



\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2664/2023**
PANKAJ SHARMA Petitioner
Through: Mr.Harsimran Duggal, Advocate

versus

NARCOTICS CONTROL BUREAU Respondent
Through: Mr.Subhash Bansal, Sr. Standing
Counsel/SPP with Mr.Shashwat Bansal, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
26.04.2024

%

1. By way of present application filed under Section 439 read with Section 482 Cr.P.C., the petitioner/applicant seeks regular bail in Complaint No.VIII/05/DZU/2022 registered under Sections 8(c), 22(b), 23(b), 27A and 29 of NDPS Act.
2. Learned counsel for the applicant submits that the applicant was taken in custody on 20.01.2022 and the complaint was filed under the aforesaid sections. However, no charge has been framed yet. Learned counsel further submits that as per the prosecution complaint itself, the applicant has been charged for intermediate quantity.
3. Learned counsel for the applicant has further placed reliance on the decisions in Tinku Tagadgiri v. State of Odisha passed in SLP (Crl.) 12844/2023, Jitendra Jain v. Narcotics Control Bureau reported as **2022 SCC OnLine SC 2021** and Rabi Prakash v. State of Odisha reported as **2023 SCC OnLine SC 1109** to submit that even in cases of commercial quantity, considering the length of incarceration and the fact that the trial is



yet to begin or that the same would take a long time, accused persons have been granted the benefit of bail.

4. Learned SPP for the State has opposed the bail application. He submits that in the present case, on suspicion, a parcel was seized from the Foreign Post Office. The sender of the parcel was found to be one *Puneet Gupta*, the co-accused in the present case. In the said parcel, 1000 tablets of *Lorazepam*, 520 tablets of *Zolpidem* and 500 tablets of *Tramadol* were found, weighing a total of 304.4 grams. He further submits that there are money transactions between the co-accused *Puneet Gupta* and the applicant's wife. He further submits that during the investigation, from the mobile phone recovered, chats have been recovered which indicate that the present applicant has been involved in soliciting clients from abroad for selling the NRX tablets. Even the picture of parcel was also found on the said mobile phone.

5. At this stage, learned counsel for the applicant submits that as per the case of the prosecution, it was the co-accused, who was soliciting the clients and that the role of the applicant is that of a conspirator.

6. A reading of the complaint, copy of the which has been placed on record, would show that the complaint was filed under the aforesaid sections. The applicant has statedly been in custody since 20.01.2022 and that the trial is yet to take a long time since even charges are yet to be framed.

7. While considering a case where the accused had undergone custody of more than two years in Jitendra Jain (supra), the Supreme Court observed as under:-

“xxx



3. Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard 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 trial court.

xxx”

8. Again in Rabi Prakash (supra), where the accused had remained incarcerated for more than three and a half years, the Supreme Court while releasing the applicant on bail observed that:-

“xxx

4... The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

xxx

6. Consequently, while directing that the petitioner shall be released on bail on his furnishing bail bonds to the satisfaction of the Trial Court...

xxx”

9. More recently in Man Mandal and Anr. v. State of West Bengal reported as **2023 SCC OnLine SC 1868**, while taking into account continued custody of more than two years, the accused was granted bail. The relevant observations are extracted hereunder:-

“xxx

5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act



and the quantity being commercial in nature, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.

7. The petitioners are directed to be released on bail in connection with aforesaid FIR, on such terms and conditions as may be imposed by the Trial Court.

xxx”

10. Keeping in view the aforesaid facts and circumstances including the import of the decisions reproduced above and the period of custody as well as further fact that the charges are yet to frame, it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/ concerned Court/Duty M.M. and subject to the following further conditions:-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.



- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
11. The bail application is disposed of in the above terms.
12. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.
13. Copy of the order be uploaded on the website forthwith.
14. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

APRIL 26, 2024

na