



\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

BAIL APPLN. 4036/2024

SHAMBHU SINGHANIA @VISHAL

.....Petitioner

Through: Ms.Sakshi Yadav, Mr.Rahul Sahani,
Mr.Shubhendra Trivedi and
Ms.Veronica Bajaj, Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms.Meenakshi Dahiya, APP for the
State

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

17.12.2024

%

1. The instant application has been filed under Section 439 of the Code of Criminal Procedure, 1973 read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 on behalf of the applicant/petitioner seeking regular bail in FIR bearing No. 185/2021 registered at Police Station Gulabi Bagh for offences punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
2. Briefly stated, the facts according to the FIR are that on 07.07.2021, secret information was received regarding an inter-state supplier of Heroin, Shambhu Singhoniya @ Vishal, who had been procuring large quantities of Heroin from Delhi and supplying it to Haryana, Punjab, and Himachal Pradesh. Acting on this information, ASI Yashpal informed Inspector Raj Kumar and ACP Jaipal Singh of the Operation Cell, North District, Delhi, and a raiding team was constituted. The team apprehended the petitioner. Following the



procedure under Section 50 of the NDPS Act, 1985, a search conducted in the presence of ACP Jaipal Singh led to the recovery of a bag containing 303 grams of Heroin, though no contraband was found on the accused's body. Consequently, FIR No. 185/21, dated 07.07.2021, was registered under Section 21 of the NDPS Act at Police Station Gulabi Bagh, Delhi. The applicant is stated to have been in judicial custody since 07.07.2021.

3. Learned counsel for the applicant submitted that, to date, not a single witness has been examined. It is further submitted that the trial may take a long time, and therefore, the applicant may be granted bail.
4. Learned APP for the State has vehemently opposed the present bail application, stating that 303 grams of contraband were recovered from the possession of the applicant. It has also been submitted that the applicant is involved in a similar offence, namely FIR No. 14/2021, registered at Police Station Rohru, Shimla. Furthermore, it is submitted that the investigation was completed on time, and the prosecution will endeavour to conduct the trial expeditiously.
5. The right to speedy trial is an inalienable right of an individual facing criminal trial. The court has a duty to see that an individual may not remain in prolonged incarceration on account of delay in trial. The statutory embargo and gravity of the offence cannot overtake the right to speedy trial and the same has duly been acknowledged by the Apex Court in number of cases.
6. The question of admitting the accused on bail on account of prolonged incarceration has come up for discussion in several cases before the Apex Court. In ***Union of India v. K.A. Najeer*** reported as



(2021) 3 SCC 713 dated 01.02.2021, the Apex Court *inter alia* held 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.*

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.

xxx

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”

7. 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, it was *inter alia* held that in the case of prolonged incarceration, conditional liberty would override the statutory embargo under Section 37 of the Act.
8. Recently in **Man Mandal & Anr. vs. The State of West Bengal** in SLP No. 8656/2023 the Apex Court admitted the accused on bail on



the ground that the petitioner was in custody for almost two years and the trial was not likely to be taken up for hearing in the immediate near future.

9. Similarly, in ***Jitendra Jain vs. NCB & Anr.*** in SLP No. 8900/2022 the Apex Court held that though it was a case of commercial quantity and allegations leveled against the petitioner were serious in nature, but having regard to the fact that the petitioner was in custody for 02 years and the conclusion of trial will take time, the petitioner was admitted to bail.
10. Similarly, the Apex Court in ***Javed Gulam Nabi Shiakh vs. State of Maharashtra and Another*** in SLP No. 3809 of 2024 the Apex Court relied on ***Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor*** (1978) 1 SCC 240 *inter alia* observed that bail is not to be denied as a punishment as the requirement of bail is merely to secure the attendance of the prisoner at trial.
11. In ***Rabi Prakash v. State of Odisha*** 2023 SCC OnLine SC 1109 where the accused had remained incarcerated for more than three and a half years, the Apex Court while releasing the petitioner on bail *inter alia* observed that 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 of the NDPS Act.



12. In the present case, the petitioner has been in custody since July 2021, and the trial is likely to take a long time. In view of the facts and circumstances, and applying the parameters enunciated by the Apex Court, the applicant is admitted to regular bail upon furnishing a personal bond in the sum of Rs. 20,000/- with one surety of the like amount to the satisfaction of the concerned learned Trial Court, subject to verification of the address and mobile number provided, and further subject to the following conditions:

- a. the petitioner shall regularly appear before the IO/trial court as and when directed;
- b. the petitioner shall not directly or indirectly make any inducement, threat, intimidate or tamper with any person acquainted with the facts of the case;
- c. the petitioner shall remain available on the address, to be given to the IO and shall not leave the country without the permission of the learned Trial Court;
- d. 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.

13. In view of the above, the instant application stands disposed of.

14. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

DINESH KUMAR SHARMA, J

DECEMBER 17, 2024

Dy/na..