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

+ BAIL APPLN. 3649/2024

DILBAGH SINGH

.....Petitioner

Through: Mr. Sumit Sharma and Mr. Narender,
Advts.

versus

STATE THROUGH SHO SPECIAL CELLRespondent

Through: Mr. Laksh Khanna, APP for State
with SI Kuldeep Singh, Special Cell,
NR/STR, Rohini.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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23.10.2024

1. By way of present application, the petitioner/applicant seeks regular bail in FIR No.301/2022 registered under Sections 18 & 29 of NDPS Act at P.S. Special Cell.

2. Learned counsel for the applicant submits that in the present case, though prosecution has alleged recovery of 45 kgs of *opium* from a truck driven by co-accused, namely, *Jasvir Singh*, however, there is no recovery effected at the instance of the present applicant. He further submits that the prosecution has alleged CDR connectivity and banking transactions between the present applicant and the co-accused/*Jasvir Singh*, however, the said banking transactions are about 1½ month prior in time. It is also stated that though the applicant's earlier application was dismissed on 22.04.2024, however, since then there has been no progress in the trial inasmuch as the chargesheet was filed in the month of March 2023, the charge came to be



framed 19 months later i.e. on 22.10.2024 and next date of hearing before the Trial Court is 07.01.2025 for Prosecution Evidence. It is stated that the prosecution has cited more than 20 witnesses and the trial is likely to take some time. Lastly, he submits that the applicant is not involved in any other case.

3. The present bail application is opposed by learned APP for the State, who submits that based on secret information received, the mobile phone of the accused persons were put on interceptor and the chargesheet is accompanied by transcript of conversation between present applicant and the co-accused persons. It is stated that though no recovery has been effected at the instance of the applicant, however, the reading of the transcript would reflect that the conversation is about drugs in a coded language.

4. Concededly, the material against the applicant is the recorded conversation, in which code language was used. The money transaction is also stated to be 1½ month prior.

5. As noted above, the chargesheet was filed in March, 2023, however, the charge came to be framed 19 months later i.e. on 22.10.2024 and the trial is yet to begun.

6. I have heard the learned counsels for the parties and perused the material on record.

7. At this stage, it is apposite for the Court to refer to a decision of the Supreme Court in Union of India v. K.A. Najeeb reported as **(2021) 3 SCC 713**, wherein it was 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 the grounds of violation of Fundamental Rights enshrined in Part III of the



Constitution of India. 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.

xxx

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”

8. While considering a case where the accused had undergone custody of more than two years, the Supreme Court in Jitendra Jain v. Narcotics Control Bureau reported as **2022 SCC OnLine SC 2021**, observed as under:-

“xxx

3. Though it is a case of commercial quantity and allegations levelled against the petitioner are serious in nature, but having regard 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 trial court.

xxx”

9. Again in Rabi Prakash v. State of Odisha reported as **2023 SCC OnLine SC 1109**, where the accused had remained incarcerated for more than three and a half years, the Supreme Court, while releasing the applicant on bail, observed that:-

“xxx



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.

xxx

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

xxx”

10. More recently, in Man Mandal and Anr. v. State of West Bengal reported as **2023 SCC OnLine SC 1868**, while taking into account continued custody of more than two years, the accused was granted bail. The relevant extract of observations is extracted hereunder: -

“xxx

5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the quantity being commercial in nature, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.

7. The petitioners are directed to be released on bail in connection with aforesaid FIR, on such terms and conditions as may be imposed by the Trial Court.

xxx”

11. Taking cue from the legal position enumerated hereinabove, Coordinate Benches 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. Positive reference in this regard may be made to the decisions in Sachin Arora v. State Govt. of NCT of Delhi reported as **2023 SCC OnLine Del 4941** and Vishwajeet Singh v. State (NCT of Delhi) reported as **2024 SCC OnLine Del 1284**.

12. Considering the aforesaid legal position, the period of custody and especially the fact that the charges came to be framed only on 22.10.2024. As such, more than 20 witnesses are to be examined as the trial is yet to begin. Further, bearing in mind the principles of right to a speedy trial enriched in Article 21 of the Constitution of India and upheld by Supreme Court in the aforementioned decisions, this Court is inclined to release the applicant on regular bail subject to his furnishing a personal bond in the sum of Rs. 25,000/- with one surety of like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty J.M. and subject to the following further conditions :-

- i) The applicant shall not leave the NCR without prior permission of the concerned Court.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which she will remain available during the pendency of the trial.
- iii) 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.
- iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.
- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

13. The bail application is disposed of in the above terms.



14. Copy of the order be communicated to the concerned Jail Superintendent electronically for information and necessary compliance.
15. Copy of the order be uploaded on the website forthwith.
16. Needless to state that this Court has not expressed any opinion on the merits of the case and have 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

OCTOBER 23, 2024

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