



2024:DHC:8107



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

Judgment delivered on: 21.10.2024

+ **BAIL APPLN. 22/2024**

RAJ KUMAR

.....Applicant

versus

THE STATE NCT OF DELHI

.....Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Rashid Khan, Mr. Vishal Singh, Ms. Nagma Bee and Mr. Sohail, Advs.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State with SI Satnarayan, Anti Narcotic Squad, South East Distt.
Mr. Sanjeev Bhandari, ASC for the State with Ms. Charu Sharma, Mr. Arjit Sharma, Mr. Vaibhav Vats and Mr. Nikunj Bindal, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed seeking regular bail in FIR No. 529/2022 dated 09.12.2022 registered at Police Station Kalindi Kunj for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. It is alleged that on 08.12.2022, on the basis of a secret information, a raiding team reached at Pusta Road, near Kalindi Kunj metro station canal road. It is alleged that at about 09:30

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pm, at the instance of a secret informer, accused Veer Singh was apprehended, who was carrying two black coloured plastic bags, and was approaching the canal road. It is alleged that thereafter a notice under Section 50 of the NDPS Act was served upon the accused Veer Singh who then tendered his refusal on the notice. It is alleged that when the black colour kattas were checked, the same were found to contain greenish brown colour leaves, which prima facie appeared to be Ganja. It is alleged that thereafter the accused Veer Singh confirmed that the recovered leaves were Ganja. The recovered contraband, when weighed on electronic machine, was found to be 22.400 kg. The recovered items were then placed in the same plastic Kattas, and were sealed. The exhibit containing Ganja was seized and marked as "A" and the same was taken in possession through seizure memo. Accused Veer Singh was thereafter arrested on 09.12.2022.

3. During interrogation, accused Veer Singh disclosed that he used to supply Ganja with the help of his brother-in-law Rajender, and the applicant in various areas in Delhi/NCR. It is alleged that the accused Veer Singh further disclosed that he purchased the said ganja with the help of the applicant from one Rama of Damanjodi, Odisha (the source of the contraband). On the basis of the disclosure of accused Veer Singh, co-accused persons namely Rajender, and the applicant were arrested on 09.12.2022. During interrogation, accused Rajender disclosed that he came in contact with the applicant recently who lived in the neighboring place, and allegedly also told him that the

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applicant was engaged in the business of supplying ganja after purchasing the same from co-accused Rama, and was earning substantial profits. During interrogation, the applicant disclosed that in order to earn money, he used to supply ganja after purchasing the same from accused Rama.

4. At the instance of the applicant, accused Rama was arrested from Damajodi, Odisha, who during his interrogation, disclosed that he came in contact with the applicant recently, and that he supplied ganja to the applicant frequently for sale.

5. During investigation, on 13.12.2022, 22.400 kg Ganja was produced before the learned MM and an application under 52A of the NDPS Act was moved for seeking permission to draw sample from the recovered contraband. Two samples, subsequently were drawn, and the sample of Ganja was deposited in FSL Rohini on 14.12.2022. During investigation, FSL result was obtained, in consonance of which, the recovered contraband was found to be "Ganja."

6. During investigation, CDR & CAF of mobile numbers of accused persons were examined. From the said investigation, it transpired that the locations of all four accused persons were found connected with each other.

7. The learned Trial Court vide order dated 12.12.2023 dismissed the application filed by the applicant seeking grant of regular bail.

8. The applicant has been chargesheeted under Sections 20/29 of the NDPS Act.

9. The learned counsel for the applicant submitted that the



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applicant has been falsely implicated in the present case. He submitted that no recovery has been effected at the instance of the applicant, and that the applicant was arrested merely on the basis of the disclosure statement of the co-accused.

10. He submitted that the applicant is the sole breadwinner of the family, and has 2 minor daughters to take care of. He submitted that the applicant was enlarged on interim bail on 27.01.2023, and 03.03.2023, however, the applicant never misused the liberty granted to him.

11. Per contra, the learned Additional Public Prosecutor for the State vehemently opposed the request for grant of any relief to the applicant. He submitted that the applicant is in close connection with the other co-accused persons. He submitted that as per the disclosure statements of the accused persons, co-accused Veer Singh and co-accused Rajender went to Odisha to conduct a deal involving Ganja on the instructions of the applicant. He submitted that the applicant, at that time, was already in Odisha, and had arranged a meeting between co-accused Veer Singh and co-accused Rajender with the co-accused Rama, who is the source of the recovered contraband. He submitted that the said meeting was conducted on 28.11.2022 wherein co-accused Veer Singh and co-accused Rajender paid a sum ₹60,000 to co-accused Rama for purchasing 22.5kg of Ganja, and the said transaction was carried out in the presence of the applicant.

12. He submitted that as per the CDR analysis of the mobile numbers of all the accused persons on 28.11.2022, the location



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of all the mobile numbers were traced to be on the same location. He submitted that several phone calls were also made between them, and the involvement of the applicant in the present case cannot be ruled out. He submitted that the applicant does not have clean antecedents, and prays that the applicant not be granted the relief of bail.

13. 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.

14. It is relevant to note that while the veracity of the disclosure statement of the said co-accused is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Supreme Court in ***Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1***, wherein it was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration. The relevant paragraphs of the said judgment is set out below:

"155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any



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safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in *Kanhaiyalal* then goes on to follow *Raj Kumar Karwal* in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments in *Noor Aga* and *Nirmal Singh Pehlwan v. Inspector, Customs* are correct in law.

158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

(emphasis supplied)

15. A Coordinate Bench of this Court in *Phundreimayum Yas Khan Vs. State (GNCT of Delhi)* : 2023 SCC OnLine Del 135, held that when there is no material to link the applicant with the recovery of the commercial quantity from the co-accused persons, the rigors of Section 37 would not apply. It was further held that the disclosure statement of co-accused is per se not admissible without there being any corroboration.

16. Apart from the disclosure statement of the co-accused persons, the only material against the applicant is the existence of CDR analysis highlighting that the accused persons were telephonically connected to each other. It is also the case of the



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prosecution that the accused persons were found to be on the same location on 28.11.2022.

17. This Court, in the case of ***Dalip Singh v. State (NCT of Delhi) : 2019 SCC OnLine Del 6494***, had observed as under:

“11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.

12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.”

(emphasis supplied)

18. At this stage, there is no other evidence to show that the applicant is involved in any manner with the co accused persons. Admittedly no recovery has been affected from the applicant and in such circumstances merely because the applicant was allegedly in touch with the co-accused persons, the bar of Section 37 of the NDPS Act is not attracted. The Courts are not expected to accept every allegation made by the prosecution as a gospel truth. Mere contact with other co - accused person who was found in possession of contraband cannot be treated to be

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corroborative material in absence of substantive material found against the accused.

19. The learned APP for the State has contended that the applicant cannot be enlarged on bail unless the conditions laid down in Section 37 of the NDPS Act are met.

20. The Hon'ble Apex Court, in the case of ***Union of India v. Shiv Shanker Kesari* : (2007) 7 SCC 798**, has observed as under:

"11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion."

21. The Hon'ble Apex Court, in the case of Mohd. ***Muslim v. State (NCT of Delhi)* : 2023 SCC OnLine SC 352**, has reiterated the law in regard to Section 37 of the NDPS Act as under:

"20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result



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in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

22. In view of the above, this Court is of the opinion that the embargo of Section 37 of the NDPS Act does not come in the way of granting bail to the applicant.

23. The applicant is in custody since 09.12.2022. 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.

24. It is trite law that grant of bail on account of delay in trial and long period of incarceration cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of ***Mohd. Muslim v. State (NCT of Delhi)*** : 2023 SCC OnLine SC 352 has observed as under:

“21....Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on



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31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in *A Convict Prisoner v. State*²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer's ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

(emphasis supplied)

25. 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 petitioner 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.

26. 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 held 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.”

27. It is pointed out that the applicant was involved in another case being FIR No. 266/2018 for offences under Sections 8/20 of the NDPS Act. It is seen that the applicant has already been enlarged on bail in that case vide order dated 03.06.2024 by the learned Trial Court. The chargesheet has already been filed and the investigation in relation to applicant is stated to be complete. The applicant is also stated to have two minor daughters to be taken care of.

28. In view of the facts of the case, in the opinion of this Court, the applicant has prima facie established a case for grant of bail.

29. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties 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



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with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

- b. The applicant shall appear before the learned Trial Court on every date;
- c. The applicant shall, after his release, appear before the concerned Investigating Officer once in every week;
- d. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/ SHO;
- 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.

30. 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.

31. 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.

32. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 21, 2024

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