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

+ **BAIL APPLN. 2466/2023**

RAHUL BEHERA

.....Petitioner

Through: Mr. Arvind Kumar Gupta,
Mr.G.S.Bhatia, Mr.Bharat and
Mr.Abhisumant, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for
State.

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+ **BAIL APPLN. 4180/2023**

NAVEEN MISHRA @ RAJU

.....Petitioner

Through: Mr. Amit Gupta, Advocate.

versus

THE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for
State.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

27.11.2024

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1. The present bail applications have been filed under Section 439 Cr.P.C seeking regular bail in case FIR No. 175/2020 registered at P.S. Crime Branch for the offences punishable under Sections 20/25/29 NDPS Act, 1985.



2. Learned counsel for the petitioners submits that the petitioners are in custody since 20.11.2020. He submits that till date even only one witness has been examined, out of 23 witnesses. He further submits that there are no criminal antecedents of the petitioners. It has been submitted that since the trial may take some time, the petitioners may be admitted to bail.

3. Learned APP for State opposes the bail applications on the ground that commercial quantity of ganja was recovered from the possession of the petitioners. She submits that on the basis of secret information and at the instance of co-accused Dharmendra Yadav, a raid was conducted and the present petitioner Rahul Behera was found in possession of 20.700 kg ganja and Naveen Mishra @ Raju was found in possession of 20.300 kg ganja. She further submits that there were money transactions showing their involvements in the offence. Learned APP further submits that CDR also shows that there is incriminating material in the form of CDR. However, she fairly submits that there is no involvement.

4. The question of prolonged incarceration has been addressed by the Apex Court and this Court. In *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713, the Supreme Court held that if a timely trial is not feasible, courts are ordinarily obligated to release the undertrial on bail. The Court further emphasized that statutory restrictions do not curtail the discretion of Constitutional Courts to grant bail on the grounds of violation of Fundamental Rights enshrined in Part III of the Constitution. While the said judgement was passed in the context of UAPA, the said observations merit mention:-

“xxx 12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the



*Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in *Paramjit Singh v. State (NCT of Delhi)*, *Babba v. State of Maharashtra* and *Umarmia v. State of Gujarat* enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.*

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*15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners v. Union of India)*, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.*

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a



*reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.
xxx”*

5. In ***Jitender Jain vs. Crime Branch*** 2022 SCC OnLine SC 2021, the Supreme Court *inter alia* held as under:

“Xxx

3. Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regards to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

4. The petitioner is, accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of the trial court.”

6. Similarly, in the case of ***Mohd. Muslim v. State (NCT of Delhi)*** SLP (Crl.) 5530/2022, while considering a bail application in an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985, held that in the case of prolonged incarceration, conditional liberty would override the statutory embargo under Section 37 of the Act.

7. More recently, in ***Badshah SK vs. State of West Bengal***, SLP Criminal No. 9715/2023 and in ***Man Mandal & Anr. vs. State of West Bengal*** 2023 SCC OnLine SC 1868, the Apex Court while taking into account the continued custody of more than two years, granted bail to the accused.

8. The coordinate bench of this Court after due consideration of the facts including the fact that the trial is likely to take time, have released the



accused on bail. Reliance may be placed upon *Sachin Arora v. State Govt. of NCT of Delhi* (2023:DHC:5808) and *Vishwajeet Singh v. State (NCT of Delhi)* (2024:DHC: 1554).

9. The petitioners have been in custody since 20.11.2020. According to the status report filed by the State, the chargesheet was submitted on 30.05.2021, and charges were framed on 29.11.2023. As of now, one prosecution witness, Inspector Sushil Kumar, has been partly examined, indicating that the trial is progressing at a very slow pace. The petitioners cannot be kept in incarceration for an indefinite period.

10. In view of the facts and circumstances, the applicants are admitted to regular bail on furnishing a personal bond in the sum of Rs. 25,000/- each with one surety each of the like amount to the satisfaction of concerned learned Trial Court, subject to the verification of address and mobile numbers to be given and subject to the following further conditions:

- a. the petitioners shall regularly appear before the IO/trial court as and when directed;
- b. the petitioners shall not directly or indirectly make any inducement, threat, intimidate or tamper with any person acquainted with the facts of the case;
- c. the petitioners shall remain available on the address, to be given to the IO and shall not leave the country without the permission of the learned Trial Court;
- d. In case of change of residential addresses and/or mobile numbers, the petitioners shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.



11. In view of the above, the instant applications stand disposed of.
12. A copy of this order be sent to the concerned Jail Superintendent for necessary compliance.

DINESH KUMAR SHARMA, J

NOVEMBER 27, 2024/ssc/na