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

+ **BAIL APPLN. 3401/2022**

MONA DEVI

..... Applicant

Through: Mr.Kuldeep Rai, Mr.Aniruddh
Singh Rajawat, Mr.Ankur Jain,
Mr.Sanchit Jain, Mr.Shivam
Adhikary and Mr.Manoj Kr.
Sharma, Advs.

versus

THE STATE (GNCTD)

..... Respondent

Through: Mr.Aman Usman, APP with SI
Manoj Kumar and ASI Rajesh
Kumar.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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15.05.2024

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on bail in FIR No. 724/2021 registered at Police Station: Mundka, Delhi under Sections 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act').

2. It is the case of the prosecution that on 14.07.2021 at about 6:45 AM, Sub Inspector Dipender Singh received a secret information that a lady, namely Mona Devi, that is, the applicant herein, who is a resident of Flat No.427, Pocket A, Bakkarwala, Delhi is engaged in the supply of *Ganja* and on 14.07.2021 at about 8.00 AM, she will proceed with huge quantity of *Ganja* from her flat. SI Dipender Singh, with the raiding party, took position outside the flat of the applicant to apprehend her. When the police party tried to apprehend the applicant,



she turned back and entered the flat. Upon search of the flat of the applicant, 83.100 Kg of *Ganja* concealed in 3 bags was recovered by the raiding party.

3. The learned counsel for the applicant submits that the applicant has been in custody since 14.07.2021 and the trial is likely to take long as only 5 out of 19 witnesses have been examined so far. Placing reliance on the judgments of the Supreme Court in ***Mohd. Muslim alias Hussain v. State (NCT of Delhi)***, 2023 SCC Online SC 352; ***Rabi Prakash v. State of Odisha***, 2023 SCC OnLine SC 1109; order dated 14.02.2023 in SLP (Crl.) bearing no.11731/2022 titled as ***Biswajit Mondal @ Biswajit Mandal v. The State of West Bengal***; and ***Dheeraj Kumar Shukla v. State of U.P.***, 2023 SCC OnLine SC 918, he submits that the Supreme Court has emphasized in the aforesaid judgments that if there is a delay in conclusion of the trial, the rigors of Section 37 of the NDPS Act will not come in the way of the applicant being granted bail, as the fundamental right guaranteed under Article 21 of the Constitution of India will prevail. He submits that in such cases, a delay of even 1½ years has been considered sufficient to grant bail to the applicant.

4. On the other hand, the learned APP submits that the delay in the trial is also attributable to the accused/applicant.

5. Considering this submission, this Court *vide* its Order dated 22.04.2024 had requested for a report from the learned Trial Court. The learned Trial Court has submitted a report dated 13.05.2024, which *inter alia* reports as under:

“It is relevant to mention here that as per the



record of the present case file

- 1. The present chargesheet was filed on 07.01.2022 before Ld. Predecessor of this court.*
- 2. The cognizance of offence was taken on 01.02.2022*
- 3. Compliance of 207 Cr. RC. was done on 15.02.2021.*
- 4. Charge was framed against accused on 23.03.2022 for commission of offence /s 20 (b) (ii) (c) of NDPS Act.*
- 5. Thereafter, matter was fixed for PE for 27.05.2022, PWs present could not be examined due to paucity of time as there was no regular steno in the court and only one substitute was provided. However, Counsel for the accused had not appeared on the date of hearing.*
- 6. On next date i.e. 02.08.2022, adjournment was sought by Ld. Counsel for the accused.*
- 7. On NDOH 27.09.2022, ASI Raj Kumar was examined as PW1 and SI Dipender was partly examined as PW2. However, only Proxy Counsel for the accused had appeared on the date of hearing.*
- 8. On NDOH 06.12.2022, witnesses were discharged unexamined due to paucity of time. However, only Proxy Counsel for the accused had appeared on date of hearing.*
- 9. On NDOH 08.02.2023, PW2 ASI Dipender was further examined, however, his cross examination was deferred at request of Proxy Counsel subject to the condition that in case no opportunity to cross examination is availed on the NDOH, cost of Rs.20,000/- will be deposited in DLSA.*
- 10. On NDOH i.e. 19.04.2023 and 30.05.2023, Ld. Predecessor of this court was on leave. However, on both dates of hearing main counsel of the accused was not present.*
- 11. On NDOH 25.08.2023 no police witnesses were present as they were deployed in G-20 arrangements duty.*
- 12. On NDOH 27.10.2023, Ct. Manju was examined as PW4. Inspector Gulshan Nangpal*



was examined as PW3, however, his cross examination was deferred as the main Counsel for the accused was available.

13. On NDOH 19.01.2024 PW3 Inspector Nagpal was cross examined and discharged.

14. On last date of hearing i.e. 18.03.2024, the main counsel for the accused was not available however, the present PWs namely SI Dipender (PW2) and PW 5 HC Sukhpal were examined and cross examination of the PWs was 'Nil' (opportunity given).

15. The NDOH in the present case is now fixed for PE for 22.05.2024.

It is relevant to mention here that number of cited PWs in the present chargesheet are 19, out of which 5 witnesses have already been examined and 14 prosecution witnesses are yet to be examined.

On the perusal of the trial court record, it is apparent that after filing of the present chargesheet the matter was heard for 15 dates of hearing, out of which only on three dates of hearing main counsel for the accused was appeared and proxy counsel for the main counsel has appeared on eight dates of hearing and on the remaining dates of hearing no counsel has appeared on behalf of the accused. Hence, it is apparent that the main counsel for the accused is not appearing in the case on the date of hearings regularly and due to which delay has been caused in the recording of the evidence in the present case."

6. From the above, it is apparent that the learned Trial Court has been proceeding expeditiously and, in fact, it is the accused who is not being properly represented by the respective counsel, because of which repeated adjournments had to be granted. In fact, the learned Trial Court had imposed cost on the accused *vide* its Order 08.02.2023 in case the cross-examination of PW2 was further deferred.



7. While it is a settled proposition that in case there is an unreasonable delay in the conclusion of the trial, the fundamental rights of the accused would prevail entitling him to be released on bail notwithstanding the rigors of Section 37 of the NDPS Act, however, at the same time, it is also pertinent to note that each case has to be considered on its own facts and it is also to be determined if the delay was on account of the accused itself. A party cannot be allowed to seek a benefit of its own default.

8. In the present case, as noted hereinabove, it is the case of the prosecution that 83.100 Kg of *Ganja* has been recovered from the applicant. Even though only five witnesses have been examined before the learned Trial Court, some blame for the said delay is also at the doors of the applicant, as highlighted by the learned Trial Court's Report dated 13.05.2024.

9. Keeping in view the above facts, the applicant has not been able to make out a case for being released on bail at this stage. The learned Trial Court is, however, requested to expedite the trial and make an endeavour to dispose it of within a period of one year from its first listing post this order before it. In this endeavour, any unreasonable request from either party for an adjournment shall be denied.

10. The application is disposed of in the above terms.

11. Let a copy of this order be sent to the learned Trial Court for information and ensuring compliance.

NAVIN CHAWLA, J

MAY 15, 2024/ns/VS/RP

Click here to check corrigendum, if any