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

+ **BAIL APPLN. 628/2024 & CRL.M.A. 15194/2024**
CHANDAN SHAH

.....Petitioner

Through: Mr. Pratyush Prasanna, Ms. Malvika
Kulkarni, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
24.01.2025

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1. This is a petition seeking regular bail in the FIR No. 01/2021 dated 02.01.2021 registered under section 20, 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ("**NDPS Act**") PS Crime Branch, New Delhi.
2. As per the prosecution, on the basis of secret information, as the petitioner along with the co-accused Krishna were about to sit in their vehicle/tempo bearing No. DL 1LY 6729, they were apprehended and thereafter 950 KGs of *Ganja* was recovered from the said tempo. The said tempo was in the name of the petitioner. Hence, the FIR.
3. The petitioner was arrested on 02.01.2021.
4. After competition of investigation, chargesheet was filed against the aforesaid persons including the petitioner on 08.06.2021.



5. Learned counsel for the petitioner has restricted his arguments only on the ground of delay and long incarceration. He submits that the petitioner is in jail since 02.01.2021 and only 7 witnesses out of 17 witnesses have been examined till yet. In addition, the petitioner has clean antecedents and deep roots in the society and there is no possibility of the petitioner influencing the witness.
6. *Per Contra*, learned APP submits that in the present case, there is a recovery of commercial quantity and hence, the petitioner has to satisfy the twin conditions as laid down under section 37 of NDPS Act.
7. I have heard learned counsel for the parties and perused the material available on record.
8. To grant bail in NDPS Act, the accused person has to cross the hurdle of twin conditions mentioned in section 37 of NDPS Act when there is a recovery of commercial quantity. Time and again, the Hon'ble Supreme Court in catena of judgments has laid down that the twin conditions can be relaxed provided the accused person has undergone substantial period of incarceration and the trial is unlikely to end in near future. In addition, the accused person has a right to speedy trial which flows from Article 21 of Constitution of India. It is apposite to refer to the judgment of ***Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352*** wherein the Hon'ble Supreme Court observed as under:-

“13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this



court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly.....

21. 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.

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 country²⁰. 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 1940²³). 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.”

9. The Hon’ble Supreme Court in ***Man Mandal v. State of W.B., 2023 SCC OnLine SC 1868*** granted bail to the petitioners on the ground that they had undergone almost 2 years and the trial is not likely to be concluded in near future. Also, in ***Dheeraj Kumar Shukla v. State of U.P., 2023 SCC OnLine SC 918***, the Hon’ble Supreme Court dispensed the rigors of section 37 of NDPS Act and granted bail to the petitioner therein as the petitioner had undergone two and a half years. Relevant para of the said judgment is extracted below:-

“3. It appears that some of the occupants of the ‘Honda City’ Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at



this stage, more so when the trial is yet to commence though the charges have been framed.”

10. The Hon’ble Supreme Court in ***Badsha Sk. v. State of W.B., 2023 SCC OnLine SC 1867*** has granted bail to the petitioner, who had been in custody for more than 2 years with trial yet to begin. Again in ***Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109***, the Hon’ble Supreme Court granted bail to the petitioner therein who had undergone more than 3 and a half years of incarceration.
11. Relying on the above cited judgments, this Court in catena of judgments including ***Jai Kishan Pandey @ Chikna v. State NCT of Delhi in Bail Appln. 3055/2024***, ***Gaus Mohammad v. The State (NCT of Delhi) in Bail Appln. 888/2024***, ***Edith Namirembe v. Cutoms in Bail Appln. 3267/2023*** has released the petitioner therein only on the ground of delay in trial and long incarceration.
12. No doubt, in the present case, the recovery of the contraband recovered from the tempo of the petitioner is commercial in nature. However, the Nominal Roll dated 11.12.2024 suggests that the petitioner has been in custody since 02.01.2021 and had undergone 3 years 10 months 13 days. The petitioner was released on interim bail earlier and has complied with all the bail conditions and surrendered on time.
13. On perusing the chargesheet, total 16 witnesses are cited. Charges against the petitioner were framed on 02.09.2022 and till date only 7 witnesses are examined. From the aforesaid, I am of the view that the trial will not be concluded in the near future. The petitioner is the only



male member of the family and the father of the petitioner has already been expired. The mother and the brother of the petitioner are suffering from various disabilities. The disability certificate of the mother shows that she is a case of mental retardation and the certificate of the brother shows that he has a speech and language disability. Hence, the petitioner is required to take care of his mother and brother. The petitioner still continues to be an under trial prisoner and his right to speedy justice under Article 21 needs to be protected. Furthermore, the petitioner has no other criminal antecedents and his jail conduct has been satisfactory.

14. For the foregoing reasons, the petitioner herein is released on bail subject to the following terms and conditions:-

- a) The petitioner shall furnish a personal bond in the sum of Rs 10,000 (Rupees ten thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned trial court;
- b) The petitioner shall not leave the country without the permission of the concerned court and if the petitioner has a passport, he shall surrender the same to the concerned trial court;
- c) The petitioner shall furnish to the IO concerned the cell phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched on at all times;
- d) The petitioner will furnish his permanent address to the concerned IO and in case he changes his address, he will



- inform the IO concerned;
- e) The petitioner shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;
 - f) The petitioner shall appear in Court on every date of hearing unless exempted;
 - g) The petitioner shall not communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.
15. All the observations made herein above are only for the purpose of deciding the present petition and will have no effect on the merits of the case pending.
16. A copy of this order be communicated to the concerned jail authorities for necessary compliance.
17. The petition along with pending applications, if any, are disposed of.

JASMEET SINGH, J

JANUARY 24, 2025 / (MS)

Click here to check corrigendum, if any