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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 4131/2023

ARIF

..... Petitioner

Through: Mr. L.K. Singh, Adv. (through VC).

versus

STATE

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with Ms. Mansi Gera, Advocate.
SI Vishan Kumar, ANTF/Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

29.05.2024

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1. The present application is under section 439 r/w section 482 of the CrPc seeks regular bail in case FIR.No. 119/2019 under sections 21/29 of the NDPS act registered at P.S Crime Branch, Delhi.
2. Briefly stated facts of the case as per Status Report dated 19.01.2024 filed by Mr. Anil Sharma, Assistant Commissioner of Police, ANFT, Crime Branch, Delhi, are as under:-

“i. That on 02.05.2019 at about 09:00 AM, a secret information was received to ASI Sudhir Kumar that one person namely Arif r/o Shadhe Char Pusta, Gamdi, Delhi with his two sister Afsana and Shahnaj is indulging in sale and supply of Heroin and they would come from Khajoori Chowk to Shastri Park Pusta near Sadhe Char Pusta Delhi in between 11:00 AM and 11:30 AM to deliver a consignment of Heroin to someone.

ii. After verifying the secret information, ASI Sudhir Kumar produced the informer before the then Insp. Brijpal Singh of Narcotic Cell and he was apprised with the secret information. After verifying the secret information, Insp. Brijpal Singh further transmitted the same to Sh R.K. Ojha, the then ACP/Narcotics Cell Crime Branch, Delhi on his phone, who ordered to conduct raid and



to take necessary legal action. Accordingly, the secret information was reduced into writing in the Daily Diary vide DD No 05 at 10:00 AM dated 02.05.2019 Narcotics Cell, Crime Branch, Delhi and copy of the same was produced before the then Insp. Brijpal Singh in compliance of section 42 NDPS Act, who further forwarded the same to senior officers.

iii. A raiding party was constituted and the raiding party left for the spot vide DD No. 06 at 10:30 AM along with informer in private vehicle No. DL-2C-AW-7181 along with Field Testing Kit, IO Bag, Electronic Weighing Machine.

iv. On the way, public persons were requested to join raiding party but none of them agreed and left without disclosing their name and address. After reaching at spot, a trap was laid at Khajoori Chowk to Shastri Park Pusta near Sadhe Char Pusta Delhi. At the instance of informer, a person was intercepted on the spot. The name and address of apprehended person revealed Arif s/o Shafiq r/o H.No. A-2/752 Gali No.43, Som Bazar, Sadhe Char Pusta, Delhi Age 25 yrs. (The present petitioner). From the search of green color carry bag, two transparent polythene packets containing therein mud color powdery substance, were recovered.

v. The substance recovered from both the transparent polythene packets was detected to be Heroin. Both the transparent polythene packets which were given Mark-A and Mark-B, weighed 200 gram and 300 Gram on electronic weighing machine respectively. Two samples of 5 gram each were taken out from recovered transparent polythene packet Mark-A, which were converted into two cloth parcels Mark A-1 & Mark A-2.

vi. Remaining Heroin recovered from polythene packet mark-A was retained in the same packet Similarly, two samples of 5 gram each taken out from recovered transparent polythene packet Mark-B, which were converted into another two cloth parcels Mark B-1 & Mark B-2. Remaining Heroin recovered from polythene packet Mark-B was retained in the same packet.

vii. Thereafter, polythene packets Mark-A and Mark-B were further kept in the recovered green color carry bag in the same way as were recovered and finally converted the same into another cloth parcel, which was given Mark-C. FSL Form was filled up. ASI Sudhir Kumar put his official seal GAPS/NB DELHI on all the five parcels Mark A-1, A-2, B-1, B-2 & C and FSL Form. Seal after use was handed over to H.C. Birbal. All the five parcels and FSL Form



duly sealed were taken in police possession vide a seizure memo.”

3. Learned counsel appearing on behalf of the applicant submits that the applicant has been falsely implicated in the above case by the police officials and submits that out of the 14 witnesses 06 has been examined, cross examined and discharged. It is further submitted that the applicant has been in Judicial custody since 02.05.2019 and has undergone more than 5 years. It is further submitted that the mandatory provisions of section 50 NDPS act has not been complied with which is in itself sufficient to prima facie establish that the applicant is not guilty and has been framed and falsely implicated in the case.

4. *Per contra*, learned APP opposes the present application on the ground that the previous bail application moved by the applicant vide Bail Application no. 182/2021 had already been dismissed as withdrawn on 03.12.2021 by this Hon’ble court and no new ground has been taken in the present bail application. It is further submitted that the contraband recovered from the applicant was of commercial quantity u/s Section 21 of NDPS Act and provision of Section 37 NDPS Act will be attracted.

5. Heard learned counsel for the parties and perused the record.

6. It is an admitted position that the applicant was arrested on 02.05.2019 and has been in custody for approximately more than 5 years. A perusal of the nominal roll dated 15.01.2024 received from the Office of Superintendent of Prison, Central Jail No. 11, Mandoli reflects the same.

7. The Hon'ble Supreme Court, in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, 1994 6 SCC 731, has directed as under:



“(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

8. It is pertinent to note that a coordinate bench of this Court in Anil Kumar @ Nillu v. State, 2022 SCC Online Del 778, while following the judgment of the Hon’ble Supreme Court in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (*supra*) observed that while remaining cognizant of the impact that drugs have on society, Courts must also remain conscious of the fact that prolonged deprivation of one’s personal liberty, without the assurance of a speedy trial runs contrary to principles of the Constitution. It was held as under:

“14. In view of the above, this Court believes that achievement of universal equality before the law requires the tenets of personal liberty to be applicable to all similarly circumstanced individuals and must not be restricted unless according to procedure established by law. This Court does not find any weight in the submission of the learned APP that the aforementioned judgment of the Supreme Court does not apply to the instant case and that the judgment of this Court in Atul Agarwal v. Directorate of Revenue Intelligence (*supra*) must be referred to a larger Bench due to the incorrect application of the Supreme Court's judgment. Furthermore, in Atul Agarwal v. Directorate of Revenue Intelligence (*supra*), this Court had not solely granted bail on the footing of the inordinate delay in trial, but had also considered the twin requirements stipulated under Section 37 of the NDPS Act. Therefore, this Court is of the opinion that the Petitioner herein is squarely covered by judgment of the Supreme Court and is entitled to release on account of inordinate delay in trial and prolonged judicial



custody.

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16. Therefore, fair, just and reasonable procedure is implicit in Article 21 and it creates a right in the accused to be tried speedily. This Court has consistently observed that while Courts must remain cognizant of the deleterious impact of drugs on society, it is also important to keep in mind that deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution. In the instant case, the Petitioner has been incarcerated for almost eight years now, i.e. since 27.03.2014, for an offence that is punishable with a minimum imprisonment of ten years. This is an egregious violation of an accused's right to personal liberty and right to speedy trial as, in the off-chance that the Petitioner is acquitted, it would entail an irretrievable loss of eight years of his life that cannot be compensated. Whether or not the Petitioner played an active role in the commission of the offence of drug trafficking and supply is a matter of trial and cannot justify the prolonged incarceration of the Petitioner.”

9. It is pertinent to note that the decision in Anil Kumar @ Nillu (*supra*) was challenged in appeal before the Hon’ble Supreme Court and *vide* order dated 14.10.2022, SLP (Criminal) 25615/2022, was dismissed.

10. The Hon’ble Supreme Court, in Union of India v. K.A. Najeeb, (2021) 3 SCC 713 took note of the law laid down in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (*supra*) and observed 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. It was held as under:

“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* [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , 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.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the



threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

11. The present applicant was arrested on 02.05.2019 and has been in custody ever since. A perusal of the nominal roll dated 15.01.2024 reflects that the applicant has been in custody for more than 5 years. The applicant has been chargesheeted for offences related to commercial quantity under Section 21/29 of the NDPS Act, and will therefore be covered under direction (iii) in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (*supra*), which is as under:

“(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

Section 21(c) of the NDPS Act provides for a punishment of rigorous imprisonment for a term which **shall not be less than 10 years** but which may extend to twenty years and a fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. Since, in the present case, the applicant has been in custody for more than 05 years, his case is squarely covered by the aforesaid judgment of the Hon’ble Supreme Court.

12. In view of the facts and circumstances of the present case, the



application is allowed and the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith two sureties of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The applicant, Shall on being released on bail will present himself at P.S Crime Branch, once in a week, on every Friday at 11:00 AM, unless leave of absence is obtained in advance from the learned Special Judge concerned.
 - ii. The applicant shall not leave India without prior permission of the learned Trial Court.
 - iii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iv. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - v. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times. He shall not switch off or change the mobile number without prior information to the Investigating Officer.
 - vi. The bail granted to the applicant shall be cancelled *forthwith* if any of the above conditions are violated or a case for cancellation of bail is otherwise made out.
13. The application is allowed and disposed of accordingly.
 14. Pending applications, if any, also stand disposed of.
 15. Needless to state that nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.



16. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
17. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 29, 2024/nk

Click here to check corrigendum, if any