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

+ **BAIL APPLN. 3171/2024**

MOHAMMAD FAIZ AHMADPetitioner
Through: Mr. Vikram Hegde, Mr.
Abhinav Hansaraman and
Mr. Harsh Jain,
Advocates.

versus

NARCOTICS CONTROL BUREAURespondent
Through: Mr. Utsav Bains, SPP.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
17.12.2024

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1. The present application is filed seeking regular bail in Crime No. VIII/78/DZU/2021, under Sections 8/ 22/ 23/ 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act')
2. Brief facts of the case are that on 07.12.2021, on the basis of secret information a recovery of 14,800 tramadol tablets (4.881 Kgs) from parcel AWB No. N21916829 destined to USA, was made at DTDC Super Hub Samalkha, New Delhi, in the presence of independent witnesses. It is alleged that as per the documents annexed with the parcel, it was booked at DTDC Express Pvt. Ltd.'s franchise at Kanpur.
3. It is alleged that the applicant had booked the parcel on the instruction of co-accused, Iliyas Khan using fake ID of one, Saad Athar. Subsequently, the applicant was arrested on 10.12.2021.
4. The learned counsel for the applicant submits that the investigation in respect of the applicant is complete and nothing incriminating has been recovered from the applicant. He further

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submits that the applicant has clean antecedents and has been in custody since 10.12.2021, and no purpose would be served keeping him in further incarceration.

5. He submits that there has been no recovery effectuated from the applicant and neither the applicant was the consignor nor the consignee of the parcel. Thus, no knowledge of the contents of the parcel can be attributed to the applicant.

6. He submits that the learned Trial Court *vide* order dated 23.03.2023, granted bail to the co-accused namely Sheikh Abdul Muttalib. He submits that another co-accused, namely, Iliyas Khan has also been enlarged on bail by this Court by order dated 03.04.2024. Hence, the applicant is entitled to be released on bail on the ground of parity.

7. *Per contra*, the learned Special Standing Counsel (SSC) for the NCB submits that the sequence of events *prima facie* establishes conspiracy on the part of the applicant. He submits that the applicant is part of a drug syndicate indulged in illegal business of drug trafficking and thus, is not entitled to bail.

8. He submits that the matter is at the stage of arguments on charge and the applicant's release at this stage could adversely affect the trial. He further submits that the seized contraband involves commercial quantity of Tramadol tablets and the embargo under Section 37 of the NDPS Act would squarely apply in the present case.

9. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction;



the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

10. Delay in trial and long period of incarceration is also an important factor which has to be kept in mind while considering the application for bail. Section 37 of the NDPS Act does not prevent bail from being granted when there is unjustified delay in trial.

11. The antecedents of the applicant being clean, he is not likely to commit any offence while on bail.

12. Notably, the co-accused persons, namely, Sheikh Abdul and Iliyas Khan have already been enlarged on bail. The role of the applicant cannot be said to be graver than the co-accused persons.

13. Speedy trial in the present case does not seem a possibility. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

14. The applicant is in custody since 10.12.2021. The Hon'ble Apex Court in the case of *Man Mandal & Anr. v. The State of West Bengal: SLP(CRL.) No. 8656/2023* had granted bail to the petitioners therein, in an FIR for offences under the NDPS Act, on the ground that the accused had been incarcerated for a period of almost two years and the trial was likely going to take considerable amount of time

15. The Hon'ble Apex Court in *Rabi Prakash v. State of Odisha : 2023 SCC OnLine SC 1109*, while granting bail to the
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petitioner therein observed 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.”

16. In the present case, even the charges have not been framed as yet. Thus, trial is likely to take a considerable period of time. The accused also has clean antecedents, and therefore, I am satisfied that, if released on bail, he is not likely to commit the offence.

17. In view of the aforesaid discussion and keeping in mind the legal provisions specially on the ground of parity and delay in trial, without commenting upon the merits of the case, the applicant is directed to be released on bail on furnishing a personal bond in the sum of ₹50,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the boundaries of Delhi without informing the concerned SHO;



- c. The applicant shall appear before the learned Trial Court as and when directed;
 - d. The applicant shall provide the details of his permanent address where he would be residing after his release to the learned Trial Court and intimate the Court, by way of an affidavit, as well as to the IO about any change in his residential address;
 - e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
18. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
19. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.
20. The bail application is allowed in the aforementioned terms.
21. The pending applications are also disposed of.

AMIT MAHAJAN, J

DECEMBER 17, 2024/DU