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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3055/2024

JAI KISHAN PANDEY @ CHIKNA

.....Petitioner

Through: Mr. Omkar Sharma, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
with ASI Sandeep Tyagi, ANTE
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

25.11.2024

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1. By way of present bail application, the applicant seeks regular bail in FIR No. 246/2022 registered under Sections 21/29 of the NDPS Act at P.S. Crime Branch, Delhi.
2. Learned counsel for the applicant submits that the applicant is in judicial custody since 22.10.2022 and that he has been shown to be in possession of 260 grams of heroin which is just over the commercial quantity i.e. 250 grams. He submits that despite the charge-sheet being filed on 08.04.2023, the charges were framed after one year i.e. 29.04.2024, and till date prosecution evidence has not begun. It is further submitted that the prosecution has cited 18 witnesses in total and the trial will take long time to conclude. Lastly, it is submitted that applicant is not involved in any other case and co-accused namely, *Ranjeet @ Cheera* and *Anwar Alam* have



already been enlarged on regular bail by the Coordinate Bench of this Court vide order dated 08.12.2023.

3. Bail is opposed by Ld. APP for the State who contends that commercial quantity of substance has been seized from the possession of the applicant and thus, rigours of Section 37 of the NDPS Act are applicable. He further contends that after filing of the charge-sheet on 08.04.2023, supplementary charge-sheet was filed on 30.08.2023. It is also pointed out that the applicant's address is yet to be verified as in the charge-sheet, he is stated to be a vagabond. He however, on instructions, submits that applicant is not found involved in any other case and that the prosecution evidence is yet to begin.

4. I have heard the learned counsels for the parties and have also perused the material placed on record.

5. At this stage it is apposite for the Court to refer to decision of the Supreme Court in Union of India v. K.A. Najeed 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 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:-

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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.

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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.

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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.

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6. While considering a case where the accused had undergone custody of more than two years, Supreme Court in Jitendra Jain v. Narcotics Control Bureau reported as **2022 SCC OnLine SC 2021**, the Supreme Court observed as under:-

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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”

7. 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.

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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”

8. 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:-

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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”

9. Reference is also made to the recent decision of the Supreme Court in Mohd. Muslim v. State (NCT of Delhi), reported as **2023 SCC OnLine SC 352**. Taking cue from the legal position enumerated hereinabove, Coordinate Benches of this Court, after due consideration of the facts including the fact that the trial is likely to take time, have released the accused on bail. Positive reference in this regard may be made to the decisions in Sachin Arora v. State Govt. of NCT of Delhi reported as **2023 SCC OnLine Del 4941** and Vishwajeet Singh v. State (NCT of Delhi) reported as **2024 SCC OnLine Del 1284**.

10. In the present case, the first charge-sheet came to be filed on



08.04.2023. Thereafter, on receiving the FSL report, supplementary charge-sheet came to be filed after four months. After one year, the charges came to be framed on 29.04.2024. Another 7 months have gone by and prosecution evidence has yet not begun. Considering the aforesaid legal position and especially the fact that the applicant has been in custody since 28.10.2022 and the further fact that parameters of Section 37 of the Act are met, it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.25,000 with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/ concerned Court/Duty JM and subject to verification of his address and also subject to the following further conditions:-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

11. The bail application is disposed of in the above terms.

12. Copy of the order be communicated to the concerned Jail



Superintendent.

13. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

NOVEMBER 25, 2024

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