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

+ **BAIL APPLN. 3295/2024 & CRL.M.A. 27503/2024**

SHAKTI AGARWAL

.....Applicant

Through: Mr. Akshay Bhandari, Mr.
Janak Raj Ambavat, Ms.
Megha Saroa, Mr. Anmol
Sachdeva and Mr. Kushal
Kumar, Advs.

versus

NARCOTIC CONTROL BUREAU

.....Respondent

Through: Mr. Shashwat Bansal,
Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

19.11.2024

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1. The present bail application is filed seeking regular bail in Case No. VIII/52/DZU/2021, registered at Police Station Narcotics Control Bureau, for offences under Sections 20(ii)(b), 21(a), 22(b), 22(c), 23(c), 27-A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. The case of the prosecution is that on the basis of a 'secret information' dated 23.09.2021, the NCB team along with independent witnesses reached the house of the applicant, and a recovery of 605 LSD Blots, 79 grams of Hashish, 1.6 grams of Cocaine and 18 grams of MDMA was made from the rented premises in the occupation of the applicant.

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3. On 23.09.2021, in pursuance of the notice given to the applicant under Section 67 of the NDPS Act, he tendered his voluntary statement. The applicant disclosed that he had gotten addicted to drugs and had then started selling drugs to support himself. The applicant further confessed that he purchased and sold drugs through Wicker and Telegram. The applicant disclosed the names of other co-accused persons, namely Jasbir Singh, Divyas Bardewa and Rajat Tailor, and their involvement in the commission of the crime as well. The applicant, on the basis of the recoveries made, and the statement tendered under Section 67 of the NDPS Act was arrested on 23.09.2021.

4. During investigations, consequent to the recovery of commercial quantity of contrabands and on the basis of the disclosure statement of the applicant, production warrants were issued against co-accused Jasbir Singh, and Shradha Surana who were both lodged in Tihar jail in another case under the NDPS Act. Both the co-accused persons Jasbir Singh, and Shradha Surana were thereafter arrested on 25.09.2021.

5. On 26.09.2021, another recovery of 13 gram of contraband (magic mushroom believed to be the psychotropic substance psilocybin) was effected in this case from the parcel which was delivered at the house of co-accused Divyas Bardewa, who was the consignee of the said parcel. It is alleged that co-accused Divyas revealed that the parcel had been received by him on 23.09.2021. It is alleged that co-accused Divyas had voluntarily handed over the parcel from which the contraband was recovered. The co-accused Divyas Bardewa was arrested on 27.09.2021.

6. On 29.09.2021, in follow up action, on the basis of the



disclosure statement of the applicant, a search was conducted at the house of the co-accused Rajat Tailor. It is alleged that co-accused Shubham Banshiwal brought a parcel allegedly on the asking of the co-accused Rajat Tailor, at the house of the co-accused Rajat Tailor. A recovery of 36 LSD Blots weighing 10.4 grams was made from the said search.

7. Thereafter, on 01.10.2021, on the basis of the disclosure statement of the co-accused Rajat Tailor, one consignment bearing no. CY550967135D shipped from Germany was tracked and searched. It is alleged that the said parcel was found to be named for Shubham, address 342A, Vasundhara Colony, Gopalpura Mode, Jaipur, and got delivered at Shyam P.G. at Plot No. 342-343, Vasundhara Colony, Jaipur. It is alleged that in the presence of one Rahul Chaudhary, and upon the search of the parcel, two big containers were found containing dark greyish pills, allegedly found to be Ecstasy (MDMA) Tablets. It is alleged that a total of 1.230 kg of MDMA pills were recovered.

8. During investigations, the mobile numbers as used by the applicant, was found to be in contact with the co-accused Shubham Banshiwal, Divyas Bardewa and Rajat Tailor. As per the CDR details, the numbers registered in the name of the co-accused Rajat Tailor were found to be in contact with co-accused Shubham Banshiwal, and the applicant.

9. It is alleged that one sim card, registered in the name of one Mohd. Nafees, was recovered from the co-accused Rajat Tailor. It is alleged that the said number was mentioned on the parcel with tracking number CY550967135 from which 1.230kg of Ecstasy pills were recovered on 01.10.2021. The co-accused Rajat Tailor was thereafter arrested on 29.09.2021.



10. The learned Trial Court *vide* order dated 31.05.2024 dismissed the bail application of the applicant.

11. The learned counsel for the applicant submits that the applicant has been in incarceration since 23.09.2021, and charges are yet to be framed. He submits that there is a delay in trial. He submits that the other co-accused persons have already been granted bail. He cites the order of the Hon'ble Apex Court in Special Leave to Appeal (Crl.) No. 11628/2022, to argue that despite there being a clear recovery at the instance of the co-accused Divyas Bardewa, he was still enlarged on bail on account of the delay in trial.

12. *Per contra*, the learned counsel for the respondent vehemently opposes the grant of bail to the applicant. He submits that given the quantity of contraband recovered at the instance of the applicant, the ground of parity would not be available to the applicant. He further submits that the co-accused Divyas Bardewa was granted bail by the Hon'ble Apex Court on the ground that the FSL was not annexed with the chargesheet, and had not tested positive for contraband. He however submits that the recovery effected at the instance of the applicant has tested positive for contraband.

13. It is pertinent to note that the charges are yet to be framed in the present case. Speedy trial in such circumstances does not seem to be 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. It is trite law that grant of bail on account of delay in trial 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 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. 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 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.”

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” (also see Donald Clemmer's 'The Prison Community' published in 1940). 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)

15. All the accused persons have been chargesheeted for the same offences by invoking Section 29 of the NDPS Act. It is not the case that some co-accused are charged with a lesser degree of offence than the applicant in the present case. It is relevant to note that co-accused Shradha Surana, and Jasbir Singh have already been admitted on bail by this Court.

16. Co-accused Divyas Bardewa has been admitted on bail by the Hon'ble Apex Court *vide* Special Leave to Appeal (Crl.) No. 11628/2022 dated 01.05.2023. The learned counsel for the respondent contends that the co-accused Divyas Bardewa was granted bail since the FSL was not appended with the chargesheet, and the same benefit cannot be extended to the applicant in the present case.

17. A perusal of the order granting bail to the co-accused Divyas Bardewa, however, makes it amply clear that the Hon'ble Apex Court, without reference to whether the accused had acquired a right to seek statutory bail since the chargesheet was filed without an FSL report, noted that the co-accused had been in custody for some time, and the trial was not likely to conclude in the near future. The benefit of the order of the Hon'ble Apex Court cannot be denied to the applicant.

18. The applicant was arrested on 23.09.2021. It has been more than three years since the applicant is in custody, and till date the charges are yet to be framed. It is not likely that the trial will conclude in the near future. In such circumstances, this Court is of the opinion that the applicant has made out a *prima facie*



case for grant of bail on the ground of parity, and delay in trial.

19. It is stated that the applicant has no criminal antecedents. In view of the same, I am of the opinion that the applicant is not likely to commit any offence whilst on bail.

20. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000/- 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 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 country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he shall reside upon his release, and shall not change the address without informing the concerned IO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep his mobile phone switched on at all times;
- f. The applicant shall deposit his passport with the concerned IO.

21. 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.

22. 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.

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

24. The pending applications also stand disposed of.

AMIT MAHAJAN, J

NOVEMBER 19, 2024