



2024:DHC:1266



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

***Reserved on: 18.01.2024***  
***Pronounced on: 20.02.2024***

+ **BAIL APPLN. 3030/2022**  
**MAHTAB TYAGI**

..... Petitioner  
Through: Mr.Ayub Khan & Mr.Naiem  
Ahmed, Advs.

versus

**THE STATE GOVT. OF NCT OF DELHI**

..... Respondent  
Through: Mr.Aman Usman, APP with SI  
Shamsher Singh.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**J U D G M E N T**

1. This application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking release on Bail in FIR no. 44/2021 registered at Police Station: Sarita Vihar, under Sections 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act').

**Case of the prosecution**

2. It is the case of the prosecution that on 06.02.2021, information was received by the police that a truck carrying Ganja was travelling from Kalindi Kunj to Sarita Vihar. SI Surender along-with the staff intercepted the aforesaid truck while it was en-route near CNG Petrol Pump from Kalindi Kunj to Sarita Vihar, and along-with the truck,



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caught its driver/the applicant herein and another person, namely Ashwani Yadav, who was sitting with him in the truck. Upon preliminary search of the truck, total 30 *Katte* (bags) containing 104 packets of Ganja were found, which weighed 525 kgs in total. Upon interrogation, the applicant disclosed that he is the owner of the truck and one Sonu Pathan had told him that two persons, namely Pramod and Ashwani, are involved in the business of illegal transportation of Ganja from Andhra Pradesh to Delhi. He is alleged to have stated that Sonu Pathan convinced the applicant that if he uses his vehicle for transportation of Ganja, he would earn a good amount of money. He disclosed that he along with Ashwani loaded the Ganja in the truck from Sambalkot, Andhra Pradesh, and the co-accused Ashwani accompanied him during transportation. It was while being en-route that they were intercepted and apprehended by the police.

**Submissions of learned counsel for the Applicant**

3. The learned counsel for the applicant submits that the accused was arrested on 07.02.2021, and has been in custody ever since. He submits that the applicant has been languishing in custody for over 3 years. He submits that the applicant is a truck driver who plies the vehicle on contract to earn his livelihood and has been falsely implicated in this case. He states that applicant was arrested with the vehicle and was brought from Jewar, Noida to Delhi and there was animal skin inside the vehicle. He further states that the applicant was made to sign on several blank papers and police has neither filed the



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CCTV recordings nor the mobile location history of the day of the arrest; rather, they have prepared a false arrest memo.

4. Placing reliance on the judgment of the Supreme Court in ***Rabi Prakash v. State of Odisha*** 2023 SCC OnLine SC 1109, he submits that in similar circumstances, where the applicant had been in jail since three and a half years, the Court enlarged the accused therein on bail.

5. The learned counsel for the applicant submits that as all the witnesses in the trial are police officials, there is no likelihood of the applicant influencing or threatening the witnesses in the course of the trial. Moreover, now that the investigation is complete and the chargesheet has been filed on 21.09.2021, the applicant be released on bail.

**Submission of the learned APP**

6. On the other hand, the learned APP submits that the applicant has, in active connivance with the co-accused persons, transported Ganja in his own vehicle from Andhra Pradesh to Delhi. Ganja weighing 525 kgs has been recovered from his possession, which is way over the commercial quantity. Even the FSL report confirmed the recovered substance to be Ganja.

7. The learned APP further submits that during the course of investigation, the applicant along with one co-accused have named their other associates/co-accused persons, and efforts were made to trace them out by conducting raids at certain places, but as of yet, no one has been apprehended as all of them are hiding to avoid arrest. He submits that the applicant may abscond if released on bail.



**Analysis and findings**

8. I have considered the submissions made by the learned counsels for the parties.

9. In the present case, though the applicant has been in custody since 07.02.2021; and the charge-sheet has been filed on 21.09.2021, some of the co-accused are yet to be apprehended. The stage of the trial has not been stated by the parties. The applicant has been stated to have been found with 525 Kgs of Ganja, which is of commercial quantity.

10. Though in *Rabi Prakash* (Supra), the Supreme Court has held that the prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and that the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, each case has to be considered on its own facts. Mere delay in conclusion of the trial may not be sufficient to release the accused on bail.

11. In the present case, as stated above, the applicant is alleged to have been apprehended while carrying Ganja in his truck from Andhra Pradesh to Delhi. The quantity alleged to have been recovered is commercial.

12. In my view, therefore, instead of releasing the applicant on bail, ends of justice would be met by requesting the learned Trial Court to expedite the trial and make an endeavour to conclude the same within a period of six months. In case there is delay in conclusion of the trial,



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the applicant shall be at liberty to renew this prayer for being released on bail, in accordance with law.

13. The Bail Application is disposed of in the above terms.

14. A copy of this judgment be sent to the Jail Superintendent for communicating the same to the applicant.

**NAVIN CHAWLA, J.**

**FEBRUARY 20, 2024/am**

*Click here to check corrigendum, if any*