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

+ **BAIL APPLN. 163/2025**

DINESH KUMAR

.....Petitioner

Through: Mr. Varun Mohan Popli, Mr. Deepak
Ghai and Mr. S.M. Popli, Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
SI Pritam Chand, NR-I/Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

05.03.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeks regular bail in case FIR No. 202/2019, under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), and Sections 471/474/482 of the IPC registered at P.S. Crime Branch.
3. The case of the prosecution is that on 11.07.2019, on receipt of a secret information regarding supply of marijuana (*Ganja*), a trap was laid near gate no. 1 Bawana Industrial Area and a truck bearing registration no. NL-07A-7611 was intercepted which was being driven by the present applicant. It is the case of the prosecution that during the formal search of the said truck, 16 bags of *Ganja* weighing 800 kilograms was recovered and additionally, 13,200 kilograms of cashew peel cartons were found inside the vehicle. The



total recovery of *Ganja* in the present case was 800 kilograms. Subsequently, the present FIR was registered under Sections 20/25/29 of the NDPS Act and after completion of investigation, chargesheet stands filed on 07.10.2019 and the matter is now presently pending before the learned Special Judge, (NDPS Act), North District, Rohini Courts for the purposes of prosecution evidence.

4. It is the case of the prosecution that additionally, co-accused persons, namely, one Vinod Kumar Pandey, who was owner of the said vehicle as well as Mohd. Kazim @ Laddan and Mohd. Anwar were also arrested.

5. Learned counsel appearing on behalf of the applicant submits that the co-accused Vinod Kumar Pandey has already been granted bail by the learned Trial Court on 06.09.2024. It is pointed out that the learned Trial Court while dismissing the bail of the present applicant had observed that the previous application for bail (**BAIL APPLN. 191/2024**) preferred by the applicant before this Court was withdrawn on 30.08.2024. Prior to that his application for bail was dismissed by Coordinate Bench of this Court *vide* judgment delivered on 04.11.2022 in **BAIL APPLN. 2543/2021**. It is submitted that the co-accused Vinod Kumar Pandey was also similarly placed as the present applicant and his bail application had been dismissed *vide* the aforesaid common judgment in **BAIL APPLN. 828/2022** and his application for bail was also withdrawn on 30.08.2024 being **BAIL APPLN. 407/2024**. It is further pointed out that the applicant is in custody for more than 5 years 6 months and 6 days as on 01.03.2025 and he is not involved in any other previous offence. It is further pointed out that the applicant was released on interim bail twice and without misusing the liberty granted to him, he duly surrendered on time. Reliance is placed upon the order passed by the Hon'ble Supreme Court in **Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC**



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6. *Per contra*, learned APP for the State, on instructions of the Investigating Officer, submits that this is the 3rd application of the applicant seeking bail and first two applications being **BAIL APPLNs. 2543/2021** and **191/2024**. It is submitted that **BAIL APPLN. 2543/2021** was dismissed by Coordinate Bench of this Court *vide* judgment delivered on 04.11.2022 on merits. It is further submitted that the quantity involved in the present case is commercial in nature and therefore rigours of Section 37 of the NDPS would be squarely applicable.

7. Heard learned counsel for the parties and perused the records.

8. As per record, the first application on behalf of the present applicant was dismissed by Coordinate Bench of this Court on 04.11.2022 on merits and the second application was dismissed as withdrawn *vide* order dated 30.08.2024. It is pertinent to note that the co-accused Vinod Kumar Pandey was similarly placed as the present applicant.

9. The learned Trial Court while granting bail to the co-accused Vinod Kumar Pandey who was alleged owner of the truck *vide* order dated 06.09.2024, observed as under: -

“3.7 It is also argued by Id. Addl. PP for the State that bar of section 37 NDPS Act is applicable against the accused. I am in agreement with Ld. Addl. PP for the State in this regard but the view of Hon’ble Supreme Court on this aspect is that in case there is an inordinate delay in conclusion of trial then bar of section 37 NDPS act becomes inoperative. **In Rabi Prakash Vs. The State of Odisha, Special Leave to Appeal (Crl.) No. 4169/2023 decided on 13.07.2023**, Hon'ble Supreme Court observed in respect of prolonged incarceration which is here as under:

As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as



the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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.

3.8 Hence, as per **Rabi Prakash (discussed supra)**, formation of opinion as to whether there are reasonable grounds to believe that the accused is not guilty, the same may not be formed at this stage when he has already spent more than 3 years and 8 months in custody. 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 NDPS Act. Further, Hon'ble Delhi High Court in case of **Soletto Justniano Fernando Tito Vs. Narcotics Control Bureau**, Bail Appln. 850/2023 decided on 26.07.2023, it has been observed that most recently, the Hon'ble Apex Court in case of **Rabi Prakash (discussed supra)** has again reiterated that bar under section 37 of NDPS Act would not come in way of grant of bail to under trials in case of prolonged incarceration.

3.9 Accused is facing trial wherein minimum punishment is 10 years and has already spent more than three years and eight months in custody. The rigors of section 37 of NDPS Act has become inoperative in view of above mentioned cases and observation of Hon'ble Supreme Court. Moreover, the charge against accused is of section 29 NDPS Act of criminal conspiracy and nothing was recovered from his possession.

3.10 It is also argued on behalf of State that accused is involved in three other FIRs and he is a habitual offender. This court had already dismissed three applications of the accused on merits in addition to dismissal of bail application by Hon'ble High Court in the year 2022 but the main argument on behalf of accused is delay in trial. Ld. Defence Counsel has argued that accused cannot be denied the bail merely on the basis of his previous involvement. Considering the delay in trial in this case and other facts and circumstances and the material available on record, previous involvement of the applicant/accused has become insignificant and the accused cannot be kept in custody on this ground alone. In



Prabhakar Tiwari Vs. State of Uttar Pradesh (2020) 11 SCC 648, it was held that pendency of other criminal cases against an accused cannot be the only basis for rejection of bail to an accused and the Court has to take holistic view of the facts and circumstances.

3.11 In view of above cited cases, I am of the considered view that the accused has successfully to raise the bar of Section 37 while satisfying the twin conditions therein. Out of 35 witnesses, only two have been examined till and considerable amount of time is taken in conclusion of trial. This court has pendency of 700 cases including around 240 cases of NDPS Act. More than 100 cases are of murder and in all these cases accused are in JC. Therefore, conclusion of trial would take time in this case as 35 witnesses are yet to be examined.”

10. It is pertinent to note that a coordinate bench of this Court in **Anil Kumar @ Nillu v. State, 2022 SCC Online Del 778**, while following the judgment of the Hon’ble Supreme Court in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731**, observed that while remaining cognizant of the impact that drugs have on society, Courts must also remain conscious of the fact that prolonged deprivation of one’s personal liberty, without the assurance of a speedy trial runs contrary to principles of the Constitution. It was held as under:

“14. In view of the above, this Court believes that achievement of universal equality before the law requires the tenets of personal liberty to be applicable to all similarly circumstanced individuals and must not be restricted unless according to procedure established by law. This Court does not find any weight in the submission of the learned APP that the aforementioned judgment of the Supreme Court does not apply to the instant case and that the judgment of this Court in *Atul Agarwal v. Directorate of Revenue Intelligence (supra)* must be referred to a larger Bench due to the incorrect application of the Supreme Court's judgment. Furthermore, in *Atul Agarwal v. Directorate of Revenue*



Intelligence (*supra*), this Court had not solely granted bail on the footing of the inordinate delay in trial, but had also considered the twin requirements stipulated under Section 37 of the NDPS Act. Therefore, this Court is of the opinion that the Petitioner herein is squarely covered by judgment of the Supreme Court and is entitled to release on account of inordinate delay in trial and prolonged judicial custody.

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16. Therefore, fair, just and reasonable procedure is implicit in Article 21 and it creates a right in the accused to be tried speedily. This Court has consistently observed that while Courts must remain cognizant of the deleterious impact of drugs on society, it is also important to keep in mind that deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution. In the instant case, the Petitioner has been incarcerated for almost eight years now, i.e. since 27.03.2014, for an offence that is punishable with a minimum imprisonment of ten years. This is an egregious violation of an accused's right to personal liberty and right to speedy trial as, in the off-chance that the Petitioner is acquitted, it would entail an irretrievable loss of eight years of his life that cannot be compensated. Whether or not the Petitioner played an active role in the commission of the offence of drug trafficking and supply is a matter of trial and cannot justify the prolonged incarceration of the Petitioner.”

11. It is pertinent to note that the decision in **Anil Kumar @ Nillu (*supra*)** was challenged in appeal before the Hon’ble Supreme Court and *vide order dated 14.10.2022, SLP (Criminal) 25615/2022*, was dismissed.

12. The Hon’ble Supreme Court, in **Union of India v. K.A. Najeeb, (2021) 3 SCC 713**, took note of the law laid down in **Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (*supra*)** and observed 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. It was held as under: -

“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* [*Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , 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.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.”

13. The applicant was arrested on 11.07.2019. Perusal of the nominal roll dated 03.03.2025 reflects that the applicant has been in custody for more than 5 years 6 months and 6 days. Out of 35 witnesses cited by the prosecution, only 4 witnesses have been examined so far. Applicant's first bail application was dismissed on merits in September 2022 and despite substantial passage of time the trial has not progressed. He is not involved in any other previous offences and he had been released on interim bail twice previously and had duly surrendered on time. There is no likelihood of the trial being completed within a reasonable time.

14. Considering the delay in trial and long incarceration of more than 5 years and 6 months the embargo under Section 37 of the NDPS Act, in view of the aforesaid judgments passed by the Hon'ble Supreme Court, at this stage, will not be applicable in the facts and circumstances of the present case.

15. In totality of the facts and circumstances of the case, the applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/-



with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions: -

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
16. The application is allowed and disposed of accordingly.
17. Pending application(s), if any, also stand disposed of.
18. Needless to state that nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
19. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
20. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MARCH 5, 2025/bsr/sc



Click here to check corrigendum, if any