



\$~4

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

+ **BAIL APPLN. 2985/2023**

HARJEET SINGH

..... Petitioner

Through: Mr. Kaushal Jeet Kait, Mr. Jatin Yadav, Mr. Gaurav dua, Mr. Pariwal Bhatia & Mr. Daksh Gupta, Advocates.

versus

THE STATE (NCT OF D ELHI)

..... Respondent

Through: Mr Tarang Srivastava, APP for the State with SI Charan Singh, P.S. Tilak Nagar.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
04.01.2024

%

1. The present petition has been filed seeking regular bail in connection with the FIR No. 06/2020 under Sections 15/25/29/61/85 of the NDPS Act, 1985 registered at Police Station Tilak Nagar, Delhi.
2. The brief facts of the case are that on 04.01.2020, SI Vikas Sahu along with HC Sandeep and Ct. Manoj were patrolling in Tilak Nagar area, and at 07:15 A.M., they reached in front of Gali No. 6, Guru Nanak Nagar, where they found the accused persons unloading bags from a white I-10 car, however, on seeing police officials, the accused persons became scared. Taking note of their suspicious conduct, their bags were searched and it was found that the bags contained *doda posht* (poppy straw) which weighed 58.5



kg, which is a commercial quantity.

3. The learned counsel for the petitioner submits that as per the version of the prosecution, the present case is that of a chance recovery and the petitioner has been falsely implicated in the present case. He submits that the alleged recovery has been planted on the petitioner and no independent witness was associated at the time of recovery despite the fact that the alleged recovery was made at about 07:15 A.M. in a residential area and public witnesses would have been easily available and associated, had it been a case of genuine recovery.

4. He further submits the co-accused Hardeep Singh, against whom identical allegations have been made, has already been enlarged on bail by the Court of learned Special Judge (NDPS) *vide* order dated 13.09.2023 by extending the benefit of the decision of the Hon'ble Supreme Court in ***Rabi Prakash V. State of Odisha, 2023 SCC OnLine SC 1109***. He, therefore, claims parity for the present petitioner.

5. He also relies on the decision of ***Rabi Prakash (supra)*** to contend that since the petitioner is in custody for the last more than three and a half years and the conclusion of trial is nowhere in sight, the rigors of Section 37 of the NDPS Act will not apply. He, therefore, urges the Court to enlarge the petitioner on bail.

6. He submits that since all the witnesses in the present case are police officials, therefore, there is no possibility of petitioner influencing the said witnesses in the event he is enlarged on bail.

7. He submits that the petitioner has clean antecedents and there is no possibility of petitioner committing any offence while on bail.

8. On the contrary, learned APP has argued on the lines of the status



report. He submits that the petitioner has been found with commercial quantity of contraband and the rigors of Section 37 apply to the present case.

9. I have heard the learned counsel for the petitioner and the learned APP for the State and perused the material on record.

10. A perusal of the chargesheet and the status report filed by the State reveal that the allegations against the petitioner and his co-accused, namely, Hardeep Singh, are similar as both were arrested together with the contraband that was recovered from the bags in their possession. Co-accused Hardeep Singh, has already been enlarged on bail by the learned Special Judge *vide* order dated 13.09.2023 extending the benefit of the decision of the Supreme Court in ***Rabi Prakash*** (*supra*).

11. At this stage, it is apt to refer to the decision of the Hon'ble Supreme Court in ***Rabi Prakash*** (*supra*) wherein under somewhat similar circumstances the Hon'ble Supreme Court observed as under:-

*“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. **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.**”*

(Emphasis supplied)

12. It is also not in dispute that the petitioner and his co-accused, Hardeep



Singh, were arrested together on 04.01.2020 and the total custody period of the petitioner is more than three and a half years and the conclusion of trial is nowhere in sight given the fact the prosecution has cited 13 witnesses and till date only 03 witnesses have been examined. Therefore, the petitioner is also entitled to the benefit of parity, as well as, the decision of the Hon'ble Supreme Court in ***Rabi Prakash*** (*supra*).

13. Besides that, the petitioner was aged about 19 years at the time of his arrest and admittedly he does not have a criminal record, therefore, keeping the petitioner in custody in the company of hardened criminals will do more harm than good to him.

14. Considering the circumstances in totality and keeping the aforesaid law laid down by the Hon'ble Supreme Court in perspective and further regard being had to the fact that the similarly situated co-accused has already been enlarged on bail, I am of the view that the petitioner is also entitled to grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 50,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall not leave the Delhi without prior permission of the Court.
- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.



- d) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
15. The petition is disposed of.
16. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
17. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

JANUARY 4, 2024

MR