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

+ **BAIL APPLN. 4109/2024**

PANKAJ SAHU

.....Petitioner

Through: **Mr. Swarandeeep Singh, Advocate.**

versus

NCB (NARCOTICS CONTROL BUREAU)Respondent

Through: **Mr. Arun Khatri, Senior Standing Counsel for NCB with Mr. Harssh Bhatia and Ms. Shelly Dixit and Ms. Shreya Lamba, Advocates.**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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10.12.2024

1. By way of present bail application, the applicant/petitioner seeks regular bail in Complaint No. VIII/21/DZU/2023 read with Section 200 CRPC at Police Station NCB RK Puram, New Delhi registered under Sections 8C/22C/23C/29 of NDPS Act, 1985.

2. Learned counsel for the applicant submits that the applicant is in custody since 13.05.2023 and though prosecution complaint was filed in November, 2023, even the charges are yet to be framed. It is further submitted that the prosecution has cited 12 witnesses and at this rate, the trial is likely take a long time to conclude.

On merits, it is stated that as per the case of the prosecution, on a secret information, a parcel containing 14,700 *Alprazolam* tablets and 10,030 *Tramadol* tablets were recovered and seized from the office of Garudavega International Courier, Mahipalpur, Delhi. The prosecution has shown that the said parcel originated from the booking office of SSB



Enterprises, Gwalior and the same was booked by one booking agent, namely, *Pushpendra Kumar Nadawar*. On investigation, he disclosed that he had received the said parcel from one Mahesh, a bus driver, who had in turn received it from one *Munna Kuli @ Rashid*. Insofar as the present applicant is concerned, the only material cited against him is the statement recorded under Section 67 of the NDPS Act of *Munna Kuli* to the effect that *Munna* had received the said parcel from the applicant.

3. The bail application is resisted by Mr. Arun Khatri, learned Senior Standing Counsel appearing for NCB, who submits that besides the aforesaid, the Investigating Officer has also seized a pay-in slip for an amount of Rs.7,500/- vide which the applicant has deposited the said amount in the bank account of *Pushpendra Kumar*, thus establishing his complicity in the matter. He further submits that in support of the aforesaid, a CCTV footage from the bank has also been seized which shows the applicant's presence in the bank on the said date. Furthermore, the ID of *Neeraj Pathak* has also been found in the mobile phone of the applicant, and the same ID was used for booking the subject parcel. He, however, submits on instructions that the applicant is not found involved in any other case.

4. I have heard learned counsels for the parties and perused the record placed before me.

5. From the aforesaid, it is apparent that the prosecution has claimed that the parcel travelled from one *Ankit Goyal* to the applicant, who has further given it to *Munna Kuli @ Rashid* and from whom, it has come to the booking office of SSB Enterprises, Gwalior through *Mahesh*, a bus driver. The material cited against the applicant is of being in possession of a pay-in slip of 7,500/-, vide which the amount was deposited in the bank account of



Pushpendra Kumar for booking the parcel.

6. During the course of submissions, learned Senior Standing Counsel for NCB has stated that the applicant was an employee in a shop run by the brother of *Ankit Goyal*. Besides the ID of *Neeraj Kumar Pathak*, the prosecution has relied upon the statement recorded under Section 67 of the NDPS Act to establish knowledge on part of the applicant. However, in terms of decision of the Supreme Court in Tofan Singh v. State of Tamil Nadu, reported as **(2021) 4 SCC 1**, statement recorded under Section 67 of the NDPS Act, without any further corroborative evidence, does not have evidentiary value.

7. At this stage, this Court also takes note of the fact that the prosecution complaint having been filed in November, 2023, the charges are yet to be framed. In this regard, it is deemed apposite to make reference 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 is likely to take a long time to conclude, the accused was directed to be released on bail, even in those cases wherein commercial quantity was recovered.

8. A gainful reference can be made to Union of India v. K.A. Najeeb reported as **(2021) 3 SCC 713**, wherein 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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9. 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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10. 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 v. State (NCT of Delhi), reported as **2023 SCC OnLine SC 352**, 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.”

11. In view of the aforesaid facts as well as the abovenoted legal position and considering that the applicant is in custody since 13.05.2023 and the charges are yet to be framed, this Court is inclined to admit the applicant on regular bail and it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty JMFC 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 he 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.

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 and necessary compliance.

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.

16. ***DASTI***

MANOJ KUMAR OHRI, J

DECEMBER 10, 2024/rd