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

+ **BAIL APPLN. 3314/2024**

HUSHN JAHAN

.....Petitioner

Through: **Mr. Jubir Khan and Mr. Omkar
Sharma, Advocates.**

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: **Mr. Utsav Bains, SPP, NCB.**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

05.12.2024

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1. By way of the present application, the petitioner/applicant seeks regular bail in FIR/Crime No. VIII/06/DZU/2023, U/s 8, 21(C), 23 & 29 NDPS Act, P.S. NCB, R. K. Puram, Delhi.
2. Learned counsel for applicant submits that as per the prosecution case, the applicant along with one *Mahfooz* was apprehended at IGI Airport who were to travel from Delhi to Riyadh through Hyderabad. A total of 173 bottles of 100 ml each of Phensedyle Chlorpheniramine Maleate and Codeine Phosphate Cough Linetus, were recovered from the suitcase of the present applicant. It is further submitted that the respondent has also shown the recovery of 174 bottles from co-accused *Mahfooz*.
3. Learned counsel submits that the applicant is in custody since 27.02.2023 and no prosecution witness has been examined till date and due to the delay in trial, the applicant's rights under Article 21 are being affected.



He contends that the applicant also seeks bail on the ground of parity as co-accused *Mahfooz* has been granted regular bail on 05.09.2024 by a Coordinate Bench of this Court in Bail Application 2207/2024. Lastly, he refers to the FSL report to submit that only 0.17 - 0.18 % of codeine phosphate along with chlorpheniramine was found in each of the bottles.

4. Learned SPP, NCB opposes the bail application by contending that the seized quantity is commercial and rigours of Section 37 of NDPS Act would apply. It is stated that the present applicant was also found to be in touch with another co-accused *Danish* (Proclaimed Offender) and *Istikar Ahmed*, who had come to drop the applicant at Airport. It is submitted that the applicant alongwith *Mahfooz* was apprehended from the airport before she could board the flight to Riyadh. Learned SPP, on instructions, also states that the petitioner is not involved in any other case.

5. I have heard learned counsel for the applicant and the learned SPP for the respondent agency and gone through the records.

6. For appreciation of the said contentions, it is deemed apposite if reference is made to certain decisions of the Supreme Court as well as this Court, wherein while considering the long period of incarceration and the fact that the trial was likely to take a long time, the accused was directed to be released on bail, even in those cases wherein commercial quantity was recovered.

7. In Union of India v. K.A. Najeeb reported as (2021) 3 SCC 713, the Supreme Court stated that if a timely trial is not possible, courts are ordinarily obligated to release the undertrial on bail and statutory restrictions do not exclude the discretion of Constitutional courts to grant bail on grounds of violation of Fundamental Rights enshrined in Part III of the



Constitution. While the said judgement was passed in the context of UAPA, the said observations merit mention: -

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12. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“the NDPS Act”) which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), Babba v. State of Maharashtra and Umarmia v. State of Gujarat enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

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15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where 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 a 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.

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation



of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

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8. In Rabi Prakash v. State of Odisha reported as **2023 SCC OnLine SC 1109**, the Supreme Court while releasing the applicant on bail observed that:-

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4... 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.

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6. Consequently, while directing that the petitioner shall be released on bail on his furnishing bail bonds to the satisfaction of the Trial Court...

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9. With regard to consideration of undue delay in completion of trial, while granting bail under NDPS Act, the Supreme Court has held, in Mohd. Muslim (Supra), 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 in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). 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.”

10. The applicant has pressed Article 21 of the Constitution of India seeking release by contending that she has been in custody for approximately the last 20 months and no prosecution witness has been examined as charges have been framed only on 29.11.2024.

11. Considering the totality of the facts and circumstances and the import of the abovementioned decisions, it is directed that the applicant be released on regular bail subject to her furnishing a personal bond in the sum of



Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty JMFC/ Link JMFC. and subject to the following further conditions :-

- i) The applicant shall provide her mobile number to the Investigating Officer on which she will remain available during the pendency of the trial.
 - ii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
 - iii) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
 - iv) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
12. The bail application is disposed of in the above terms.
13. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.
14. Copy of the order be uploaded on the website forthwith.
15. Needless to state that this Court has not expressed any opinion on the merits of the case and has made the observations only with regard to present bail applicant and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

DECEMBER 05, 2024/ssc