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

+ **BAIL APPLN. 3635/2024**

MOSIM

.....Petitioner

Through: Mr. Prateek Kumar, Ms. Ankita,
Advvs.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for State
and SI Naveen Dahiya, PS Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

19.11.2024

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1. The present bail application has been filed under Section 483 R/w Section 528 BNSS and Section 37 Narcotic Drugs and Psychotropic Substances Act seeking regular bail in Sessions Case No. 336/2021 arising out of case FIR No. 65/2021 registered at PS Crime Branch under Section 20/25/29 of Narcotic Drugs and Psychotropic Substances Act & 5/180/55/177 M.V Act
2. Learned counsel for the petitioner submits that the petitioner has been in custody since 19.04.2021. Learned counsel submits that the trial is yet to be completed and in view of the prolonged incarceration the petitioner may be admitted to bail. Learned counsel has also submitted that even otherwise, there are lacunas in the investigation being conducted by the prosecution.
3. Learned APP for the State has vehemently opposed the bail application and has submitted that merely on the ground of long incarceration, the



petitioner may not be admitted to bail. Learned APP submits that huge quantity of commercial contraband was recovered from the possession of the accused and in view of the rigour of Section 37 of NDPS, the bail may not be granted. Learned APP for the State has relied upon ***NCB vs. Mohit Aggarwal***, 2022 SCC OnLine SC 891. It has been also submitted by the learned APP for the State that the matter is now fixed for prosecution evidence on 09.01.2025 and therefore the Court may await for the completion of the trial.

4. It is a settled proposition that on account of delay in trial, the petitioner cannot be kept in detention for an indefinite period. The Apex Court as well as this Court, while considering the long period of incarceration and the fact that trial was likely to take a long time, have admitted the accused on bail even in those cases wherein commercial quantity was recovered.
5. 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 under trial 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:-

“xxx 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.
xxx”*

6. In ***Jitender Jain vs. Crime Branch*** 2022 SCC OnLine SC 2021, the Supreme Court *inter alia* held as under:

“Xxx

3. Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regards to the fact that he is in custody for 2 years and conclusion of trial will take time, we are inclined to release the petitioner on bail.

4. The petitioner is, accordingly, ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of the trial court.”

7. Similarly, in the case of ***Mohd. Muslim v. State (NCT of Delhi)*** SLP (Crl.) 5530/2022, while considering a bail application in an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985, held that in the case of prolonged incarceration, conditional liberty would override the statutory embargo under Section 37 of the Act.
8. More recently, in ***Badshah SK vs. State of West Bengal***, SLP Criminal No. 9715/2023 and in ***Man Mandal & Anr. vs. State of West Bengal*** 2023 SCC OnLine SC 1868, the Apex Court while taking into account the continued custody of more than two years, granted bail to the accused.



9. The coordinate bench of this Court after due consideration of the facts including the fact that the trial is likely to take time, have released the accused on bail. Reliance may be placed upon *Sachin Arora v. State Govt. of NCT of Delhi* (2023:DHC:5808) and *Vishwajeet Singh v. State (NCT of Delhi)* (2024:DHC: 1554).
10. Taking into account the facts and circumstances of the case, the petitioner is admitted to bail on furnishing a personal bond of Rs. 20,000/- with one surety of the like amount to the satisfaction of the concerned learned trial court, subject to the verification of address and subject to the following further conditions:
- a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - d) the Petitioner shall provide his/her mobile number(s) to the Investigating Officer;
 - e) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
8. In view of the above, the present application stands dispose of.

DINESH KUMAR SHARMA, J

NOVEMBER 19, 2024/AR/SMG..