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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 33/2024**
SHAHROUKH KHAN

.....Petitioner
Through: Mr. Rahul Sharma, Mr. Ambuj Singh,
Ms. Parneet Kaur, Mr. Satnam Singh,
Mr. Amit Kumar and Ms. Monika
Anand Kaur, Advocates.

versus
STATE GOVT. OF NCT OF DELHI

.....Respondent
Through: Mr. Amit Ahlawat, Ld. APP with SI
Ravi Shankar AATS, Central.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
16.07.2024

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1. An Bail Application under Section 439 Cr.PC has been filed for grant of bail to the accused in FIR No.02/2021 under Section 20 and 29 of NDPS Act.
2. It is submitted in the application that the accused was apprehended on 04.01.2021 on the basis of secret information and was found carrying 3 packets containing 6 Kg of *Ganja*. His co-accused Deen Mohammad who was accompanying him, was found in possession of 22 Kgs. of *Ganja*. It is submitted that the Charge Sheet has been filed in May, 2021 and the charges have been framed, however, out of 13 witnesses only 6 witnesses have been examined. It is further submitted that in terms of the judgments in Amar Singh Ramji Bhai Barot vs. State of Gujarat (2005) 7 SCC 550 and



Bhupinder Singh alias Bhinda vs. State of Punjab 2005 (1) RCR (Crl.) 168.

3. **Learned Prosecutor has argued** that two recovery witnesses and I.O who are the main three witnesses out of the six remaining witnesses yet to be examined. The trial is likely to be concluded soon and no case is made out for grant of bail.

4. **Submissions heard.**

5. In view of the observations made in the judgment *Amar Singh Ramji Bhai Barot* (Supra) and *Bhupinder Singh alias Bhinda* (Supra), it cannot be overlooked that the individual can be held responsible only for the quantity received from his person and the quantity recovered from the co-accused cannot be added to the quantity recovered from the accused. The 6 Kgs. recovered from the petitioner qualifies as an intermediate quantity and therefore, the bar of Section 37 NDPS Act is not applicable. The petitioner has further claimed that there is inordinate delay in trial. He is in the judicial custody since 04.01.2021. The Charge Sheet in the matter has been filed in the year 2021 and out of 13 witnesses only seven witnesses have been examined and two main recovery witnesses are yet to be examined.

6. The objections taken on behalf of the applicant/accused is that there is ‘**inordinate delay**’ in concluding the trial against him.

7. The Supreme Court in the case of *Union of India vs. K.A. Najeeb* (2021) 3 SCC 713 observed that if the timely trial is not possible, Courts should ordinarily release the undertrials on bail and statutory restrictions do not exclude discretion of the constitutional Courts to grant bail on the ground of fundamental right enshrined in Part III of the Constitution. The Personal Liberty guaranteed by Part II of the Constitution, would cover not only the protective but also bring within its ambit not only due procedure



and fairness but also access to speedy trial.

8. The Supreme Court in the case of Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India (1994) 6 SCC 731 had observed that undertrials cannot be indefinitely detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same has been established before a neutral arbiter. However, owing to the practicalities of real life were 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 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.

9. Considering the delay in the trial and the facts as narrated above, including recovery of intermediate quantity of *Ganja* and petitioner/accused being in custody since 2021, the petitioner is admitted to bail on the following conditions:-

- a) The petitioner/accused shall furnish a personal bond of Rs.50,000/- and one surety of the like amount, subject to the satisfaction of the learned Trial Court.
- b) The petitioner/accused shall appear before the Court as and when the matter is taken up for hearing.
- c) The petitioner/accused 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 intimate to the Investigating Officer concerned.



- d) The petitioner/accused shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
 - e) The petitioner/accused shall not leave the country, without permission of this Court.
 - f) The petitioner/accused shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of affidavit.
10. The application is disposed of accordingly.

NEENA BANSAL KRISHNA, J

JULY 16, 2024/va