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

+ **BAIL APPLN. 2347/2024**

ALOH OKECHUKWU JOHN

.....Petitioner

Through: Mr. Farz Maqbool, Ms. Sana Juneja
and Mr. Sahitya Veena, Advocates.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Subhash Bansal, Senior Standing
Counsel for NCB with Mr. Shaswat
Bansal, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

24.10.2024

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1. By way of present bail application, the applicant/petitioner seeks regular bail in Session Case No. 278/2021 arising out of Crime No. VIII/22/DZU/2021 registered under Sections 8/21/22 of the NDPS Act at Police Station Narcotic Control Bureau, Delhi.

2. Learned counsel for the applicant submits that the applicant is in custody since 23.04.2021 and that though the charge-sheet was filed on 18.10.2021, citing 14 witnesses, only four have been examined till date. On merits, it is stated that there is a delay of 143 days in drawing the samples and thus, it is contended that the provisions of Section 52-A of the NDPS are violated. It is also contended that there is one day's delay in depositing the samples with the FSL, and there is a difference in weight of the samples when seized and when the same was produced before CRCL. Lastly, it is stated that the applicant is not involved in any other case.

3. The bail application is opposed by learned counsel for the



respondent/NCB. While disputing the submissions made on behalf of the applicant, he submits that the application for sending the said sample was made within two days of seizure and as such, there is no violation of Section 52-A. He further submits that from the applicant, 30 gm of *cocaine*, 05 gm of *Methamphetamine* and 40 gm of MDMA tablets were recovered, the seizure being of a commercial quantity and as such, the rigours of Section 37 of NDPS Act should apply. It is also stated that total of five witnesses stand examined. He, however, upon instructions, states that the applicant is not involved in any other case.

4. I have heard learned counsels for the parties and perused the material placed on record.

5. From the abovenoted facts, it is discernable that the applicant was arrested on 23.04.2021, the charge-sheet came be filed on 18.10.2021 and the charges were framed on 10.01.2022. It is further noted that till date, only four/five witnesses have been examined out of total of 14 witnesses cited by the prosecution and there is no likelihood of the trial to be concluded in the near future.

6. For appreciation of the said contention, it is deemed apposite if reference is made to certain decisions of the Supreme Court as well as this Court, wherein while considering the long period of incarceration and the fact that the trial was likely to take a long time, the accused was directed to be released on bail, even in those cases wherein commercial quantity was recovered.

7. In Union of India v. K.A. Najeeb reported as (2021) 3 SCC 713, the Supreme Court stated that if a timely trial is not possible, courts are ordinarily obligated to release the undertrial on bail and statutory restrictions



do not exclude the discretion of Constitutional courts to grant bail on grounds of violation of Fundamental Rights enshrined in Part III of the Constitution. While the said judgement was passed in the context of UAPA, the said observations merit mention:-

“xxx

12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

xxx

15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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8. While considering a case where the accused had undergone custody of more than two years, the Supreme Court in Jitendra Jain v. Narcotics Control Bureau reported as **2022 SCC OnLine SC 2021**, 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”

9. Again, in Rabi Prakash v. State of Odisha reported as **2023 SCC OnLine SC 1109**, 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”

10. 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 extract of observations is extracted hereinunder:-

“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”

11. Taking cue from the legal position enumerated hereinabove,



Coordinate Benches of this Court have, after due consideration of the facts including the fact that trial is likely to take time, have released the accused on bail. Positive reference in this regard may be made the decision in Sachin Arora v. State Govt. of NCT of Delhi (**2023:DHC:5808**) reported as **2023 SCC OnLine Del 4941** and Vishwajeet Singh v. State (NCT of Delhi) (**2024:DHC: 1554**) reported as **2024 SCC OnLine Del 1284**.

12. In view of the discussions undertaken above, it is clear that even in situations wherein commercial quantity has been recovered from the accused, the said individual has been granted the benefit of bail, while considering the period of incarceration as well as the fact that the trial is likely to take some time in the case.

13. Considering the totality of the facts and circumstances, as well as the above-discussed legal position, especially the fact that the applicant has been in custody for about 3 and a half years as well as the fact that only 4/5 witnesses have been examined till date, 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 J.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.
- 14. The bail application is disposed of in the above terms.
- 15. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.
- 16. Copy of the order be uploaded on the website forthwith.
- 17. Needless to state that this Court has not expressed any opinion on the merits of the case and have made the observations only with regard to present bail applicant and 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

OCTOBER 24, 2024/rd