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

+ **BAIL APPLN. 3934/2023**

R K MADAAN

.....Petitioner

Through: **Mr. Paranjay Chopra, Advocate.**
versus

STATE NCT OF DELHI THROUGH SHO

.....Respondent

Through: **Mr. Amit Ahlawat, APP for the State**
with **Mr. Dinesh Kumar, Mr. Sunil**
Kumar and Mr. Pankaj Saini, Advs.
SI Anup Rana, P.S. Paschim Vihar
West.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

03.07.2024

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By way of the present petition filed under section 439 read with section 436-A of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No.255/2019 dated 08.06.2019 under section 420 of the Indian Penal Code 1860 ('IPC') registered at P.S.: Paschim Vihar (West), principally on the ground that he has already served more than one-half of the maximum period of imprisonment that he can be sentenced to in the case. Consequent upon completion of investigation, *vide* charge-sheet dated 02.12.2019, offences under sections 468/471/201/174-A/34 IPC have been added.

2. Notice on this petition was issued on 22.11.2023.
3. Status report dated 22.01.2024 as well as additional status report dated 'nil' have been filed in the matter.



4. Insofar as the trial is concerned, charge-sheet dated 02.12.2019 has been filed; charges have been framed; however the evidence is yet to commence.
5. SCRB report dated 20.01.2024 has been requisitioned, which shows that the petitioner is involved in several other cases.
6. Mr. Paranjay Chopra, learned counsel appearing for the petitioner submits, that other things apart, the petitioner is in any case entitled to be enlarged on regular bail in view of the mandate of section 436-A Cr.P.C., since he has already undergone imprisonment for more than one-half of the maximum period of imprisonment prescribed for any of the offences for which he has been charged. Insofar as the other cases pending against the petitioner are concerned, Mr. Chopra submits, that mere pendency of those cases cannot be basis to deny to the petitioner the benefit of section 436-A Cr.P.C.; and also that the petitioner is already on regular bail in 02 of the other cases in which he has been implicated.
7. Relying upon the contents of status report dated 22.01.2024 filed in the matter, Mr. Amit Ahlawat, learned APP appearing for State submits, that the petitioner is involved in a total of 06 cases, including the present one, all of which involve similar offences. Mr. Ahlawat accordingly argues, that the petitioner is a habitual offender and does not deserve the benefit of section 436-A Cr.P.C. Attention in this behalf is drawn to first proviso to section 436-A Cr.P.C., which grants to the court the discretion to order the continued detention of a person for a period longer than one-half of the maximum punishment that may be attracted, for reasons to be recorded in writing.



8. Additional status report dated 'nil' records that the residential address furnished by the petitioner in Gautam Buddha Nagar, U.P. has been verified; and that statements of some neighbours recorded by the Investigating Officer have confirmed that the petitioner has been living at the said address as a tenant for the last about 05 years.
9. It is observed that the petitioner's nominal roll dated 22.04.2024 obtained in the connected matter (*i.e.* Bail. Appln. No.4111/2023) shows that he has been in custody since 06.10.2019; and that therefore, as of the date of the nominal roll, has remained in custody for 04 years 06 months and 16 days. The nominal roll further records that the petitioner's jail conduct has been 'satisfactory' during the last 01 year; and that he has not availed any interim bail so far.
10. It is also observed that the maximum punishment prescribed in law for any of the offences alleged against the petitioner is 07 years.
11. The position accordingly is that the petitioner has already undergone detention in prison for a period of more than one-half of the maximum period of punishment that can be awarded to him, if he were to be convicted for any one or more of the offences with which he is charged.
12. Insofar as the contention of the learned APP that the petitioner is also involved in other similar cases is considered, suffice it to say that the pendency of other cases *alone* cannot be basis to deny to the petitioner the benefit of section 436-A Cr.P.C. which provision is, in the first instance cast in mandatory terms by the Legislature, stating that a person who fulfils the criteria prescribed in the section "*shall be released*" by the court on bail. Furthermore, clearly if a person



accused of multiple offences in different FIRs is denied the benefit of section 436-A Cr.P.C. *only* on the ground that he has not been given that benefit in other cases, then such person will never be able to avail the benefit of section 436-A Cr.P.C.

13. Most importantly, having been arrested in the present case on 06.10.2019 and having been continuously in custody ever-since, the court is informed that recording of evidence is yet to commence in the trial despite lapse of more than 4 ½ years.
14. Upon a conspectus of the facts and circumstances of the case, the petition is allowed. The petitioner is admitted to *regular bail* subject to the following conditions :
 - 14.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned Trial Court;
 - 14.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
 - 14.3. The petitioner shall *ordinarily* reside at the address as per prison records.
 - 14.4. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;
 - 14.5. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution



witnesses or other persons acquainted with the facts of case.
The petitioner shall not tamper with evidence; nor otherwise
indulge in any act or omission that is unlawful or that would
prejudice the proceedings in the pending trial;

14.6. In case of any change in his residential address/contact details,
the petitioner shall promptly inform the Investigating Officer.

15. The petition is disposed-of in the above terms.

ANUP JAIRAM BHAMBHANI, J

JULY 3, 2024

V.Rawat