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

+ **BAIL APPLN. 429/2025**

SABANA KHATOON

.....Petitioner

Through: Mr. M.L.Yadav, Mr. Harish Chand,
Mr. Deepak Kumar, Mr. Anant
Chittoria, Mr. P.C. Arya and Mr.
Praveen Arya, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
ASI Sabana Khatun.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

03.04.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 483 of the BNSS seeks regular bail in Case FIR No. 376/2022 registered under Sections 18/29/61/85 NDPS Act at PS Timarpur.
3. The case of the prosecution is that on 06.12.2022, on receipt of a secret information regarding two individuals i.e. present applicant and Bilal, a raiding body was constituted and a trap was laid.
4. On the said date the present applicant and Bilal were apprehended after following relevant provisions of the NDPS Act including notice under Section 50. Search of the applicant as well as the co-accused Bilal resulted in a recovery of 3.1 kgs of opium from the present applicant and 500 gms from co-accused Bilal. During further investigation the present applicant and co-accused Bilal gave certain information on the basis of which raids were



carried out. One such raid led to the arrest of one of the co-accused Md. Tahir (known as Beeru) and 270 gms of opium was recovered from his possession.

5. As per the Status Report dated 01.04.2025 some incriminating evidence was found on the mobile phone of the present applicant and the phone was sent to FSL for data extraction and a report with regard to the same is awaited.

6. It is submitted that no photography or videography was done of the seizure process. Reliance was placed on the judgment of the Co-ordinate Bench of this Court in Sanjay vs. State of NCT. of Delhi in Bail Appln. 3710/2023 dated 27.01.2025 and Zakir Hussain vs. State of NCT. of Delhi in Bail Appln. 1418/2024 dated 22.01.2025.

7. Learned counsel appearing on behalf of the applicant further submits that the latter has been in custody since 06.12.2022 and has completed more than 2 years 3 months and 23 days in judicial custody as on 28.03.2025. It is submitted that even the charges have not been framed and the prosecution has cited 21 witnesses. Thus, the trial is likely to take a long time to conclude.

8. It is pointed out that the co-accused persons in the present case have already been granted bail. Further the applicant is a single mother of a 5 year old daughter.

9. *Per contra*, learned APP for the state opposes the present application on the ground that the recovery effected from the present applicant is that of a commercial quantity and therefore, the rigors of Section 37 of the NDPS Act would have to be satisfied.

10. Heard the learned counsel for the parties and perused the record.

11. The Hon'ble Supreme Court in Rabi Prakash vs. State of Odisha, 2023 SCC Online SC 1109 *vide* order dated 13.07.2023 has held and observed as



under:-

“2.The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. 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.”

12. The Hon’ble Supreme Court in Man Mandal and Anr. Vs. State of West Bengal 2023, SCC Online SC 1868 has held as under:-

“2. Learned counsel for the petitioners submitted 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.

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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.”

13. The present case is still at the stage of consideration on the point of charge and the prosecution has cited 21 witnesses in the chargesheet. The trial has not even started. As per the nominal roll dated 02.04.2025, the applicant has been in judicial custody since 2 years 3 months and 23 days as on 28.03.2025.

14. Considering the delay in trial and long incarceration of more than 2 years and 3 months the embargo under Section 37 of the NDPS Act, in view of the aforesaid judgments passed by the Hon’ble Supreme Court, will not be applicable in the facts and circumstances of the present case.

15. In view thereof, the present application is allowed. The applicant is directed to be released on bail, on her furnishing a personal bond of Rs. 50,000/- 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 applications, if any, also stand disposed of.
18. Needless to state, 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

APRIL 03, 2025

Click here to check corrigendum, if any