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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1733/2024 & CRL.M.A. 21712/2024**
DHARMENDER KUMAR MEHTOPetitioner

Through: Mr. Pratyush Prasanna and Ms.
Saumya Yadav, Advocates.

versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Utkarsh, APP for the State.
SI Rajesh, P.S.: M.Park and SI Vinod,
P.S.: Anand Parbat.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
04.10.2024

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By way of the present petition filed under section 439 read with section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 494/2020 dated 25.08.2020 registered under section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S.: Mahendra Park, Delhi.

2. Notice on this petition was issued on 15.05.2024.
3. Status Report dated 22.07.2024 has been filed.
4. Nominal Roll dated 18.07.2024 has also been received from the Jail Superintendent.
5. Mr. Pratyush Prasanna, learned counsel appearing for the petitioner cites the following 03 principal grounds for grant of bail to the petitioner:

5.1. *Firstly*, Mr. Prasanna argues, that a perusal of the chargesheet will show that the contraband which was allegedly recovered from the truck, of which the petitioner is stated to have only been



the driver, was neither inventorised nor sampled in compliance of the provisions of section 52-(A)(2) of the NDPS Act; and that therefore, in light of the judgment of the Supreme Court in *Yusuf @ Asif vs. State*¹, there is no primary evidence available against the petitioner. Counsel argues that the evidence cited by the prosecution to show that there has been sufficient compliance with section 52-(A)(2) of the NDPS Act is an order dated 31.08.2020 recorded by the Sub-Divisional Magistrate, Model Town, New Delhi ('SDM') and it is the prosecution case that the SDM was competent to have undertaken certification as required under section 52-(A)(2). It is submitted however, that the said provision requires the inventorisation and sampling of seized contraband to be certified by a Judicial Magistrate and not by an Executive Magistrate;

5.2. *Secondly*, counsel submits that even the contraband that is alleged to have been seized, was admittedly transported by the SHO of the Police Station *in his private vehicle*, thereby casting serious doubts as to the integrity of the contraband alleged to have been seized. Mr. Prasanna submits, that the aforesaid two submissions are borne-out by a perusal of the chargesheet filed in the matter;

5.3. *Thirdly*, Mr. Prasanna draws the attention of this court to the petitioner's Nominal Roll dated 18.07.2024, to submit that the petitioner has already spent more than 4 years in judicial

¹ 2023 INSC 912



custody, having been arrested on 25.08.2020; and that only 02 out of the 29 prosecution witnesses cited in the charge-sheet have so far been examined. Counsel accordingly argues, that it is unlikely that the trial in the matter will be completed anytime soon; and cites the judgment of the Supreme Court in ***Mohd. Muslim vs. State (NCT of Delhi)***² to submit that where an under-trial has been in custody for a prolonged period, even the additional twin conditions contained in section 37 of the NDPS Act would not stand in the way of granting bail.

6. On the other hand, Mr. Utkarsh, learned APP appearing for the State has opposed the grant of bail to the petitioner, by submitting that the Legislature has mandated a process for inventorisation and sampling of contraband in section 52-(A)(2) of the NDPS Act for facilitating *disposal* of seized narcotic drugs and psychotropic substances; and it is in that backdrop, that the Supreme Court has passed certain directions and made observations in its decision in ***Union of India vs. Mohanlal & Anr.***³
7. In particular, learned APP argues that the decision of the Supreme Court in *Yusuf @ Asif* (supra) has no application to the present case, since on a meaningful reading of *Yusuf @ Asif*, it will be seen that the prosecution in that case had *not retained or preserved* the contraband seized in that case, and therefore, there was no ‘real evidence’ available to be produced in the course of trial. In the said case therefore, the only

² 2023 SCC OnLine SC 352

³ (2012) 7 SCC 712



possible evidence to show that *any contraband had been seized at all* would have been the certificate issued by a Magistrate under section 52-(A)(2) of the NDPS Act; *which was also not available*. It was in these circumstances that the Supreme Court observed that since the only piece of primary evidence in that case would have been a section 52-A(2) certificate issued by a Magistrate, in the absence of even that primary evidence, the accused in that case was entitled to bail.

8. Learned APP submits, that in the present case however, the prosecution *has preserved the 293 kgs of ganja* recovered during the seizure operation; which ‘real evidence’ will be produced before the learned Special Judge in the course of trial.
9. It is also pointed-out that the threshold for ‘commercial quantity’ of *ganja* is 20 kgs., and therefore, the seizure of the contraband in the present case is substantially higher than that threshold.
10. Insofar as the delay in recording the deposition of prosecution witnesses is concerned, learned APP submits, that considering the quantity of contraband recovered, the delay is not ground enough to admit the petitioner to regular bail. Learned APP also submits that almost 02 years of the past 04 years have been lost due to the then prevailing pandemic.
11. Upon a conspectus of the facts and circumstances of the case and the submissions made, in the opinion of this court, there is merit in the submissions made by learned APP when it is contended that the primary purpose of section 52-(A) of the NDPS Act is to ensure the integrity and credibility of contraband alleged to have been recovered in a given case, *where the actual contraband seized has been disposed-*



of and destroyed and the ‘real evidence’ namely the contraband itself, is therefore not available to be produced at the trial. Learned APP is also correct in pointing-out that the decision of Supreme Court in *Mohanlal* (supra) came in the backdrop of the fact that huge quantities of contraband recovered in various States in the country were being stored and not disposed-of, which made them susceptible to theft, misuse and re-circulation which was against the interests of the society at large.

12. Mr. Utkarsh is also correct in arguing that the intent and purpose of engrafting section 52-(A) is to ensure that the seized contraband is disposed-of; and thereafter, the inventory, samples and photographs as *certified* by a Magistrate in accordance with that provision, are to be treated as *primary evidence* of the seizure of the contraband.
13. In these circumstances, this court accepts the submission of the learned APP that the decision of the Supreme Court in *Yusuf @ Asif* (supra) has no application in the present case, since the prosecution says that they have preserved the original contraband in the present case, which will be produced at the trial.
14. That being said however, in the opinion of this court, the petitioner in the present case deserves to get the benefit of what the Supreme Court has held in *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari vs. State of Uttar Pradesh*⁴ as well as *Mohd. Muslim* (supra), namely that even in cases under the NDPS Act, the additional twin conditions under

⁴ 2024 INSC 534



section 37 of the NDPS Act would not bar a court from granting bail where the custody of an undertrial is prolonged.

15. In the present case, the petitioner has suffered judicial custody of more than 04 years as an undertrial; and only 02 out of the 29 prosecution witnesses cited have been examined so far, despite the chargesheet having been filed on 22.02.2021.
16. In the circumstances of the case, this court is persuaded to admit the petitioner – ***Dharmender Kumar Mehto s/o Mahesh Mehto*** – to *regular bail* pending trial, subject to the following conditions:
 - 16.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount, *one* from a family member of the accused and *one* from a local person from Delhi, to the satisfaction of the learned trial court;
 - 16.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
 - 16.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
 - 16.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of 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.

16.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the IO. in writing.

17. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
19. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
20. The petition stands disposed-of in the above terms.
21. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 4, 2024

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