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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 04th JULY, 2024IN THE MATTER OF:+ **BAIL APPLN. 2258/2024**

MD. AYUB PATHAN

.....Petitioner

Through: Mr. Saurabh Upadhyay, Mr. Aakash
Yadav and Ms. Muskan Kumar
Singh, Advocates.

versus

THE STATE OF NCT DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the
State.**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)****CRL.M.A. 19144/2024 (Exemption)**

Allowed, subject to all just exceptions.

BAIL APPLN. 2258/2024

1. Petitioner has approached this Court for grant of regular bail in FIR No.294/2020, dated 07.12.2020, registered at Police Station Special Cell for offences under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS), till the pendency of the case bearing No. SC/157/2021, pending before the learned Session Judge, Patiala House Courts.
2. A perusal of the FIR indicates that Special Cell, Delhi received information that ISI through its K2 desk (Kashmir - Khalistan) had been



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funding the targeted killings of Hindu right-wing leaders through the spoils from drug trafficking and that they have been pushing Narcotics through Hizbul Mujahiddin Cadres of over-ground workers based in Kashmir and supplying the same to their Khalistani counterparts in Punjab for onward distribution. It was also informed that on the instructions of ISI, three persons from Kashmir have come to Delhi to provide funds obtained from drug trafficking to the sharpshooters. The FIR indicates that Linkages between Punjab -based gangsters and pro-Khalistani radicals, first came to notice during the investigation of target killings of Hindu Right-Wing leaders in Punjab during 2016-17 and these killings were executed on the behest of ISI and executed through the linkages between Punjab based gangsters and pro-Khalistani radicals. It is stated that on 07.12.2020, information was received that one Sukh Bhikhariwal has instructed his sharpshooters - Gurjit Singh @ Bhaa and Sukhdeep Singh @ Bhura, to commit targeted killing of a Hindu Right Wing Leader in Delhi on the instructions of ISI and Khalistani extremist groups. The FIR further reveals that a raiding team was constituted for conducting raid. Accordingly, a team was constituted and team members were strategically placed in different cars and motorcycles. It is stated that after reaching the place of information at about 06:15AM, all the team members were apprised about their deployment at strategic points and efforts were made to stop the vehicles to indulge public person to join the raiding party, but no one stopped due to odd hours. It is further stated in the FIR that around 06:30 AM, all the team members were strategically deployed so that all the possible routes/area are covered and all the team members were in complete coordination and sync with each other. It is stated that at around 06:45 AM, one car Honda City bearing



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Registration No. DL8C AA 2511 came and stopped near Ramesh Park Bus Stand, Shakarpur, Delhi and was occupied by two persons. It is stated that both persons were identified by the informer as Gurjit Singh Bhaa and Sukhdeep Singh Bhura. Insp. It is further stated that after about five minutes, one Swift car, bearing Registration No. JK04B 8173, being occupied by three persons, stopped near the above-mentioned car and two persons, each carrying one rucksack bag, came out from the car except the driver. It is stated that as soon as, suspects Gurjiet Singh Bhan and Sukhdeep Singh Bhura met these two persons, ACP Sh. Lalit Mohan Negi alerted the team and signaled the raiding team to apprehend them. It is stated that on seeing Police Gurjit Singh @ Bhaa and Sukhdeep Singh Bhura ran randomly in different directions. Police party asked them to surrender after revealing their identities but Gurjit Singh Bhaa and Sukhdeep Singh Bhura opened fire indiscriminately upon police in order to escape. It is stated that in response, ACP Sh. Lalit Mohan Negi, ASI Shahjad Khan and ASI Manoj Bhati also fired on them. It is stated that after some time both the persons were apprehended. It is further stated that the Swift car No. JK04B 8173 was also apprehended and its occupants were also arrested. It is stated that after cursory search of all five apprehended persons, their identity were revealed as (1) Gurjit Singh Bhaa S/o Harbhajan Singh R/o Village Lakhanpal, Distt. Gurdaspur, Punjab, age 20 yrs. (ii) Sukhdeep Singh Bhura S/o Burender Singh R/o Village Khari, Distt. Ourdaspur, Punjab, age 28 yrs. (ii) Shabir Ahmad Gojri S/o Abdul Karim Gojri, R/o Dofpura, Badgam, Jammu & Kashmir, (iv) Md. Ayub Pathan S/o Md. Abdulla Pathan, R/o Astan Mohallah, Gundipura, Jammu & Kashmir (the Petitioner herein) and (v) Reyaz Ahmad Rather S/o Mohammad Shafi Rather R/o Nassrulla Pora,



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Budgam, Jammu & Kashmir. The FIR further reveals that from the possession of accused Gurjit Singh Bhaa, two pistols were recovered, from the possession of accused Sukhdeep Singh Bhura one pistol was recovered from Reyaz Ahmad Rather. Accordingly, FIR No. 295/2020, dated 07.10.2020, under Sections 186/353/307/34 IPC & 25/27 Arms Act was registered at PS Special Cell, Delhi. It is stated that accused Shabir Ahmad Gojri and the Petitioner herein were carrying one backpack each on their backs. The backpacks were also searched and one bright Yellow colour polythene packet in main compartment of backpack, suspected to be containing some narcotics substance was recovered from the Petitioner. On the search of other accused mentioned above Shabir Ahmad Gojri, one brownish yellow colour polythene packet, suspected to be containing some narcotics substance were recovered from him. On testing the recovered substance with the help of field testing kit, it was found that it is Heroin. On weighing the recovered polythene packet from the Petitioner herein, the total weight was found to be 824 grams which is commercial quantity. The total weight of the recovered substance from co-accused Shabir Ahmad Gojri was found to be 881 grams. Thereafter, a rukka under Section 21 of the NDPS Act was prepared and produced before the duty officer for registration of the FIR. Accordingly, the FIR in question was registered under Section 21 of the NDPS Act.

3. Material on record indicates that charge-sheet has been filed on 04.06.2021. The FSL Report shows that the contraband seized from the Petitioner is Narcotics. Charges have been framed against the Petitioner under Section 29 of the NDPS Act read with Section 21 of the NDPS Act on 12.05.2022. Material on record discloses that the Petitioner filed various bail



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applications which have been rejected. The last Bail Application of the Petitioner was rejected on 21.05.2024.

4. Learned Counsel for the Petitioner contends that the case against the Petitioner is completely false and concocted. He states that speedy trial is the concomitant of Article 21 of the Constitution of India and the Petitioner is in incarceration for the past four years and there is no possibility that the trial would be concluded in the near future and, therefore, the Petitioner be released on bail.

5. Heard the Counsel and perused the material on record.

6. Material on record discloses that the Petitioner has been arrested from the site and at the time of arrest the Petitioner was found with 824 gms of Heroine which is commercial quantity.

7. The quantity of heroin recovered in the instant case is commercial quantity. It is well settled that the jurisdiction of a Court to grant bail for offences under NDPS Act in cases of recovery of commercial quantity is circumscribed by Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:-

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section



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27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

8. A perusal of Section 37 of the NDPS Act indicates that bail can be granted only when there are reasonable grounds for believing that the accused is not guilty of an offence and he is not likely to commit any offence when released on bail. The parameters for grant of bail to an accused under Section 37 of the NDPS Act have been laid down in a number of judgments. The Supreme Court in Collector of Customs v. Ahmadalieva Nodira reported as **(2004) 3 SCC 549** has observed as under:

*"6. As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. **The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable***



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grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....." (emphasis supplied)

9. In Union of India v. Rattan Mallik reported as (2009) 2 SCC 624, the Supreme Court has observed as under :

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are



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reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. *The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.*

14. *We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail."* (emphasis supplied)



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10. In State of Kerala & Ors. v. Rajesh & Ors. reported as (2020) 12 SCC 122, the Supreme Court has observed as under :-

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

11. The Petitioner has been found with persons who are now being tried under Unlawful Activities (Prevention) Act, 1967. A perusal of the FIR shows that many rounds were fired by the co-accused before they were apprehended by the Police. The Petitioner has been found with commercial



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quantity of heroin. Looking at the sequence of events, this Court is of the opinion that there are reasonable grounds for believing that the Petitioner is guilty of an offence under the NDPS Act and he is likely to abscond and commit further offence if released on bail.

12. In view of the law laid down by the Apex Court, this Court is not inclined to enlarge the Petitioner on bail.

13. Accordingly, the Bail Application is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 4, 2024

Rahul