



2024:DHC:4163



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20th May, 2024

+ **BAIL APPLN. 2397/2023**

SHRADHA SURANA

..... Applicant

versus

NARCOTICS CONTROL BUREAU

..... Respondent

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 Case No. VIII/46/DZU/2021, for offences under Sections 8(c)/20/22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
2. The brief facts of the case are as follows:

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2.1. On 04.08.2021, on the basis of information from Narcotics Control Bureau ('NCB'), Kolkata Zonal Unit ('KZU'), co-accused Sarvothaman Guhan was intercepted at the IGI Airport for enquiry in relation to a case registered by NCB, KZU, Kolkata and a recovery of 30g of Ganja and 0.45g of Ecstasy was effectuated from him.

2.2. On further enquiry, co-accused Sarvothaman Guhan allegedly disclosed the involvement of his friend Rahul Mishra. On the basis of the said disclosure, on 05.08.2021, a raid was conducted at the house of co-accused Rahul Mishra and a recovery of 1.05kg of Ganja was made from there.

2.3. On 05.08.2021, a search was conducted at the residence of co-accused Sarvothaman and 1 kg imported Ganja along with ₹15,52,300/- in cash were recovered. It is alleged that co-accused Aashray Panday was intercepted at Ambiance Mall, Gurugram and 400 g of Ganja was recovered from him.

2.4. It is alleged that co-accused Sarvothaman in his disclosure statement under Section 67 of the NDPS Act stated that he placed orders through one person, namely, Tareena Bhatnagar, and also paid ₹6 lakhs through cash to co-accused Jasbir Singh through Bitcoins.

2.5. On 01.09.2021, co-accused Jasbir in his disclosure statement admitted his involvement in the NDPS offences and further stated that he had dealt with co-accused Sarvothaman on behalf of the applicant. He stated that he along with the applicant and co-accused Parichay

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Arora was involved in the drug business through the “dark net”. He also disclosed that the applicant had introduced him to “Orient Express Group” on Telegram. He also disclosed the usernames of several people, including co-accused persons Naman Sharma, Krunal Golawala and Dixita Golawala. He further disclosed that payments were made to him through the applicant’s bank account and her cousin’s bank account. He also provided the tracking number of a shipment ordered by co-accused Raghunath Kumar.

2.6. It is alleged that the co-accused Jasbir used to procure drugs from in and outside India and deliver them to various addresses provided by the applicant and also used to sell them on the group.

2.7. On the basis of the disclosure statement of the co-accused Jasbir, the applicant was served noticed under Section 67 of the NDPS Act. It is alleged that the applicant admitted in her disclosure statement about her involvement in distribution of the contrabands and stated that she used to receive payments for the same through UPI on several bank accounts controlled by her. She allegedly admitted that she used to conduct the financial transactions through the bank account of her cousin. She had allegedly endorsed her signatures on incriminating print outs taken from her darknet account as well. She allegedly admitted to knowing co-accused Parichay Arora and the applicant, and stated that she had been in a relationship with co-accused Jasbir for the last 4-5 years. She stated that she was aware that co-accused Jasbir procuring the contraband from various countries.



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She also allegedly disclosed about the involvement of co-accused Suvashish Roy and co-accused Raghunath Kumar.

2.8. The applicant was arrested on 04.09.2021 in the present case.

2.9. It is alleged that co-accused Naman admitted to being a member of a group on Telegram which was used for illegal Ganja business. He disclosed that he used to procure the parcels at his address for the applicant, co-accused Jasbir, co-accused Krunal and others.

2.10. On 09.09.2021, a search was conducted at the house of co-accused Suvashish Roy and 1.250 kg of high-quality Ganja, 16 g of Ecstasy pills (MDMA), 6 g of Heroin, 40 g of Charas and 130 g of suspected psychotropic substance in the form of coloured pills were recovered.

2.11. On 09.09.2021, the parcel ordered in the name of co-accused Raghunath was also intercepted and 39.700 g of cannabis paste (solid) and 2.530 g of cannabis liquid was recovered from the same.

2.12. Co-accused Raghunath in his disclosure statement named the applicant along with other co-accused persons and stated that he used to get 10% commission on certain transactions in the form of Bitcoins.

2.13. On 14.09.2021, a request was made by the respondent to freeze the Bitcoin wallets. The NCB, Helsinki (Finland) disclosed that no accounts of the given credentials existed.

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2.14. On 14.09.2021, Karan Kumar Gupta disclosed that he used to deliver parcels containing drugs from the applicant to co-accused Jasbir and used to receive money for his services. He stated he was unaware about the contents of the parcel.

2.15. On 24.09.2021, 1.03 Kg of Ganja was recovered from the residence of co-accused Krunal Golwala and Dixita Golwala. Furthermore, 955 g of imported Ganja, 96.6 g of Charas, 284 g of Ecstasy (MDMA) tablets, 5.6 g of LSD Blots and 171 g of Hashish chocolate was also recovered from the office of the said co-accused persons.

2.16. The name of co-accused Devesh Vasa surfaced from the bank account of the applicant's cousin. On 25.09.2021, 5 Blots (0.05g) of LSD was recovered from a parcel belonging to co-accused Devesh at DTDC, Carmac Street, Kolkata. Co-accused Devesh in his disclosure statement stated that he had previously ordered Ganja from the co-accused Jasbir through his Telegram account.

2.17. It is the case of the prosecution that all the accused persons hatched a conspiracy and were involved in sale and distribution of the contrabands, and the accused persons thereby conducted illegal trade of contraband through 'dark net' and social media platforms for monetary benefit.

2.18. The bail application of the applicant was dismissed by the learned Trial Court by order dated 25.02.2023.

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3. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case and the chargesheet has been filed.

4. He submitted that the applicant has been in custody since 04.09.2021 and no purpose would be served by keeping her in further incarceration.

5. He submitted that it is the admitted case of the respondent that no recovery has been effectuated from the possession of the applicant.

6. He submitted that the allegations against the applicant are based on the statements recorded under Section 67 of the NDPS Act which is not admissible as evidence against the applicant. He submitted that the same is *per se* insubstantial. He placed reliance on the judgment passed by the Hon'ble Apex Court in the case of ***Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1*** in this regard.

7. 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, thereby the embargo under Section 37 of the NDPS Act would not apply in the present case.

8. He submitted that apart from the disclosure statements of the co-accused persons and the applicant, there is no other material to implicate the applicant in the present case.



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9. He submitted that the applicant is at better footing than the other co-accused persons who have been granted bail in the present case. He submitted that co-accused Jasbir falsely named the applicant in the present case as she broke up with him.

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

11. *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.

12. 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.

13. 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

14. 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 is to be considered.

15. It is relevant to note that the case of the prosecution is essentially based upon the disclosure statement of the co-accused persons. It is relevant to note that while the veracity of the disclosure statement of the co-accused 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 without corroboration. The relevant paragraphs of the said judgment are 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



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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)

16. 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 of the NDPS Act would not apply. It was further held that the disclosure statement of co-accused is per se not admissible without there being any corroboration.

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17. The learned Senior Standing Counsel for the respondent has submitted that the disclosure statement of the applicant has been corroborated in the present case by the recoveries made on the basis of the disclosure statement of the applicant and the embargo of Section 37 of the NDPS Act would thus apply in the present case.

18. It is 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.

19. 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 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."

(emphasis supplied)

20. The applicant is in custody since 04.09.2021. 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



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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.

21. It is also not disputed that co-accused persons, namely, Sarvothaman Guhan, Rahul Mishra, Asray Panday, Jasbir Singh, Naman Sharma, Dixita Golwala, Devesh Vasa, Mohd. Aslam and Vishal Chaturvedi, have been enlarged on bail in the present case.

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

23. 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;
- 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;



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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.

24. 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.

25. 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.

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

AMIT MAHAJAN, J

MAY 20, 2024

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