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

+ **BAIL APPLN. 3245/2023**

JAFFAR HUSSAIN

..... Applicant

Through: Ms. Sushma Sharma, Mr.
Girish Kumar Sharma and
Mr. Dhruv Kumar Sharma,
Advs.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC for
the State with Mr. Kshitiz
Garg, Mr. Ashvini Kumar,
Ms. Chavi Lazarus and
Mr. Arjun Singh, Advs.
with SI Amit Maan, Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

02.04.2024

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1. The present application is filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeking regular bail in FIR No. 214/2018 dated 24.08.2018, registered at Police Station Crime Branch, for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. It is alleged that on 24.08.2018, on the basis of secret information, the present applicant was apprehended and during his search a plastic packet weighing 510 grams containing maroon coloured substance / contraband was found from a black bag, of the applicant. The alleged substance / contraband was found to be positive for contraband / *Smack*.

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3. The learned counsel for the applicant submits that the applicant has falsely been implicated in the present case and nothing was recovered from the possession of applicant. She states that alleged contraband was planted on the applicant.

4. The learned counsel for the applicant submits that the applicant has been in incarceration for a period of more than five years. She submits that only two out of the fourteen witnesses have been examined till date.

5. She further submits that there is violation of the principles of Section 52A of the NDPS Act. The search of the applicant was not carried out in the presence of the Magistrate, and the samples were drawn on the spot itself.

6. She relies upon the judgment of the Hon'ble Apex Court in the case of ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India and Others: (1994) 6 SCC 731.***

7. It is submitted that in such circumstances, the bar of Section 37 of the NDPS Act, is not applicable. In this regard, she places reliance upon the judgment in the case of ***Rabi Prakash v. State of Odisha : 2023 SCC OnLine SC 1109***, where the Hon'ble Apex Court had held as under:

“3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

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.”



8. The sentence prescribed for an offence under Section 22 of the NDPS Act is not less than 10 years, but which may extend to 20 years.

9. It is important to note that the Hon'ble Apex Court, in the case of ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India and Others*** (*supra*), has specifically observed that where the minimum sentence is prescribed as ten years, the accused is entitled to be released on bail if he has spent more than five years in jail. The relevant excerpt of the said judgment is reproduced hereunder:

“(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

10. It is also not disputed that the applicant has no antecedents. The applicant is in custody for more than five years and only two out of the fourteen witnesses have been examined till date. It is not disputed that the trial will take considerable period of time.

11. The Hon'ble Apex Court in the case of ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*** (*supra*) has also stipulated certain appropriate conditions that have to be imposed, while granting bail.

12. In view of the above, the applicant is, directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall upon his release, provide his mobile number to the IO/SHO, and shall keep it



switched on at all times;

- b. The applicant shall upon his release, inform his address, to the IO/SHO, where he would be residing after his release;
- c. The applicant shall under no circumstance leave the country and deposit his passport with the Court of the learned Special Judge concerned and in the event of the applicant not being in possession of any passport to file an affidavit to that effect before the learned Special Judge concerned the aspect of which shall also be verified by the Investigating Officer qua the aspect of possession of a passport by the applicant and the said verification report be submitted by the Investigating Officer to the Court of the learned Special Judge concerned;
- d. The applicant shall not leave the boundaries of the National Capital Region without prior information of the concerned SHO;
- e. The applicant shall appear before the learned Trial Court on every date of hearing;
- f. The applicant shall, after his release, appear before the concerned SHO on every Friday at 5 PM;
- g. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever.

13. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

14. It is clarified that any observations made in the present

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order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

15. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 2, 2024

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