



2024:DHC:8207



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

%

Reserved on: 30th August 2024

Pronounced on: 21st October 2024

+ **BAIL APPLN. 2672/2024**

SHRIMATHI S.

.....Applicant

Through: Mr. Siddharth Srivastava, Mr. Saurav Sharma, Ms. Khushi Gupta & Mr. Sidak S. Kalra, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State with SI Deep Sharma, PS: New Delhi Railway Station.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. By this application, the applicant seeks regular bail in FIR No.43/2020 under Sections 22/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). The applicant has been incarcerated since 8th December 2020. As per the Nominal Roll, there is no previous involvement of the applicant and the period of incarceration is about 3 years 9 months.



2024:DHC:8207



2. As per the case of the prosecution, on 8th December 2020, HC Dharmender and HC Pawan were on patrolling duty at Platform No.4, New Delhi Railway Station where Train No. 02692 Bengalaru Rajdhani was on the platform for departure. At about 8:45 P.M., an African citizen was boarding in Coach No. B-11, followed by a lady with a polythene packet behind that said person. Suspecting illegal activity, the police persons entered the coach and found the African citizen was sitting on berth No.14 upper berth with one polythene packet in his hand and the lady sitting on the lower birth with two polythene packets. On inquiry, they said these were domestic articles. However, on checking, white crystal type substance was found in them. Thereafter, they were brought to the police station for further proceedings.

3. Using the Narcotic Analysis Kit, *amphetamine* was found in these polythene pouches which were in contained cardboard boxes in the plastic packets. The applicant was the said lady and the African citizen was Chima Vitalis (*whose Bail Application No. 2324/2024 has also been preferred*). On checking the two plastic packets in possession of the applicant, three cardboard boxes in one polythene packet and two cardboard boxes in another polythene packet were found. A total of 33 transparent pouches, containing white crystal substance were in one plastic packet and total of 12 pouches in the other packet (a total of 45 packets) that were recovered from the applicant. A total of 57 packets were recovered from both accused, amounting to a weight of 10.5 kg. Two samples of 250gm each were taken into police possession through seizure memo and the present FIR was registered at PS



2024:DHC:8207



New Delhi Railway Station. Investigation was taken up and both the accused were arrested on the same day.

4. On interrogation, they disclosed that one person, namely, Michel of Dabri, Delhi provided them the drugs for supply of the same in Bangalore. Efforts were made to trace co-accused Michel, however, he could not be traced. Sampling was conducted in the MM Court and exhibits were deposited in FSL Rohini. Railway tickets of both the accused were verified. CCTV footage was obtained and placed on file. FSL report confirmed that the substance was '*methamphetamine*'. CDRs were analyzed to show that both accused were connected with each other. The case is pending trial.

Submissions on behalf of Applicant

5. Counsel for applicant has raised *inter alia* the following contentions.

6. On the issue of delay in trial, considering that they were incarcerated since 2020 and it has been four years since, the counsel for the applicant relies upon the Supreme Court decisions in ***Rabi Prakash v State of Odisha*** 2023 SCC OnLine SC 1109; ***Dheeraj Kumar Shukla v State of U.P.*** 2023 SCC OnLine SC 918; ***Man Mandal v State of W.B.*** 2023 SCC OnLine SC 1868 and ***Badsha Sk. v State of W.B.*** 2023 SCC OnLine SC 1867, all of which have been followed by a Coordinate Bench of this Court in ***Madhuri Chauhan v State of NCT of Delhi*** 2024 SCC OnLine Del 4735.

7. On sampling procedure, counsel for the applicant relied upon Standing Orders 1/88 and 1/89, to contend that in case of many pouches, lots of 10



2024:DHC:8207



have to be made and two samples from each ought to be collected. It is contended that the inventory was not made and the applicant relied upon in decisions of this Court in *Amina v State (NCT of Delhi)* 2023 SCC OnLine Del 3491 and *Betty Rame v Narcotics Control Bureau* 2023 SCC OnLine Del 3279. It was noted that a contrary opinion was taken in *Sovraj v State* 2024 SCC OnLine Del 4732 being that these issues are procedural and shall be considered at the time of trial. Counsel for the applicant stated that this was an erroneous interpretation in terms of para 87 of *Noor Aga v State of Punjab* (2008) 16 SCC 417 and *Union of India v Bal Mukund* (2009) 12 SCC 161. The opinion taken in *Sovraj (supra)* in para 92, that the non-compliance of Standing Orders can be overcome by the prosecution by producing evidence to the contrary at the stage of trial, was wrong. According to the counsel for the applicant, it has to be assessed whether substantial compliance has been done or not, and if not, benefit accrues to the applicant and if there is total non-compliance, then it definitely accrues to the applicant. The evidence cannot be improved during trial and if a *prima facie* opinion on reasonable doubt has been taken at this stage itself, then bail ought to be given. The sample, therefore, which has been assessed, is not a true sample.

8. He further relied upon the seizure memo, which noted that the pouches were opened, weighed on a cloth and from the mixture of the 10.5 kg of substance, 250-250 gm were taken as samples. It was contended that Section 52A(2) of NDPS Act sits separately and requires the raiding party to prepare an inventory sample and take photographs. Reliance was made on the



2024:DHC:8207



decision of this Court in ***Rishi Dev @ Onkar Singh v State*** 2008:DHC:1513 in CRL.A. No. 757/2000 in para 18 and 20, where it has been noted that there can be a possibility of tampering, in the case of delay.

9. On the issue of delay, it was pointed out that in ***Sovraj (supra)*** it has been stated by the Coordinate Bench of this Court that prejudice has to be shown while in ***Kashif v Narcotics Control Bureau*** 2023 SCC OnLine Del 2881, 72 hours has been said to be prescribed as per Standing Order 1/88. In this case, the delay was about 11 days. In ***Sarvothaman Guhan v Narcotics Control Bureau*** 2023 SCC OnLine Del 5643 the delay was for about 10 days and bail had been granted in a recovery of 30 gm *ganja* and 0.45 gm tablets of Ecstasy (MDMA). Counsel for the applicant argued that as per ***Sovraj (supra)*** the applicant will never be able to show prejudice caused.

Submissions on behalf of State

10. The APP for the State contended that it was a huge commercial quantity of 10.5 kg, threshold being 50gm. Reliance was made on the decision in ***Masibur Khan v State (Govt. of NCT of Delhi)*** 2023 SCC OnLine Del 3326 where a Single Bench of this Court has stated that whether the sample drawn would be a true representative of the contraband recovered, can be answered only by a chemical analyst during the course of the trial, where there will be the advantage of the testimony. As regards delay, reliance was placed on order dated 2nd November 2023 in Criminal Appeal No. 2027 of 2012 titled ***Jagwinder Singh v State of Punjab Jagwinder Singh*** stating that



2024:DHC:8207



delay is not fatal. Reliance was also placed on a Kerala decision in *Vaisakh v State of Kerala* 2024 SCC OnLine Ker 924 where Standing Order 1/88 was held to be mandatory, and has now been challenged before the Supreme Court, and one ought to await the decision. Further, reliance is placed on decision of the Supreme Court in *NCB v Mohit Aggarwal* 2022 SCC OnLine SC 891 where it is stated that, the length of period of custody, are not considerations that can be treated as persuasive grounds for granting relief under Section 37 of the NDPS Act.

Analysis

11. The seizure in this case was on 8th December 2020, upon interception of the applicant along with co-accused namely Chima and the total quantity recovered was 10.5 kg of ‘methamphetamine’. The threshold for commercial quantity of ‘methamphetamine’ is 50 gms, the seized contraband therefore, was at least two hundred times that quantity. Applicant was arrested on 9th December 2020 and has been incarcerated since almost 4 years. The case is pending trial at the stage of prosecution evidence and one formal witness, out of 15 witnesses, has been examined.

Sampling Procedure

12. The first objection is regarding the sampling procedure where applicant contends that mandatory provisions of sampling procedure under Section 52A of NDPS Act were not complied with. In the present case, the seizure was made on a railway platform in Bengaluru, where a total of 57 packets were



2024:DHC:8207



found to be in possession of both applicant and co-accused Chima while they were boarding the train. Out of these, 33 packets were found from the first polythene bag recovered from the applicant and 12 packets were found from the second polythene bag recovered from the applicant. The remaining 12 packets were recovered from the third polythene, in possession of co-accused Chima. As per seizure memo dated 9th December 2020, cardboard boxes were found in the polythenes carried by the accused and upon opening such boxes, transparent pouches were retrieved, containing crystal white substance. These pouches were opened and weighed on a cloth and the total weight was found to be 10.5 kg. From that substance, two samples of 250 gms each were drawn, kept separately in two plastic containers and which were sealed and marked S-1 & S-2. It would have to be seen whether, the process adopted of mixing all the samples at the spot recovered from the packets, would cause any prejudice to the accused.

13. Prior to 23rd December 2022, when the Standing Order ('SO') issued by Ministry of Finance came into the picture (*issued under Section 76 read with Section 52A NDPS Act*), the seizure and sampling guidelines which regulated the process were resident in SO 1/88 [*issued by the Narcotics Control Bureau*] and SO 1/89 [*applicable from 13th June 1989 issued by Government of India, Ministry of Finance*].

14. SO 1/89 was promulgated in exercise of powers conferred by Section 52A(1) NDPS Act dealing with disposal of seized narcotics and primarily provides for a regime of proper disposal of drugs as envisaged under Section



2024:DHC:8207



52A. While *Section I* provides a list of drugs meant for disposal, *Section II* provides the general procedure for sampling, storage etc., *Section III* is for receipt of drugs in godowns and the procedure to be followed while *Section IV* for actions to be taken for pre-trial disposal. The sequential flow, therefore, in essence, is as under:

- i. Drugs seized shall be classified, weighed and sampled at the time of seizure;
- ii. Seized packages shall be carefully numbered and kept for sampling;
- iii. Samples shall be drawn on the spot of recovery, in duplicate, in presence of *panchas* and the person accused. Mention of this should be made in the *panchnama* drawn on the spot;
- iv. The quantity drawn from each sample shall be not less than 5 g (24 g in cases of opium, ganja, and charas);
- v. The seized drugs from the packages/containers shall be well-mixed to make it homogenous before the sample is drawn;
- vi. In case the seizure is from a single packet, one sample in duplicate will be drawn; if more packages/containers then one sample will be taken from each of them. If many packages are seized of identical size and weight, they “may be bunched in lot of 10 packages/containers” (in case of ganja and hashish) in lots of 40 packages/containers;
- vii. Post the sampling it shall be secured and marked. They shall be dispatched to the FSLs. The residual quantity of the drugs would be stored in safes and vaults with the prescribed agencies after following due process;



2024:DHC:8207



- viii. Orders may be obtained for pre-trial disposal under Section 52A(2), NDPS Act and an application pertaining to the same be made to the Magistrate after proper inventorisation has been achieved;
- ix. Magistrate would allow an application as soon as possible and go through the process of certifying the inventory, taking photographs, drawing representative samples, and certifying the same, followed by disposal.

15. The above are relevant steps in the procedure, aside from other attendant guidelines. Notably, considering there is no procedure in the NDPS Act itself, SO's are usually relied upon as guideposts for proper acceptable seizure and sampling. If the Court is of the view, depending on facts and circumstances of a particular case that, the procedure adopted is so erroneous and so defective and extremely prejudicial, casting a shadow of doubt to the genuineness of the recovery and importing a suspicion of false implication and planting of the contraband, the Court may be inclined to consider grant of bail. There is no doubt, that the Court has also to consider the quantity of the recovery and the nature of the contraband, and the circumstances in which it was seized, each of which could potentially work to the benefit of the accused for the purposes of bail. Essentially, all these elements, factors, situations, are to be weighed and examined in the crucible of Section 37 NDPS parameters. The said provision requires a Court to be "*satisfied*" the accused is "*not guilty*" of the offence alleged, such satisfaction being based on "*reasonable grounds*". Likelihood of committing an offence while on bail is the other



2024:DHC:8207



parameter. There is a distinction therefore, in an assessment made, post-conviction (*in an appeal*) where the complete evidence is before Court, and that at the stage of bail, when the material before Court is that provided by the prosecution.

16. A thoroughbred examination can happen only post-trial, post-conviction in an appeal. At the stage of bail, a subjective analysis based on some objective criteria can be made, which would determine whether the Section 37 threshold is passed or not. This, in the opinion of this Court, is what imbues as assessment at the stage of bail. Circumstances of sampling and seizure can vary hugely and it may not be correct to place the same, in discrete and inflexible slots.

17. As noted, there is no prohibition, at least pre-December 2022, when notification issued by Ministry of Finance came into effect, in drawing the samples at the stage of seizure. Further, it is mandated that the drugs should be well-mixed to make them homogenous before drawing a sample. Guidelines in terms of multiple packages/containers require an option to be bunching them in lots. The phrase used in clause 2.5 of SO 1/89 is “*may be carefully bunched in lots*”. This is in contrast to the other clauses which use the words “*must*” and “*should*” or “*shall*”. The option of drawing in lots must be provided in order to accommodate for various situations which may arise on the spot.



2024:DHC:8207



18. The contention of the applicant that there is a violation of Section 52A of NDPS Act, as mixing of packets recovered has been done prior to taking the sample, cannot be held to be tenable as violation of any Standing Order would not remove the bar under Section 37 of the NDPS Act. A Coordinate Bench of this Court in *Masibur Khan v State (NCT of Delhi)* 2023 SCC OnLine Del 3326 (where there was a recovery of 9 bags containing 4 small packets each, in total 36 packets of 5 kg each, and the total recovery being 180 kg of *ganja*) has held that at the time of deciding the bail application, determination of the compliance or non-compliance of the procedure with regard to the Standing Order NO.1/89 or under Section 52-A of the NDPS Act cannot be done because the same could only be determined after the appreciation of evidence during trial. Therefore, in the opinion of this Court, no prejudice is caused to the accused as it being a chance recovery, and it is premature at this stage to say that the samples drawn are not true representative samples of the contraband seized, and the same shall be determined during the course of trial.

19. The relevant paragraphs of the said decision in *Masibur Khan (supra)*, are extracted as under:

“38. In the present case, the Seizing Officer had taken sample from each of the 04 bags contained in each of the 09 bags and after homogenously mixing those 04 samples, 02 samples of 250 gm each has been drawn with respect to each of 04 bags containing in one bag. It is also pertinent to note that recovery was with regard to ganja which otherwise is identifiable by its texture and smell, so non usage of field



2024:DHC:8207



testing kit is not fatal to the procedure. In any case final confirmation has to be from the chemical analyst.

39. *In view of the aforesaid, this Court is of the opinion that the procedure adopted with respect to contraband in the present case is not defective in nature, at this stage. The applicant will get ample opportunity to prove that the said recovery was defective and samples drawn were not the true representatives of the contraband recovered, during the course of trial before learned Special Judge. It is pertinent to note that, the said standing orders cannot be exhaustive enough to cover all factual scenarios at the time of seizure of the contraband. Various factors like nature of contraband seized, the volume/quantity of the seizure, place of seizure, time of seizure, etc. will be relevant to determine any non-compliance thereof and effect of such non-compliance.*

40. *Hon'ble Supreme Court in Balbir Singh (supra) observed that the Investigating Officer is bound by the procedural instructions and has to follow the same, and in case of non-compliance thereof, and if no proper explanation is forthcoming, then the same would have adverse impact on the prosecution's case. It was further noted in the said judgment that the Courts would appreciate the evidence and merits of the case keeping these aspects in view. In the opinion of this Court, whether the sample drawn would be a true representative sample of the contraband recovered, can be answered by the chemical analyst, who analyses the sample and gives his/her opinion. Learned Special Judge during the course of the trial will have the advantage of the testimony of the chemical analyst as well as the production of contraband seized in the Court. It is pertinent to note that the case property is still there for any further analysis if so required. Therefore, it is premature at this stage to say that the sample drawn are not*



2024:DHC:8207



true representative samples of the contraband seized. In the present case, at the time of examination of case property, the learned Special Judge can satisfy himself with regard to the correctness of the procedure followed.”

(emphasis added)

Delay in Filing Application under 52A NDPS

20. The other contention of the accused is regarding the delay in compliance of Section 52A of NDPS Act proceedings. Section 52A of the NDPS Act prescribes that upon seizure of psychotropic substances, the officer shall approach the Magistrate, under whose presence and supervision the process of sampling will be conducted and certified to be correct.

21. In the present case, the delay claimed in filing the application under Section 52A NDPS Act, as contended by counsel for applicant, is of 11 days. The recovery of contraband from the applicant was on 8th December 2020 and the application under Section 52A NDPS Act was filed by the IO on 17th December 2020, however, the sampling of substances seized was conducted by the Judge only on 19th December 2020, causing a delay of 11 days in compliance of 52A proceedings.

22. Though the application under Section 52A of the NDPS Act has to be made without undue delay, no time limit for the same has been prescribed. SO 1/88 requires samples to be dispatched to the FSL not later than 72 hours. Further, as regards the delay in moving application under Section 52A NDPS Act, there is nothing in the SO 1/89 which prescribes specific time-period.



2024:DHC:8207



23. Counsel for applicant relies upon *Kashif* (*supra*), a decision of a Coordinate Bench of this Court, in order to contend that delay in filing Section 52A application ought to render the Court, to afford benefit of doubt to the applicant. Relevant portions of the said decision are extracted as under:

“24. Hence, I am of the view that non-compliance of section 52A within a reasonable time gives rise to the apprehension that sample could have been tampered with and in case of a wrongly drawn sample, the benefit of doubt has to accrue to the accused. The prosecuting agency has to prove at the time of trial that the sample was immune from tampering.

25. In the present case, the sample was kept in the custody of the prosecuting agency for more than one and a half month, thus, raising doubt with regards to tampering of the same.

*26. Another reason which persuades me to take this view is that once the Apex Court has held in Mohanlal (*supra*) that the application under 52A has to be made without any undue delay, there should not be any reason for delaying the filing of application.*

27. The application for sample collection under section 52A is not a technical application wherein elaborate reasons, principles of law or detailed facts are required. It is more of a clerical application and should mandatorily be made within a reasonable time under section 52A NDPS. The application has to be moved at the earliest and in case, the same has not been moved, the reasons for delay must be explained by the authorities.

Reasonable time under section 52A



2024:DHC:8207



28. What is reasonable time depends on the facts and circumstances of each case. However, it cannot be the intention of the legislature that an application for sample collection can be moved at the whims and fancies of the prosecuting agency. Therefore, taking cue from the Standing Order 1/88, it is desirable that the application under 52A should be made within 72 hours or near about the said time frame.”

(emphasis added)

24. Thereafter, another Coordinate Bench of this Court in **Somdutt Singh @Shivam v Narcotics Control Bureau** 2023:DHC:8550 distinguished the judgment in the case of **Kashif** (*supra*) on the aspect that no recovery was effected from the possession or at the instance of the applicants therein and thus, embargo of Section 37 was not attracted. While dismissing the bail application, Court in **Somdutt Singh @ Shivam** (*supra*) observed as follows:

“16. Furthermore, recently a Co-ordinate Bench of this Court in **Surender Kumar** (*supra*) has observed that Section 52-A of the NDPS Act is directory in nature and non-compliance of the same, in itself, cannot render the investigation invalid. Accordingly, the bail application of an accused charged of illegally selling narcotic medicines was dismissed by taking into account that the case involved commercial quantity of such medicines.

17. It is clear from a reading of the aforesaid judgments that there is no mandatory time duration prescribed for compliance of Section 52-A of the NDPS Act. Though it is desirable that the procedure contemplated in Section 52-A of the NDPS Act be complied with at the earliest, mere delayed compliance of the same cannot be a ground for



2024:DHC:8207



grant of bail. The applicant will have to show the prejudice caused on account of delayed compliance of Section 52-A of the NDPS Act.”

(emphasis added)

25. The order passed in the case of **Somdutt Singh** (*supra*) was challenged before the Apex Court in Special Leave Petition (Crl.) No. 415/2024. By order dated 16th May 2024, the Court dismissed the said Special Leave Petition.

26. In this Court’s opinion, the applicant has failed to overcome the threshold as prescribed by Section 37 of the NDPS Act and the applicant may, in accordance with applicable law, contend prejudice caused on account of this delay, during trial. The judgement of a Coordinate Bench in **Sovraj v State** 2023:DHC:8550, on similar lines, has observed as under:

57. It is pertinent to note that the Hon’ble Apex Court in the case of Union of India v. Mohanlal (supra) had specifically noted that while the process of sampling cannot be left to the whims of the prosecution and the application for sampling and certification ought to be made without undue delay, there was no room for prescribing or reading a time-frame into the provision. Though no timeframe has been incorporated in the provision, the application should be made without undue delay. The cause of delay, however, in the opinion of this Court, can be explained by the prosecution during the course of trial and is not fatal.

58. As long as the prosecution is able to justify the delay on its end, mere delay would not vitiate the evidence. To hold otherwise would lead to an odd situation where even a few



2024:DHC:8207



hours post the threshold of 72 hours would nullify the evidence. The Court has to be cognizant of the ground realities where situations may arise where the sample was not sent to FSL on time or the application under Section 52A of the NDPS Act could not be preferred on time.

(emphasis added)

Prolonged incarceration & Delay in Trial

27. The plea of delay in trial and prolonged incarceration, though being recognized by the Supreme Court as an inalienable right under Article 21 of the Constitution of India, cannot have a formulaic application. The assessment therefore, on prolonged custody and delay in trials will depend on facts and circumstances of the case. Whether 2 or 3 years or more is considered '*prolonged*', is clearly left to the assessment of the Court.

28. Reliance may be placed on the decision of ***Emeka Prince v State NCT of Delhi*** 2024:DHC:7768 where this Court while analysing various decisions of the Supreme Court, with regard to undue delay in trial, stated that the Supreme Court has consistently held in various decisions that bail on ground of undue delay in trial is unfettered by rigors by Section 37 NDPS, where there is prolonged custody even in cases of commercial quantity. In this regard the decisions of ***Rabi Prakash v State of Odisha*** 2023 SCC OnLine SC 1109 (recovery of 247 kgs of *ganja* and applicant had been in custody for more than three and a half years), ***Dheeraj Kumar Shukla v State of U.P.*** 2023 SCC OnLine SC 918 (seizure of about 65 kgs of *ganja* and the applicant was in custody for about two and a half years), ***Man Mandal & Anr. v State***



2024:DHC:8207



of West Bengal 2023 SCC OnLine SC 1868 (seizure which was commercial in nature and the applicant had been incarcerated for about two years), *Badsha Sk. v State of West Bengal* 2023 SCC OnLine SC 1867 (seizure of 100 bottles of Phensedyl Cough Syrup, 100 ml. each, containing Codeine Phosphate, the applicant had been in custody for about 2 years 4 months) and *Mohd. Muslim alias Hussain v State (NCT of Delhi)* 2023 SCC OnLine SC 352 (recovery of 180 kg of *ganja* and applicant was in custody for over 7 years and 4 months), are relevant.

29. What may be relevant is to weigh in balance, as in the present case, the nature and quantity of the contraband seized and whether there is something seriously prejudicial about the procedure undertaken by the investigation agency. Most of the decisions cited above, giving benefit of bail for prolonged custody, were based on their own peculiar facts, some with more than 3 years of custody and some of recovery of *ganja*. Though this cannot be formulaic, the analysis serves as a guidepost.

23. In this case, there has been a seizure of 10.5 kg of ‘methamphetamine’, which is much above the threshold for commercial quantity (50 gms). In contrast of balancing the equities in matters of personal liberty, conduct of fair trial, and the Herculean task of discharging the duty to curb the menace of drugs running rampant in this country, it is pertinent to mention observations of the Supreme Court in *Ranjan Kumar Chadha v State of Himachal Pradesh* 2023 SCC OnLine SC 1262 which are extracted under:



2024:DHC:8207



“129. It has been observed in Baldev Singh (supra) that drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. It has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. Reference in the said decision has also been made to some United Nation Conventions which the Government of India has ratified. It is, therefore, absolutely imperative that those who indulge in this kind of nefarious activities should not go scot-free on technical pleas which come handy to their advantage in a fraction of second by slight movement of the baggage, being placed to any part of their body, which baggage may contain the incriminating article.”

(emphasis added)

30. In the present case, the applicant has undergone 4 years of custody and the trial is progressing. An attempt may be made by the Trial Court to expedite the trial. In the event, that trial does not proceed ahead expeditiously, needless to state that applicant will have the right to approach the Court at a subsequent stage.

31. In this regard, it is to be noted that in the decision of the Supreme Court in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v Union of India* (1994) 6 SCC 731 in context of incarceration as an undertrial and delay in disposal of cases, it was stated *inter alia* that when an undertrial is charged with offences with minimum imprisonment of 10



2024:DHC:8207



years, and if they have been in jail for not less than 5 years, they may be released on bail upon furnishing bail bond in the sum of Rupees 1,00,000/- with two sureties for like amount. This view has been endorsed in ***Thana Singh v Central Bureau of Narcotics*** (2013) 2 SCC 603 as under:

“4. Time and again, this Court has emphasised the need for speedy trial, particularly when the release of an undertrial on bail is restricted under the provisions of the statute, like in the present case under Section 37 of the NDPS Act. While considering the question of grant of bail to an accused facing trial under the NDPS Act in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [(1994) 6 SCC 731 : 1995 SCC (Cri) 39] this Court had observed that though some amount of deprivation of personal liberty cannot be avoided in such cases, but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 of the Constitution would receive a jolt. It was further observed that after the accused person has suffered imprisonment, which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21. We regret to note that despite it all, there has not been visible improvement on this front.

(emphasis added)

Conclusion

32. In light of the above discussion and taking into consideration the serious allegations, nature of offence, statutory bar under Section 37 of the NDPS Act and quantity of contraband recovered from the applicant, this



2024:DHC:8207



Court is unable to reach a *prima facie* view that the applicant is not guilty of the offences and is unlikely to commit the same when on bail and concludes that there are no grounds made out for granting bail to the applicant at this stage.

33. Petition is therefore, dismissed. Pending applications, if any, are rendered infructuous.

34. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

OCTOBER 21, 2024/MK/na