



\$~17

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

+ CRL.M.C. 6288/2024 and CRL.M.A. 24069/2024

NARCOTIC CONTROL BUREAU

.....Petitioner

Through: Mr.Arun Khatri, SPP with Ms.Shreya
Lamba and Ms.A. Bhalla, Advocates

versus

ACOSTA ARANGUREN WILLIAMS ALONSORespondent

Through: Ms.Mary Vimala Bai, Dr. Aparna
Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

18.10.2024

%

1. By way of present petition, the petitioner seeks cancellation of bail granted to the respondent vide order dated 04.04.2024 by learned ASJ/Spl. Judge, NDPS, New Delhi.

2. It is the case of the prosecution that on 10.07.2019 based on the specific information, one person namely *Acosta Aranguren Williams Alonso*/respondent, Venezuela National, who was arriving at the IGI Airport, New Delhi was suspected to have swallowed narcotic drugs. Subsequently, a raiding team was constituted and on the said date, the above-named suspect was intercepted whereafter he admitted swallowing 103 capsules of drugs. It is alleged that after the suspected drug capsules have been eased out by the petitioner, the same were tested and it gave a positive result for the presence of cocaine, which was also confirmed by the report from CRCL, New Delhi.



3. Learned SPP for the NCB/petitioner submits that the respondent is actively involved in the import of alleged contraband/*Cocaine* into India, that too of a commercial quantity. The petitioner has deliberately committed the offence by ingesting 103 capsules (1.080 kgs of *Cocaine*) inside his stomach and importing the same to India illegally. Thus, committing an offence under the provisions of the NDPS Act. He further submits that since the petitioner is involved in the case of commercial quantity, therefore, parameters of Section 37 of the NDPS Act are to be satisfied, whereas in the present matter the accused had failed to raise any cogent ground for being considered for grant of bail. Accordingly, it is submitted that the impugned order granting bail is bad in law and therefore should be set aside.

4. Learned counsel of the respondent, on the other hand, has defended the impugned order by contending that the impugned order records all the relevant facts and circumstances. He further submits that neither is there any error in the impugned order, nor the respondent has violated any of the bail conditions.

5. I have considered the submissions made and perused the impugned order placed on record.

6. The Trial Court considered the facts and passed the impugned order. A perusal of the records would show that the present case came to be registered in the context of a recovery of 1.080 kgs of *cocaine* at the instance of the respondent who was arrested on 15.07.2019 and the chargesheet came to be filed on 07.01.2020. It has been informed that only 7 out of 18 witnesses have been examined and the trial is likely to take a long time.

7. At this stage, it is apposite for the Court to refer to a decision of the Supreme Court in Union of India v. K.A. Najeeb reported as (2021) 3 SCC



713, wherein it was stated 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 the grounds of violation of Fundamental Rights enshrined in Part III of the Constitution of India. While the said judgement was passed in the context of UAPA, the said observations merit mention: -

“xxx

12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

xxx

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, 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.

xxx

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.

xxx”

8. The right of speedy trial has been repeatedly taken precedence over the twin conditions provided under Section 37 of the NDPS Act. While considering a case where the accused had undergone custody of more than two years, the Supreme Court in Jitendra Jain v. Narcotics Control Bureau reported as **2022 SCC OnLine SC 2021**, observed as under: -

“xxx

3. Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

4. The petitioner is , accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of trial court.



xxx”

9. Again in Rabi Prakash v. State of Odisha reported as **2023 SCC OnLine SC 1109**, where the accused had remained incarcerated for more than three and a half years, the Supreme Court, while releasing the applicant on bail, observed that:-

“xxx

4... 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.

xxx

6. Consequently, while directing that the petitioner shall be released on bail on his furnishing bail bonds to the satisfaction of the Trial Court...

xxx”

10. More recently, in Man Mandal and Anr. v. State of West Bengal reported as **2023 SCC OnLine SC 1868**, while taking into account continued custody of more than two years, the accused was granted bail. The relevant extract of observations is extracted hereunder: -

“xxx

5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the quantity being commercial in nature, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.



7. The petitioners are directed to be released on bail in connection with aforesaid FIR, on such terms and conditions as may be imposed by the Trial Court.

xxx”

11. Considering the aforesaid legal position, the period of custody of the applicant, the fact that so far only 7 out of 18 witnesses have been examined by the prosecution, in view of the mandate of Article 21 of the Constitution of India and the decisions of the Supreme Court as discussed above, I do not find any infirmity in the impugned order granting bail to the respondent. Resultantly, the present petition stands dismissed.

12. Order be uploaded on the website of this court.

MANOJ KUMAR OHRI, J

OCTOBER 18, 2024

na