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

+ BAIL APPLN. 3694/2024
ANURAG THAKUR

.....Petitioner

Through: Mr. Sunil Dalal, Senior
Advocate with Mr. Varun
Narang, Mr. Manik
Dhingra, Mr. Rizwan, Mr.
Devashish Bhadauria, Mr.
Nikhil Beniwal and Mr.
Navish Bhati, Advocates.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Naresh Kumar
Chahar, APP for the State
with SI Imran Khan, PS
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

19.11.2024

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1. The present application is filed seeking regular bail in FIR No. 255/2022 dated 03.11.2022, registered at Police Station Crime Branch for offences under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. It is alleged that on 03.11.2022, an information was received in the office of the NDR Crime Branch that two persons namely, Jatin Wasan @ Bidi and Vinay @ Ansul Bidhuri dealing in the Narcotics substances in Delhi-NCR, would be coming near Sarojini Nagar at around 6pm to deliver drugs to their associates. Subsequently, at 6:15 pm Jatin Wasan @ Bidi and Vinay @ Ansul Bidhuri were apprehended near Sarojini Nagar along with



their vehicle. It is alleged that 250 grams of Charas was recovered from the possession of Jatin Wasan @ Bidi and 150 grams of Charas was recovered from the possession of Vinay @ Ansul Bidhuri. Consequently, accused Jatin Wasan @ Bidi and Vinay @ Ansul Bidhuri were arrested.

3. During the course of the investigation, the accused persons disclosed that they had been receiving contraband from Akash Gupta, Nihar Bakshi and the applicant who were involved in the supply of different kinds of drugs in Delhi-NCR region. Subsequently, on the basis of the above disclosure, a raid was conducted near Pramod Mahajan Marg, PVR road near Malviya Nagar Metro Station, New Delhi and three persons namely Akash Gupta, Nihar Bakshi and the applicant were apprehended along with KIA Seltos car.

4. Upon the search conducted, 120 grams of Charas was recovered from the possession of the accused Akash Gupta, 110 grams of Charas and 50 grams of ecstasy pills weighing 27.45 grams was recovered from the possession of the accused Nihar Bakshi, and 23 grams MD (Mephedrone) and 100 ecstasy pills weighing 54.9 grams was recovered from the possession of the applicant.

5. During investigation, the applicant disclosed that he was receiving and supplying contraband that is, O.G., M.D. Ecstasy (Tablets) and other substances in Delhi-NCR region. It is the case of the prosecution that the transactions were done through Cryptocurrency and the syndicate is active through Wickr App. The applicant is also stated to have a trading account on binance platform from which the applicant dealt in various Cryptocurrencies for supplying and receiving contraband.

6. It is the case of the prosecution that the accused Nihar



Bakshi used to receive contraband from the applicant. It is further the case of the prosecution that the applicant used to receive contraband from accused Prajwal Elroy Raj through accused Faizan Ali, who is stated to be absconding. Accused Prajwal Elroy Raj was arrested on 14.03.2023 from Mangalore, Karnataka.

7. It is the case of the prosecution that from the data extracted from the mobile phone of the applicant as provided by the FSL, the same was found to contain some video files which manifest the conversation of the applicant with his associates regarding supplying and receiving of contraband.

8. Further, the FSL result materialized that the samples withdrawn from the exhibit seized from the applicant was found to contain Methamphetamine and MDMA.

9. The applicant was arrested on 04.11.2022.

10. The learned Senior Counsel for the applicant submits that the applicant has been falsely implicated in the present case. He further submits that the applicant was allegedly apprehended in a public place at 8:00 AM on 04.11.2022, however, no public witnesses have been made part of the seizure. He submits that the case of the prosecution was that 100 ecstasy pills and 23 grams of MD (Mephedrone) were recovered, whereas the FSL report mentions that the seized substance was Methamphetamine and MDMA. He submits that the possession of Methamphetamine is of intermediate quantity.

11. He further submits that the seizure memo indicates that one seal was put during the *Pulinda* formed at the time of search and seizure, however, the application under Section 52A mentions two seals on the *Pulinda*. He lastly contends that all the co-accused persons have already been admitted on bail and the



trial is yet to commence and no witnesses have been examined as yet and the trial is not likely to be concluded in near future.

12. The learned Additional Public Prosecutor for the State submits that the total quantity recovered was commercial in nature and therefore, the bar of Section 37 of the NDPS Act would apply. He submits that the co-accused persons were admitted on bail since they were found to be in possession of intermediate quantity of narcotic substances. He further submits that the applicant has also been previously involved in matters of similar nature and therefore antecedents of the applicant does not entitle him of any relief at this stage.

13. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

14. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“37. Offences to be cognizable and non-bailable. —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A



and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

15. The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail – (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

16. It has been argued by the learned Senior Counsel for the applicant that at the time the recovery was made, it was the case of the prosecution that 100 ecstasy pills and 23 grams of MD was recovered. However, the FSL report materialized that the seized drug was Methamphetamine and MDMA. It has consequently been argued that the possession of Methamphetamine was of intermediate quantity.

17. It has also been contended that the seizure memo indicated that one seal was put during the *Pulinda* formed at the time of search and seizure, however, the application under Section 52A



mentioned that there were two seals on the *Pulinda*.

18. This Court in ***Sovraj v. State : 2024:DHC:5009***, advertent to a number of judgments, has concurred with the view of a Coordinate Bench of this Court in ***Somdutt Singh @ Shivam : Narcotics Control Bureau : 2023:DHC:8550***, and held that irregularity in procedure or belated compliance of the procedure under Section 52A of the NDPS Act or Standing Order No.1/88 is not a ground for grant of bail.

19. The defence regarding the discrepancy in the recovered contraband, and whether the same amounted to recovery of commercial or intermediate quantity of contraband is a matter of trial. In the opinion of this Court, any observation with regard to the discrepancy in the recovered contraband to grant bail to the applicant would be premature.

20. The learned Senior Counsel for the applicant has also raised the issue that no independent witness was joined by the prosecution even though the applicant was apprehended in broad daylight at around 8:00 AM near Malviya Nagar Metro Station. This Court in the case of ***Bantu v. State Govt of NCT of Delhi: 2024: DHC: 5006*** has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case.

21. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

22. The present case is not based on a chance recovery that the
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Investigating Agency could contend that they did not get sufficient time to prepare. Given the crowded nature of the place from where the recovery was made, it is peculiar that no public witness has joined the search.

23. Further, from a perusal of the chargesheet, it transpires that nothing is mentioned to indicate whether any efforts to secure the presence of independent witnesses were made by the Investigating Agency.

24. This Court in *Bantu v. State Govt of NCT of Delhi* (*supra*), noted that the Hon'ble Apex Court, way back in the year 2018 in *Shafhi Mohd. v. State of H.P. : (2018) 5 SCC 311* after taking note of the technological advancements, had passed certain directions. The Hon'ble Apex Court had emphasised the role of audio-visual technology in enhancing the efficacy and transparency in the Police investigations.

25. This Court also noted that realising the need of change in time, the Legislature has now passed the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), where the practice of photography and videography has now been made mandatory as part of the investigation.

26. This Court also noted that the procedure prescribed in NCB Handbook which has been adopted by the Delhi Police may be argued to be not binding, however, it cannot be denied that the same has been prescribed as the best and crucial practice for obtaining evidence in order to avoid the allegation in regard to foul play.

27. Whether the prosecution made any attempt to get the search conducted in the presence of independent witness or not would be tested during the course of trial and would also may not be fatal to the case of the prosecution, however, the benefit, at



this stage, cannot be denied to the applicant. Undoubtedly, the search in the present case was conducted at a busy public place. It is not the case of the prosecution that no CCTV were installed around the area where raid/search was conducted.

28. It is also relevant to note that the allegation initially was that 100 ecstasy pills and 23 grams of MD were recovered from the applicant. The FSL report now indicates that the nature of drug was different and it was Methamphetamine and MDMA. The quantity of Methamphetamine recovered is intermediate.

29. 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.

30. It is trite law that grant of bail on account of delay in trial and long period of incarceration 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 country²⁰. 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.”

24. 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)

31. The applicant is in incarceration since 04.11.2022. It is pointed out that the trial is yet to commence and no witnesses have been examined. All the co-accused including Akash Gupta and Nihar Bakshi who were apprehended along with the applicant, have already been enlarged on bail.

32. It is contended by the prosecution that the applicant is also involved in two more cases under NDPS Act. On being asked, it is informed that the applicant has been made accused in said cases on his disclosure which was made while he was in custody in the present case.

33. The applicant was also released on interim bail on earlier occasions and has not misused the liberty.

34. Considering the above, I am satisfied that the applicant, if



released on bail, is not likely to commit an offence under NDPS Act while on bail.

35. In view of the above, in the opinion of this Court, the applicant has made out a *prima facie* case for grant of bail and is directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- 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 would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

36. 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.

37. 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.

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

AMIT MAHAJAN, J

NOVEMBER 19, 2024/DU