 13 g of contraband (magic mushroom believed to be the psychotropic substance psilocybin) was effected in this case from the parcel which was delivered at the house premises of co-accused Dibyas Bardewa, who was the consignee of the said parcel. It is alleged that co-accused Dibyas revealed that the parcel had been received by him on 23.09.2021. It is alleged that co-accused Dibyas had voluntarily handed over the parcel from which the contraband was recovered.

2.7. On 29.09.2021, in follow up action, on the basis of disclosure statement of co-accused Shakti, a search was conducted at the house of co-accused Rajat. It is alleged that co-accused Shubham Banshiwal brought a parcel at the house of co-accused Rajat. A recovery of 36 LSD Blots weighing 10.4 grams was made from the said search.

2.8. On 01.10.2021, during follow up action on the basis of the disclosure statement of co-accused Rajat Tailor, a consignment shipped from Germany that was delivered at Shyam PG, Vasundra Colony, Jaipur was tracked. A recovery of 1.230 kg of Ecstasy (MDMA) pills was made from the said address.

2.9. It is alleged that the applicant in her disclosure statement confessed her role in the trafficking of drugs. She stated that she was an active seller on Telegram and Wickr and was using the said apps

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due to the provisions of anonymity provided by them. She allegedly also disclosed that co-accused Raghunath had sent one book named Ikigai to co-accused Jasbir in June/ July, 2021. She disclosed that the said book contained 2000 Blots of LSD out of which the accused persons had managed to sell 600 Blots and the rest were reshipped. She further allegedly disclosed that she had provided the landing address for a consignment to co-accused Jasbir. The said parcel was to be collected by one person, namely, Karan, however, since he got arrested in another case, the parcel was returned to the concerned post office. Thereafter, post her arrest in another case by NCB, Kolkata, she was allegedly informed that the said parcel had been collected by co-accused Shakti and the recovery of 605 LSD Blots had been effectuated from him.

2.10. Co-accused Jasbir in his disclosure statement also admitted his involvement in the offence and stated that he had been introduced to the Telegram group – “The Orient Express” by the applicant, through which the applicant and co-accused Jasbir actively used to sell Ganja, LSD, Ecstasy Pills, etc. He stated that the applicant used to provide the landing addresses for the consignment of drugs. He stated that the book – “Ikigai” which was recovered from his house had been given to him by co-accused Raghunath and 2000 LSD Blots were sent inside the book for shipping ahead. He further disclosed that the book contained seed passwords of bitcoin accounts in several pages.

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2.11. Co-accused Raghunath in his statement stated that he along with co-accused Jasbir and the applicant had decided to land a drug parcel from UK, for which the applicant and co-accused Jasbir had provided him the landing address. He stated that the same was to be collected from the address of one person, namely, Shubham Poddar, however, the same couldn't be received due to their gang being caught. He stated that the parcel had been collected by co-accused Shakti Agarwal, pursuant to which, the recovery of 605 Blots was made from him. He also admitted to sending the "Ikigai" book to the co-accused Jasbir with the LSD Blots and the seed passwords for bitcoin accounts.

3. The learned counsel for the applicant submitted that no recovery has been effectuated from the applicant and she has been falsely implicated in the present case. He submitted that the applicant was also falsely implicated and arrested in Case No. VIII/46/DZU/2021, wherein also no recovery had been made from her.

4. He submitted that the applicant was taken into custody on the basis of production warrant issued against her on 25.09.2021. He submitted that she was thereafter formally arrested on 25.09.2021 on the basis of her disclosure statement.

5. He submitted that the disclosure statement of the applicant is inadmissible in law under Section 67 of the NDPS Act in view of the judgment of the Hon'ble Apex Court in the case of ***Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1***. He submitted that the disclosure



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statements of the co-accused persons recorded under Section 67 of the NDPS Act are also not admissible as evidence against the applicant.

6. He submitted that since the disclosure statement of the applicant cannot be looked into, no recovery of commercial contraband can be attributed to the applicant, whereby the embargo under Section 37 of the NDPS Act would not apply in the present case.

7. He submitted that the applicant has been in custody since 25.09.2021 in the present case and no purpose would be served by keeping her in further incarceration.

8. He submitted that there is no direct financial transaction between the applicant and the other co-accused persons which link her to present offence.

9. *Per contra*, the learned senior standing counsel for the respondent vehemently opposed the grant of any relief to the applicant. He submitted that the learned Trial Court had rightly dismissed the applicant's bail application. He submitted that all the grounds of the applicant, including the contention that no recovery was effectuated from the applicant directly, has been effectively dealt by the learned Trial Court and requires no interference.

10. He submitted that the applicant is actively involved in the commission of the offence and illicit trafficking of drug. He submitted that the complicity of the applicant in commission of the offence is evident from the circumstances in the present case.

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11. He further submitted that the applicant is involved in other cases of similar nature. He submitted that there is recovery of commercial quantity of the contraband and thus the bar under Section 37 of the NDPS Act would act against the applicant in the present case.

ANALYSIS

12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a prima facie case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that cannot be overlooked.

13. The case of the prosecution is essentially based upon the disclosure statement of the co-accused persons and the applicant. It is relevant to note that while the veracity of the disclosure statements is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Supreme Court in *Tofan Singh v. State of Tamil Nadu* (*supra*), wherein it was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence



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without corroboration. The relevant paragraphs of the said judgment is set out below:-

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments in Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law.

158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

(emphasis supplied)



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14. A Coordinate Bench of this Court in *Phundreimayum Yas Khan Vs. State (GNCT of Delhi) : 2023 SCC OnLine Del 135*, has held that when there is no material to link the applicant with the recovery of the commercial quantity from the co-accused persons, the rigors of Section 37 would not apply. It was further held that the disclosure statement of co-accused is per se not admissible without there being any corroboration.

15. It is not disputed that no incriminating recovery has been effectuated from the applicant in the present case.

16. It is also pertinent to note that the charges are yet to be framed in the present case. Speedy trial in such circumstances does not seem to be a possibility. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

17. It is trite law that grant of bail on account of delay in trial cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of *Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352* has observed as under:

“21....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

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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 country²⁰. 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. State²¹ 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"²² (also see Donald Clemmer's 'The Prison Community' published in 1940²³). 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."



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18. The applicant is in custody since 25.09.2021. The Hon'ble Apex Court in the case of ***Man Mandal & Anr. v. The State of West Bengal : SLP(CRL.) No. 8656/2023*** had granted bail to the petitioner therein, in an FIR for offences under the NDPS Act, on the ground that the accused had been incarcerated for a period of almost two years and the trial was likely going to take considerable amount of time.

19. Insofar as the antecedents of the applicant are concerned, it is relevant to note that today, by judgment dated 20.05.2024, this Court has also granted bail to the applicant in Case no. VIII/46/DZU/2021.

20. In such circumstances, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

21. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicants shall under no circumstance leave the boundaries of Delhi without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;



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- d. The applicant shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.

22. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

23. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

24. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 20, 2024

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