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

Date of Decision: 27.01.2025

+ **BAIL APPLN. 1078/2024**

RAKESH KUMAR

.....Petitioner

Through: Mr. Rudro Chatterjee, Mr. MD
Tanvir, Mr. Shariq Nisar, Mr.
Yashovardhan Oza, Advs.

versus

STATE

.....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under section 439 of Code of Criminal Procedure, 1973 seeking grant of regular bail to the petitioner in FIR No. 24/2021, dated 21.02.2021 registered at PS Crime Branch under section 18 of the NDPS Act. The chargesheet has been filed under sections 18/29 of NDPS Act.
2. In the present case, the petitioner has been in custody since 21.02.2021.
3. Briefly stating the facts are that a secret information was received at ISC, Crime Branch, Chankyapuri, Delhi that one person namely, Mr. Rakesh (petitioner), is indulging in the supply of opium in different parts of Delhi, would reach Dhaula Kuan, Delhi and deliver a consignment of opium to one of his associates and if a raid is conducted, he may be apprehended with a



huge quantity of opium. Based upon the said information, a raid was conducted and two persons i.e. Mr. Suraj Devashi @ Suja Ram (co-accused) and the petitioner were apprehended while exchanging the consignment of opium in a bag.

4. Thereafter, the petitioner and his bag was searched in the presence of Mr. S K Gulia, ACP/AHTU. The bag contained 7 plastic packets and a brown coloured substance was recovered. The recovered substance was checked with the Field testing kit and it was found to be opium weighing 7 kgs in total. All 7 plastic packets were seized through seizure memo and the FIR was registered.

5. Mr. Chatterjee, learned counsel for the petitioner states that in the present case, the allegations in the FIR against the petitioner and the co-accused are identical. The petitioner was to deliver the consignment to the co accused and before the delivery could be done, both the petitioner and the co accused were arrested.

6. He states that the co accused i.e. Mr. Suraj Devashi @ Suja Ram has already been granted bail and since the allegations are identical against the petitioner, he is also entitled to bail on the ground of parity.

7. He further states that the entire recovery process is faulty and is in violation of Section 41 of the NDPS Act. Further, there is no authorization from any gazetted officer for authorizing the raid.

8. In addition, there is also a discrepancy in the seal which was used for sealing the recovery.

9. He further states that the petitioner undergone incarceration for a period of 3 years and 11 months and only 3 out of 26 witnesses have been examined till date.



10. *Per Contra* Mr. Chauhan, learned APP states that since the recovery from the petitioner is of commercial quantity, the petitioner will have to cross the rigours of section 37 of the NDPS Act.

11. He further states that there is no parity between the petitioner and the co accused as the contraband was recovered from the petitioner.

12. I have heard learned counsel for the parties.

13. The learned Sessions court while granting bail to the other co accused i.e. Mr. Suraj Devashi @ Suja Ram observed as under:

“As per DD no. 9 dated 20.10.2021, the ACP ISC Crime Branch authorized raid but in the statement of the ACP, Mr. S. K. Gulia nothing has been mentioned about the authorization of raid by him rather his statement starts from "on 21.02.2021 at 01.30 am ASI Ravinder apprised him about the case and requested him to reach on the spot. The authorization is required u/s 41 of NDPS Act but in the present case there is discrepancy w.r.t. authorization as in the whole statement of ACP Mr. S. K. Gulia nothing about authorization of raid by him has been mentioned.

In the DD entry no. 10 dated 20.02.2021 it has been mentioned that ASI Ravinder, ASI Dharmender, HC Vinod, Ct. Ravinder, Ct. Mintu were part of raiding team and they took field testing kit, electronic weighing machin, 10 kit, laptop and printer on the raid but nowhere it is mentioned that ASI Ravinder was not having his seal and he took seal from SI Sanjay Kumar Gupta. The case property was sealed in this matter with the seal of SKG by the ASI Ravinder on the spot at the time of recovery and there is nothing on record to show how the ASI Ravinder came in possession of seal of



SKG and this does not stop here rather the irony is that it is the seal of second IO who was deputed in this matter for investigation and this is beyond coincidence in the absence of any explanation. After sealing the case property there is also discrepancy w.r.t. to whom the seal was handed over as the Ct. Mintu in his statement has stated that the seal was handed over to him by ASI Ravinder, even Ct. Ravinder stated that the seal was handed over to him after use by the ASI Ravinder, therefore, how is it possible that a single seal is handed over to Ct. Mintu and Ct. Ravinder at the same point of time. There is no memo on record showing by whom and when the seal was returned by Ct. Mintu or Ct. Ravinder. The whole case of prosecution in NDPS matter rest of the sanctity of the case property and in present matter at this stage the prosecution has failed to explain the abovesaid discrepancy of the seal and the possibility of tampering the case property can not be ruled out even otherwise also there is also discrepancy w.r.t. authorization of search.”

14. A perusal of the aforesaid paras shows that the learned Sessions Court while granting bail to the co accused i.e. Mr. Suraj Devashi @ Suja Ram has given a categorical finding regarding non-compliance of section 41 of the NDPS Act as well as the discrepancy in the seal which was used for sealing the recovery. The state has not challenged the said finding and the same becomes a finding of fact. Based on the said finding, the co-accused was granted bail.

15. Further, the courts have time and again held that the twin conditions mentioned under section 37 of NDPS Act can be relaxed provided the accused person has undergone a substantial period of incarceration and the



trial is unlikely to end in near future. In this regard, reliance is placed on the judgment of the Hon'ble Supreme court in ***Mohd. Muslim vs State (NCT of Delhi)*** 2023 SCC OnLine SC 352. The operative portion reads 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....

....

21Grant 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 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 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.”

16. In the present case, the petitioner has been in custody since 21.02.2021 and is still an undertrial prisoner. The prosecution has cited 26 witness in total, out of which only 3 have been examined till date. It does not seem probable that the trial would conclude in near future.

17. The rights under Article 21 of the Constitution of India are paramount and every accused is entitled to a speedy trial. Further, the petitioner has no other criminal antecedents and was previously granted interim bail and the petitioner duly surrendered in time.

18. The learned APP has had an opportunity to oppose the bail and the discrepancy in the seal of the recovered contraband has not been explained. There is also a delay in trial. Therefore, to my mind, the twin condition of Section 37 NDPS Act have been complied with.

19. For the said reasons, the petition is allowed and the petitioner is directed to be released on regular bail subject to the following conditions:

- (a) The petitioner shall furnish a personal bond in the sum of Rs. 50,000/- (Rupees Ten Thousand Only) with two surety of the like amount to the satisfaction of the concerned Trial Court;
- (b) The petitioner shall provide his mobile number to the concerned



Investigating Officer (IO), which shall be kept in working condition and switched on at all times. The petitioner shall also provide his permanent residential address and in case of change of residential address or contact details, the petitioner shall promptly inform the same to the concerned IO as well as to the concerned Court;

- (c) The petitioner shall not leave the country without permission of the competent Court during the bail period and surrender his passport, if any, at the time of release before the concerned Court;
- (d) In the event of there being any fresh FIR/DD Entry/complaint lodged against the petitioner/accused it would be open to the State to seek cancellation of bail of the accused.
- (e) The petitioner shall not directly/indirectly try to get in touch with any prosecution witnesses or tamper with the evidence;
- (f) The petitioner shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in pending cases, if any

20. The petition is disposed of accordingly.

JASMEET SINGH, J

JANUARY 27, 2025/DM

Click here to check corrigendum, if any