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

+ **BAIL APPLN. 2740/2024**

DINESH

.....Applicant

Through: Mr. Kedar Yadav,
Mr. Rahul Yadav & Ms.
Minakshi Yadav, Advs.

versus

STATE OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State
SI K.G. Yadav, PS- Crime
Branch

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

27.09.2024

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CRL.M.A. 22885/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

**BAIL APPLN. 2740/2024, CRL.M.A. 22884/2024 &
CRL.M.A. 22886/2024**

1. The present application is filed seeking regular bail in FIR No. 154/2021 dated 05.08.2021, registered at Police Station Crime Branch, for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). Chargesheet was filed against the applicant for the offence under Sections 20/25/29 of the NDPS Act.

2. It is alleged that on 05.08.2021, at about 04:00 PM, secret information was received by the concerned police officials that the applicant/accused would be coming to supply Ganja to an unknown person after 2-3 hours near Wazirabad Road, Delhi

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under the T-Point Gokulpuri Flyover. A raiding team was formed and dispatched to the spot.

3. At approximately 6:30 PM, a silver-colour Swift Dzire car stopped under the T-Point Gokul Puri flyover. It is alleged that the applicant was seated in the rear set of the car and the co-accused Babli was driving the same. It is alleged that the applicant got out of the car but suspecting the presence of police, attempted to flee. Upon the same, by around 6:45 PM, the police officers overpowered the accused persons and apprehended them.

4. It is alleged that around 7:30 PM, the car was thoroughly searched and two white plastic bags, containing 20 Kg Ganja and 10 Kg Ganja respectively, were recovered from the rear seat of the car. The Swift Dezire Car was also seized.

5. It is alleged that the accused persons in their respective disclosure statements disclosed that they had transported Ganja 3-4 times to Delhi previously.

6. Chargesheet was filed against the applicant for the offences under Sections 20/25/29 of the NDPS Act.

7. The applicant's bail application was dismissed by the learned Trial Court *vide* order dated 04.06.2024 due to the embargo under Section 37 of the NDPS Act.

8. The learned counsel for the applicant submits that no incriminating items were recovered from the applicant during his personal search. He submits that the alleged contraband was recovered from the car.

9. He further submits that the search and seizure has been affected at 7:30PM, at a public place, however there was no public witness at the time of the alleged recovery as mentioned in the FIR. He further submits that no endeavour was made by the prosecution to photograph or videotape the recovery either. He

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submits that the same creates a doubt regarding the credibility of the seizure.

10. He submits that the applicant is in custody since 06.08.2021 and the trial is at the stage of examination of prosecution witness. He submits only 5 witnesses have been examined so far out of the 16 prosecution witnesses. He submits that the trial is likely to take time, and in such a case, the applicant should not be allowed to suffer.

11. He submits that the co-accused, Babli has been enlarged on bail by order dated 04.07.2024 passed by this Court.

12. He submits that the applicant is the sole bread earner for his family consisting of his wife and three minor children and that the applicant has no criminal antecedents.

13. *Per contra*, the learned Additional Public Prosecutor for the State submits that the learned Trial Court has rightly dismissed the applicant's bail application

14. He submits that the FSL Report has confirmed the authenticity of the seized Ganja.

15. He submits that the applicant was operating with the co-accused Babli as a part of a well-organized drug syndicate and was actively involved in procuring drugs from the state of Uttar Pradesh to neighbouring states, including Delhi.

16. It is the case of the prosecution that the contraband was seized from the car in which the accused persons were travelling. It is alleged that the applicant disclosed that he had convinced the co-accused Babli to transport Ganja by car and was given ₹2000/- for one round of the car. He also disclosed that he had already transported the contraband 3-4 times with the help of the co-accused to Delhi.



17. The learned counsel for the applicant has also contended that the process of search and seizure in the present case was carried out in the absence of any public witnesses. It is not in doubt that while the testimony of the police witnesses in absence of independent witnesses can be sufficient to secure conviction, if the same inspires confidence during the trial. However, lack of independent witness in certain cases can cast a doubt as to the credibility of the prosecution's case. It is not disputed that the investigating agency had sufficient time to prepare before the raid was conducted.

18. Thus, not finding the public witness and lack of photography and videography of the alleged recovery in today's time and age casts a doubt on the credibility of the evidence. It is also not the case of the prosecution that notice was served under Section 100(8) of the CrPC on the persons who refused to join the raiding party in the process of seizure.

19. It is relevant to note that procedure has been prescribed in the NCB Handbook which has been adopted by the Delhi Police, though may not binding, prescribes the photography and videography as crucial practice for obtaining evidence in order to avoid allegation in regard to the foul play.

20. Thus, while it is true that the effort, if any, made by the prosecution to have the search conducted in the presence of the independent witnesses would be tested during the course of trial and the same may not be fatal to the case of the prosecution, however, the benefit, at this stage, cannot be denied to the accused.

21. It is pertinent to note that the applicant has been in custody since 06.08.2021. Only five out of the sixteen witnesses have been examined till now. Speedy trial in such circumstances does



not seem to be a possibility. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

22. It is trite law that grant of bail on account of delay in trial and long period of incarceration cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of ***Mohd. Muslim v. State (NCT of Delhi)*** : 2023 SCC OnLine SC 352 has observed as under:

“21....Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-



perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer's ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

(emphasis supplied)

23. The Hon’ble Apex Court in the case of ***Man Mandal & Anr. v. The State of West Bengal : SLP(CRL.) No. 8656/2023*** had granted bail to the petitioner therein, in an FIR for offences under the NDPS Act, on the ground that the accused had been incarcerated for a period of almost two years and the trial was likely going to take considerable amount of time.

24. The Hon’ble Apex Court in ***Rabi Prakash v. State of Odisha : 2023 SCC OnLine SC 1109***, while granting bail to the petitioner therein held as under :

“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.”

25. The applicant is also stated to be of clean antecedents and has a wife and three minor children to be taken care of.

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Therefore, I am satisfied that are reasonable grounds for believing that the applicant is not likely to commit any offence while on bail.

26. In view of the above, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

27. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall 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;
- b. The applicants shall under no circumstance leave the boundaries of Delhi without informing the concerned IO;
- c. The applicant shall appear before the learned Trial Court on every date;
- d. The applicant shall, after his release, appear before the concerned Investigating Officer once in every week;
- e. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/ SHO;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

28. 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.

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

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

AMIT MAHAJAN, J

SEPTEMBER 27, 2024
“SS”