



2025:DHC:1268



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 24.02.2025*+ **BAIL APPLN. 333/2025
JITENDRA**

.....Petitioner

Through: Mr. Amit Poonia, Advocate

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the State

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CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. This petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking regular bail in FIR No. 292/2022 dated 20.12.2022 registered at Police Station (P.S) Crime Branch for offences under Section 20/25/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

Brief facts

2. The brief facts of the case are that on 20.12.2022, on the basis of a secret information it was informed that two persons namely Chandrashekhar and Applicant/Jitender are residents of Delhi, however, they procure *Ganja* from Visakhapatnam, Andhra Pradesh and supply it in Delhi. It was further informed that on the same day i.e. 20.12.2022 around 10:00 AM-10:30 AM



the said two persons i.e. Chandrashekhar and Applicant/Jitender would come in a golden colour Honda City Car bearing No. DL-2CQ-3721 on Burari - Swaroop Nagar road, Delhi to deliver consignment of *Ganja* to someone.

2.1 Thereafter a raiding team had reached on the said spot and the said two persons i.e., Chandrashekhar and Applicant/Jitender were apprehended. It is stated that Applicant/Jitender was sitting in a rear seat of the car and one plastic bag containing 23 kgs of *Ganja* was recovered from him and simultaneously, the co-accused Chander Shekar was sitting at the driver's seat and another plastic bag containing 23 kgs of *Ganja* was recovered from the side seat (conductor seat) of the car. Therefore, a total of 46 kgs gram contraband (*Ganja*) substance was recovered from the possession of the aforesaid two persons.

2.2 It is stated in view of the aforesaid recovery, FIR bearing no. 292/2022 was registered. Further, in compliance of section 55 of NDPS Act, the recovered case property was produced before SHO/PS Crime Branch and deposited into Malkhana of PS Crime Branch.

2.3 It is stated that during the course of investigation, co-accused Chandrashekhar and Applicant/Jitendra were arrested and during interrogation it was disclosed that they used to procure the illegal contraband i.e., *Ganja* from one Manoj r/o Vishakhapatnam, Andhra Pradesh, co-accused on instructions of one Raja r/o Burari, Delhi who used to supply it to the consumers in Delhi.

2.4 It is stated that it was discovered, during investigation, that owner of Honda City car stands registered on the name of a women namely Mohini, who, during interrogation stated that though the said car was registered in



her name, however, the car was bought by her husband Varun co-accused and she does not have any knowledge about the accused person arrested.

2.5 It is stated that her co-accused Varun was searched and found to be lodged in Sunaria Jail, Rohtak, Haryana. It is stated that during his interrogation the co-accused Varun, disclosed that a person namely Abid co-accused had given Rs.75,000/- to him to buy the said car Honda City and further that the car was given to Abid, who used the said car for drug trafficking.

2.6 It is stated on 19.02.2023 co-accused Rohit Walter was arrested and he disclosed that he was working for the co-accused Abid, who was the main kingpin of this drug syndicate.

2.7 It is stated that during investigation it was found that the co-accused Abid Khan used to recharge the Fast Tag of the recovered Golden Colour Honda City Car bearing No. DL-2CQ-3721 through his Paytm account. And he had recharged for about 38 times for a total sum of rupees 20800/-. It is stated on 31.03.2023, co-accused Abid Khan was arrested. It is stated that and the other co-accused namely Manoj Khillo is still absconding, despite giving ample opportunities to join the investigation, therefore, proceedings under Section 82 C.r.P.C has been executed against him and the next date of hearing for the said proceedings has been fixed for 26.02.2025

2.8 It is stated that the co-accused Chandrashekhar has expired on 10.10.2023 in Tihar Jail due to his health problem.

2.9 It is states that after concluding the investigation, chargesheet stands filed in the Special NDPS Court, Tis Hazari, Delhi and the case is still at the



stage of framing of the charges and the next date of hearing before the Trial Court is 04.04.2025.

Arguments of the Applicant

3. The learned counsel for the Applicant states that the Applicant has been falsely implicated in the captioned FIR.

3.1. He states that despite the raid and seizure being done in broad daylight, there are no independent witness which have been examined or have corroborated with the case of the prosecution in regard to the raid proceedings and neither any efforts were made to photograph and video-graph the alleged recovery. Therefore, the said facts raises doubts with regard to the credibility of the seizure made. In this regard, he places reliance on the judgment dated 15.07.2024 passed by the Coordinate Bench of this Court in **Rafique Khan v. State**¹.

3.2. He states that there are no criminal antecedents against the Applicant and he has never been arrested or prosecuted earlier in any case of any kind and as such there are no chances of the Applicant for fleeing or tampering with any evidence if he is admitted to bail.

3.3. He states that co-accused persons namely Rohit alias Walter² and Abid Khan³ in the subject FIR have been granted bail by the Court. Hence Applicant as well is entitled to bail on the principles of parity.

3.4. He states that Applicant was arrested on 20.12.2022 and he has already undergone a substantial period of incarceration for 2 Year 1 month 27 days. He states that matter is still at the stage of framing of charges

¹ BAIL APPLN. 3603/2023 Para 39- 47

² BAIL APPLN. 275/2023 by Trial Court on 28.07.2023

³ BAIL APPLN. 1834/2024 by this Court on 30.07.2024



before the Trial Court and examination of witnesses as well has to commence which includes examination of 22 witnesses, therefore there is no certain period in which the Trial will be completed and the Applicant cannot be detained for an indefinite period which would as a result violate right of the Applicant under Article 21 of the Constitution of India. He states that the chargesheet has already been filed and the investigation qua the Applicant is complete and therefore, no useful purpose would be served by keeping the Applicant in jail.

3.5. He further states that the Applicant undertakes to make himself available as and when directed by this Court or as required by the police officials /IO.

Arguments of the State

4. In reply, Mr. Khanna, learned APP opposes the bail application of the Applicant. He states that the Applicant herein has been accused of being indulged in the offence of contraband (*Ganja*) supply.

4.1 He states recovery of contraband in the present case from the Applicant is of commercial quantity, therefore, rigors of Section 37 of the NDPS Act are applicable and the Applicant should not be enlarged on bail.

4.2 He states that previously as well the regular bail application of the Applicant filed before the Special Judge, NDPS-02, Central District, Tis Hazari Court, New Delhi (Trial Court) has already been dismissed by the Trial Court vide order dated 15.02.2024.

4.3 He, however, confirms that there are no other involvements of the Applicant, and the investigation stands complete.

Findings and Analysis



5. This Court has considered the submission of the parties and perused the material on record.
6. In the present case the total recovery made was of 46 Kg of *Ganja* out of which 23 kg of *Ganja* was recovered from the Applicant, which by itself is a commercial quantity as per the NDPS Act. The said recovery of commercial quantity of *Ganja* would attract Section 37 of the NPDS Act and therefore, ordinarily the Applicant will have to satisfy the Court that the twin conditions of Section 37 of the NDPS Act for grant of bail are made out. However, the delay in conclusion of trial and long period of incarceration is also a vital factor which has to be kept in mind, while deciding the bail application under the NDPS Act.
7. As per the Nominal Roll of the Applicant dated 18.02.2025, the Applicant has been in jail for about 2 years 1 month 27 day since the date of his arrest i.e., 20.12.2022. The investigation qua Applicant is complete; chargesheet against the Applicant has been filed and charges against the Applicant is still yet to framed. Further it has been pointed out that there are 22 witnesses which have to be examined by the prosecution and since the stage of the examination of witnesses is yet to commence, therefore, in light of the said facts, it appears to this Court that a considerable time will be further taken to conclude the trial.
8. The Supreme Court has consistently held that delay in trial/prolonged trial is antithetical to the fundamental right enshrined in Article 21 of the Constitution of India. The Supreme Court has held that even in cases relating to NDPS if the prosecution is unable to conclude the trial within a



reasonable period the accused would be entitled for bail if the accused is not liable for the delay. The following decisions are relevant in this regard:

8.1. In **Man Mandal v State of West Bengal**⁴ where the seizure was of commercial quantity and the accused had been incarcerated for almost two years and there was no hope for the trial to be concluded soon, the Supreme Court while granting bail stated as under:

“ 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.”

(Emphasis supplied)

8.2. In **Mohd. Muslim alias Hussain v State (NCT of Delhi)**⁵ the Court stated that, grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act. The Supreme Court noted as under:

“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*¹⁹). **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**

⁴ 2023 SCC OnLine SC 1868.

⁵ 2023 SCC OnLine SC 352.



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 country. 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)



9. It is a matter of record that the Applicant was arrested on 20.12.2023 and he has not contributed to any delay in trial. It is correct that the quantity of contraband recovered from the Applicant is commercial in nature and the provisions of Section 37 of the NDPS Act are attracted. However, in these facts since the conclusion of trial cannot be foreseen in near future, therefore, in view of the aforesaid judgments, this Court is satisfied that the conditions of Section 37 of the NDPS Act can be dispensed with at this stage. Further the Applicant is also stated to have no criminal priors under the NDPS Act and his conduct during his incarceration of 2 years 1 months and 27 days has been recorded as satisfactory in the Nominal Roll.

10. Learned counsel for the Applicant has raised the plea with regards to non-joining of independent public witnesses as well as absence of photography and videography at the time of the search and seizure of the contraband which cast a doubt on the investigation/raid done by the prosecution and hampers the case of the prosecution from being proved beyond reasonable doubt. However, this Court is not considering the aforesaid pleas, since this Court has taken into consideration the submission of the Applicant with regard to her period of incarceration and the considerable delay in conclusion of the trial.

11. In the opinion of this Court, after a holistic assessment of all the facts and circumstances in the said matter, and that the trial in the matter is likely to take some time, it would not be prudent to keep the Applicant behind bars for an indefinite period, therefore, this Court deems fit that that Applicant be entitled to bail. As a result, the Applicant is directed to be released on bail



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upon providing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, and further subject to the following conditions:

- i. Applicant will not leave the country without prior permission of the Trial Court.
- ii. Applicant shall provide his permanent address to the Trial Court. The Applicant shall intimate the said Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.
- iv. Applicant shall join investigation as and when called by the IO concerned.
- v. Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Applicant will report to the concerned IO of P.S Crime Branch, Delhi every 1st Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.
- vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.
- viii. The Applicant shall not threaten the witnesses or tamper with the evidence of the case.



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12. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

13. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

14. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

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

16. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

FEBRUARY 24, 2025/ms

MANMEET PRITAM SINGH ARORA, J

[Click here to check corrigendum, if any](#)