



\$~10& 11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 1474/2024
BABITA DEVI @ BOBYPetitioner
Through: Mr. Ankaj Giri, Adv.
versus

THE STATE (NCT OF DELHI)Respondent
Through: Mr. Sanjeev Sabharwal, APP with
Ms. Mansi Sharma, Adv.
Inspector Yakub Khan, ASI Yadram
Yadav, PS NDRS

11

+ BAIL APPLN. 3118/2024
REHA KUJURPetitioner
Through: Mr. Kunal Narwal, Adv.
versus

THE STATE NCT OF DELHIRespondent
Through: Mr. Sanjeev Sabharwal, APP with
Ms. Mansi Sharma, Adv.
Inspector Yakub Khan, ASI Yadram
Yadav, PS NDRS

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

%

24.02.2025

1. These are petitions filed under section 439 of Code of Criminal Procedure, 1973 seeking grant of regular bail to the petitioners in FIR No. 103/2022, dated 09.11.2022, registered at PS New Delhi Railway Station under Sections 20/61/85 of the NDPS Act.
2. In the present case, both the petitioners have been in custody since 09.11.2022.
3. Briefly stating the facts are that on 09.11.2022, the Head Constable namely, Mr. Gaurav Tomar posted near the New Delhi Railway Station,



along with other police officials were patrolling near the Exit Gate No. 2, Auto Taxi Parking, New Delhi Railway Station, when they noticed that at around 11:45 PM, two women (petitioners) were behaving in a suspicious manner. The petitioners were carrying one brown colour trolley bag, one blue colour nylon printed bag, one brown colour semi printed bag and two purse. After seeing the police officials, the petitioners started to flee with all the luggage, however they were intercepted by the police officials.

4. Babita Devi @ Bobby (petitioner in BAIL APPLN. 1474/2024) was carrying the brown colour trolley bag, brown colour semi printed bag, whereas Reha Kujur (petitioner in BAIL APPLN. 3118/2024) was carrying the blue colour nylon printed bag.

5. Upon inspecting the bags, the police recovered multiple small brown packets wrapped in plastic tape. It was found that Babita Devi @ Bobby was in possession of 22 kgs of 'Ganja' (the brown trolley bag contained nine packets weighing 18 kg and the brown semi-printed bag had two packets weighing 4 kg) and Reha Kujur was in possession of 20.5 kgs of 'Ganja.' (the blue printed nylon bag had ten packets weighing 20.5 kg)

6. After completion of formalities, both the petitioners were arrested on 09.11.2022.

7. Hence the present FIR has been registered.

8. Learned counsels for the petitioners states that the petitioners have been falsely implicated in the present case, at the instance of the police officials. Further, the petitioners have been in custody since 09.11.2022 and the trial is not likely to conclude soon. Till date, not even a single witness has been examined.

9. It is further stated that the procedure adopted by the police officials



for collection of sample is faulty. In addition, the police officials have illegally mixed the substances of all the packets recovered from each bag. Hence there is a violation of section 42 and 50 of the NDPS Act.

10. Per Contra, learned APP has vehemently opposed the arguments raised by the petitioners and states that the recovery from both the petitioners is of commercial nature and hence, the petitioners will have to cross the rigors of section 37 of the NDPS Act.

11. He further submits that the trial is at the stage of prosecution evidence and the issue whether there is non-compliance of section 42 and 50 of the NDPS Act can only be seen after the trial is concluded.

12. I have heard learned counsel for the parties.

13. In the present case, the fact that whether the mixing of samples is faulty or not and whether section 42 and 50 of NDPS Act was complied or not can only be determined after the evidence is over and the trial has concluded.

14. What weighs with me today is that both the petitioners have been in custody since 09.11.2022 and have undergone incarceration for a substantial period of time.

15. Even though the allegations against the petitioners are serious and grave in nature and the petitioners are accused of being in possession of 'ganja' in commercial quantity, however the fact remains that the petitioner is still an under trial prisoner and the charges against the petitioner are yet to be proved.

16. The prosecution has cited 27 witnesses in total, out of which not even a single witnesses has been examined. I am of the view that the trial is unlikely to conclude in the near future. Till the trial is concluded, there is a



presumption of innocence in his favour. The rights under Article 21 of the Constitution of India are paramount and every accused is entitled to a speedy trial.

17. 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....



....

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 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.”

(emphasis supplied)

18. In addition, the petitioners have clean antecedents and are not involved in any other criminal case. The jail conduct of both the petitioners is also satisfactory.

19. For the said reasons, the present petitions are allowed and the petitioners are directed to be released on regular bail subject to the following terms and conditions:-

- a. The petitioners shall furnish a personal bond in the sum of Rs 10,000 (Rupees ten thousand only) each with 1 surety in the like amount each, to the satisfaction of the concerned Trial court;
- b. The petitioners shall not leave the country without the



permission of the competent court and if the petitioners have a passport, they shall surrender the same before the concerned Trial court;

- c. The petitioners shall furnish to the IO concerned the cell phone numbers on which they may be contacted at any time and shall ensure that the numbers are kept active and switched on at all times;
- d. The petitioners will furnish their permanent address to the concerned IO and in case they change their address, they will inform the IO concerned;
- e. The petitioners shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;

20. The petitions stand disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 24, 2025/sp

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