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

+ **BAIL APPLN. 4350/2023**

TARA BHUTANI

..... Petitioner

Through: Mr Rajesh Kaushik adn Mr Shobit,
Advocates.

versus

STATE, NCT OF DELHI

..... Respondent

Through: Mr Tarang Srivastava, APP for the
State with SI Rohit, ANTF Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

04.01.2024

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1. The present petition has been filed under Section 439 CrPC read with Section 37 NDPS Act seeking regular bail in FIR No.0186/2022 under Section 21 NDPS Act registered at Police Station Crime Branch, New Delhi.
2. The brief facts of the case are that on 26.08.2022, police received information that a lady named Tara is supplying illegal drugs near Santgarh metro station. Accordingly, a raid was conducted, the petitioner was arrested and heroin weighing 300 grms. was recovered from her, which is a commercial quantity.
3. The bail application filed by the petitioner before the court of learned Special Judge was dismissed on the ground that the recovery of contraband made from the petitioner is of commercial quantity and the rigors of Section 37 of the NDPS Act are applicable to the facts of the present case. Learned



Special Judge also noted that the petitioner is a previous convict and there is likelihood of her involvement in the similar kind of offence.

4. The present bail application was listed on 22.12.2023, when the learned counsel pressed for petitioner's bail only on the medical ground of the petitioner. Accordingly, notice was issued with a direction to the State to verify the ailment of the petitioner and file a status report.

5. Learned APP for the State has handed over a status report today in the court, the same is taken on record.

6. A perusal of the status report shows that the factum that the petitioner is a patient of cancer has been verified. The relevant para of the status report reads as under:-

“9. The medical documents filed by the petitioner have been verified from Safdarjung Hospital, and they have been found to be genuine. Dr. Abhindha, Assistant Professor, Department of Radiation Oncology, has opined that the petitioner is a case of ca endometrium post-operative. The age of the petitioner is 76 years, as per department records. The petitioner was registered in the Radiation Oncology Department on 25/10/23 and advised for chemotherapy and radiotherapy; however, no treatment has been taken till now in radiation oncology.”

7. Along with the status report, a medical report from the Safdarjung Hospital has also been annexed. The said report, *inter alia*, records that – (i) the petitioner is a case of endometrium cancer post-operative (26/9/23) at Safdarjung Hospital, (ii) she is aged about 76 years, and (iii) she has been registered in Radiation Oncology Department on 25.10.23 and has been advised for chemotherapy and radiotherapy.

8. Insofar as applicability of rigors of Section 37 is concerned, it is apt to refer to the decision of the Hon'ble Supreme Court in ***Narcotics Control***



Bureau vs. Dilip Pralhad Namade: (2004) 3 SCC 619, wherein the Hon'ble Supreme Court has observed that the limitations or rigors prescribed under Section 37 on granting of bail will come into play only when the question of granting bail is considered on merits. The relevant para of the said decision reads as under:-

- “9. As observed by this Court in *Union of India v. Thamisharasi* [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are : (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.
10. ***The limitations on granting of bail come in only when the question of granting bail arises on merits.***”

(emphasis supplied)

9. In ***Rabi Prakash vs. State of Odisha, 2023 SCC OnLine SC 1109***, the Hon'ble Supreme Court has held that prolonged incarceration militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and the rigors under Section 37 of the NDPS Act are subservient to the rights of the accused under Article 21 of the Constitution. The relevant para of the said judgment reads 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.”

(emphasis supplied)

10. It is also trite that right to health is an important facet of right to life and the same is also available to under trials. Reference in this regard may be had to the judgment of the Hon’ble Supreme Court in ***State of Andhra Pradesh vs. Challa Ramkrishna Reddy & Ors.***: AIR 2000 2083, the relevant para of which reads as under:-

“22. Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. A prisoner, be he a convict or undertrial or a detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.”

11. Keeping the law laid down by the Hon’ble Supreme Court in perspective and considering the fact that the petitioner is a woman aged about 76 years, who is suffering from cancer and requires regular treatment in the form of chemotherapy and radiotherapy, I am of the view that the petitioner is entitled to regular bail. Accordingly, the petitioner is granted regular bail subject to her furnishing a Personal Bond in the sum of Rs.50,000/- and one Surety Bond of the like amount to the satisfaction of the



Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- e) Petitioner shall not leave the NCR without prior permission of the Court.
 - f) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - g) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
 - h) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
12. The petition is disposed of.
13. As the present order has been passed having regard to the peculiar facts of the case as noted above, it is clarified that the same shall not be treated as a precedent.
14. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.
15. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

JANUARY 4, 2024
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