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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1473/2024

GEEGAL KUMAR

.....Petitioner

Through: Mr. Aditya Aggarwal, Ms. Kajol Garg, Mr. Naveen Panwar, Mr. Mohd. Nasir, & Mr. Manas Agarwal, Advs.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP with SI Ravinder Singh, Special Staff/OD.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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21.02.2025

1. This is a petition seeking the grant of regular bail in FIR No.0157/2023 registered at PS Ranhola under Sections 20(b)(ii)c of Narcotics and Psychotropic Substances Act, 1985 (“NDPS”).
2. The brief facts of the case are that the respondent received a secret information on 11.02.2023 wherein a person, namely, Pabbar Giri has to come along with his two associates with the contraband to a place in Ranhola. The police constituted a raiding team and reached the spot and thereafter apprehended Pabbar Giri, Pappu Rai and Geegal Kumar, the petitioner.
3. After completing the procedural formalities, the polythenes in the custody of the petitioner and other co-accused were seized and the following items were recovered from each accused as under:-
 - a. 35.250 kgs of *ganja* from Pabbar Giri
 - b. 33.200 kgs of *ganja* from Pappu Rai
 - c. 33.200 kgs of *ganja* from Geegal Kumar (Petitioner)



4. Mr. Aggarwal, learned counsel appearing on behalf of the petitioner has stated that there was a discrepancy in the weight of the alleged recovered contraband shown in the seizure memo and FSL report.
5. Additionally, the representative samples were sent to FSL on 27.02.2023 as per the police officials, however, according to the FSL report, the date of receipt is of 07.03.2023, which shows a delay of 7 days.
6. Further, as per order dated 03.03.2023, it has been stated that the IO received the objection from the FSL that seal was not properly done in the representative samples, which raises a question on the case of the prosecution.
7. He further stated that despite the fact that the recovery was made at around 9:45 pm from a busy place at Ranhola, there was no videography or independent witnesses joining the proceedings.
8. Lastly, it is stated that the rights of the petitioner under Article 21 of the Constitution for a speedy trial are also violated as despite of him being in custody since 12.02.2023, the charges have not been framed since and the trial is yet to commence.
9. *Per contra*, Mr. Pant, learned APP appearing on behalf of the respondent opposes the bail and states that the quantity recovered from the petitioner is commercial in nature and the FSL also supports the case of the petitioner.
10. The issues with regard to delay in drawing the representative samples, discrepancy in weight and broken seal are issues which can only be decided during trial.
11. I have heard learned counsel of the parties and perused the material



available on record.

12. To grant bail in NDPS Act, the accused person has to cross the hurdle of twin conditions mentioned in section 37 of NDPS Act. 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.
13. In ***Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352***, 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. State²¹ 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."

14. On perusal, the fact that weighs with me, at this stage, is that despite lapse of 2 years, the charges are yet to be framed and the trial is yet to commence. The petitioner has already been in custody for more than 2 years i.e. since 11.02.2023. The right of speedy trial under Article 21 of the Constitution is of paramount consideration and accrues in favour of the petitioner being accused. From the facts narrated, it does not seem that the trial will conclude any time in the near future.
15. The Hon'ble Supreme Court in the case of ***Man Mandal & Anr. v. The State of West Bengal*** 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. The relevant paragraph is as under:-

"6. Taking into consideration the fact that he 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 inclined to grant bail to the



petitioners.”

16. Additionally, no reasons have been provided as to why no photograph or videography was done of the recovery in the present case. The same has also been considered by the Hon'ble Co-ordinate Bench of this Court in the case of ***Gopal Dangi v. State of Delhi***. The relevant paragraphs of the said judgment are as under:

“31. This Court in Bantu v. State Govt of NCT of Delhi (supra), noted that the Hon'ble Apex Court, way back in the year 2018 in Shafhi Mohd. v. State of H.P. (supra), after taking note of the technological advancements, had passed certain directions. The Hon'ble Apex Court had emphasised the role of audio-visual technology in enhancing the efficacy and transparency in the police investigations.

32. This Court also noted that realising the need of change in time, the Legislature has now passed the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), where the practice of photography and videography has now been made mandatory as part of the investigation.

33. This Court further noted that the procedure prescribed in NCB Handbook which has been adopted by the Delhi Police may be argued to be not binding, however, it cannot be denied that the same has been prescribed as the best and crucial practice for obtaining evidence in order to avoid the allegation in regard to foul play.

34. Thus, while it is true that the effort, if any, made by the prosecution to have the search conducted in the presence of



the independent witnesses would be tested during the course of trial and the same may not be fatal to the case of the prosecution, however, the benefit, at this stage, cannot be denied to the accused. Undoubtedly, the search in the present case was conducted at a busy public place. It is not the case of the prosecution that no CCTV were installed around the area where raid/search was conducted. It is also not the case that equipments were not available to videograph and photograph the search/seizure. It cannot be denied that almost every person today carries a smart phone with a camera installed in it.

35. Delay in trial and long period of incarceration is also an important factor which has to be kept in mind while considering the application for Bail.”

17. The petitioner has no other criminal case pending against him and except for the present case, he has clean antecedents.
18. For the said reasons, the present petition is allowed and the petitioner is directed to be 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 the complainant or any of the prosecution witnesses, or tamper with the evidence of the case.
19. 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.
20. The petition stands disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 21, 2025/pk

Click here to check corrigendum, if any