



\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

BAIL APPLN. 2330/2024

AVINASH SINGH

.....Applicant

Through: Mr. Aditya Aggarwal and
Mr. Naveen Panwar, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP
for the State with SI
Sandeep, ARSC Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

19.03.2025

%

1. The present application is filed seeking regular bail in FIR No. 345/2019 dated 03.12.2019, registered at Police Station Crime Branch for offences under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').
2. Chargesheet in the present case has been filed under Section 25 of the NDPS Act.
3. Brief facts of the case are that on 03.12.2019, specific information was received that a truck driver namely– Sonelal @ Sonu will be bringing ganja from Odisha in a truck bearing No. UP 70 BT 1055 at Dr. Hedgewar Marg. Near Paper Market, near the Gate of DDA Park, Ghazipur, Delhi, to supply ganja to someone. Pursuant to the same, Sonelal @ Sonu and another person helping him, namely– Raju Pandit were intercepted on the main road at Dr. Hedgewar Marg, Near Paper Market, near the



Gate of DDA Park, Ghazipur, Delhi and 280 kg of ganja was recovered from 7 drums in the truck, which was registered in the name of the applicant. The applicant was thereafter arrested on 05.12.2019, based on the confession of co-accused Sonelal @ Sonu.

4. It is alleged that as per the Call Detail Reports ('CDR'), the applicant was in frequent contact with co-accused Sonelal @ Sonu and in the period between 01.10.2019 to 03.12.2019, 192 calls were exchanged between the said accused persons.

5. The applicant was released on interim bail on 04.11.2020, whereafter, it is alleged that he did not surrender before the jail authority and remained absent from the proceedings before the learned Trial Court, and was ultimately declared a Proclaimed Offender by the learned Trial Court *vide* order dated 07.03.2022. It is alleged that the applicant remained absent from the trial in the present case for almost 3 years, whereafter he was arrested on 03.04.2024. A supplementary chargesheet has been filed against the applicant under Section 174A of the IPC.

6. It is alleged that the seized truck was released to the brother of the applicant on superdari, however, during the trial, the brother of the applicant could not produce the said truck, stating that he had handed over the said truck to the applicant who had disposed of the same while on interim bail, thereby tampering with evidence of the case.

7. The applicant's bail application was dismissed by the learned Trial Court *vide* order dated 07.06.2024, on the ground that the contraband was recovered from the truck owned by the applicant and while taking note of the applicant's past conduct, the learned Trial Court held that the applicant is a flight risk and may abscond if admitted to bail.



8. The learned counsel for the applicant submits that recovery was made from the co-accused persons Sonelal @ Sonu and Raju Pandit and not from the applicant. He submits that the case of the prosecution is entirely based on the disclosure statements of the co-accused persons and the fact that the truck was registered in the name of the applicant.

9. He submits that recovery of contraband was made on 03.12.2019, when two samples of 250gm from each of the 7 drums, were drawn and thereafter on 05.12.2019 were sent to FSL for testing. He submits that on 07.01.2020, an application under Section 52A of the NDPS Act was filed by the prosecution before the learned Trial Court and thereafter the samples were drawn *vide* order dated 25.02.2020, however, the same were not sent to FSL for examination, which raises doubt on the veracity of the seizure.

10. He submits that there is a delayed compliance of Section 52A of the NDPS Act as the representative samples of the contraband allegedly recovered from the drums carried in the truck of the applicant were drawn before the learned Magistrate after a delay of 84 days.

11. He submits that the co-accused persons Sonelal @ Sonu and Raju Pandit have been granted bail *vide* order dated 22.01.2024 and 30.01.2024 passed by this Court respectively.

12. *Per contra*, the learned Additional Public Prosecutor ('APP') for the State vehemently opposes the grant of any relief to the applicant. He submits that the past conduct of the applicant during the period in which he was granted interim bail does not warrant him to be released on bail, as he has misused his liberty by disposing of the truck which was released to his brother on superdari. It is also vehemently contended that the applicant was



declared as a Proclaimed Offender and, thus, should not be released on bail.

13. I have heard the counsels and perused the record.

14. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

15. In the present case, 280 kg of contraband was recovered from the truck which was registered in the name of the applicant and as per the CDR, the applicant was regularly in contact with the co-accused person Sonelal @ Sonu, on the day of the delivery. There is *prima facie* material to link the applicant with the recovery of the contraband of commercial quantity from the other co-accused persons, and hence, the rigours of Section 37 of the NDPS Act are to be applied.

16. The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail– (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any



offence while on bail.

17. The rigors of Section 37 of the NDPS Act would certainly be attracted against the applicant as nothing has been placed on record before this Court so as to believe that he did not commit the alleged offence or if he is released on bail, he would not commit any such or similar offence or abscond.

18. It is trite law that grant of bail on account of delay in trial cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

19. In the present case however, the charges are yet to be framed against the applicant as he was absconding from the proceedings before the learned Trial Court. Although speedy trial at this stage does not seem to be a possibility, since the delay has been caused due to the conduct of the applicant himself, he cannot be allowed to take advantage of his own wrong doings.

20. It is true that the search and seizure of the contraband so seized is a serious aspect during the investigation and if there is any violation of the mandatory requirements as prescribed under the NDPS Act as to the manner in which search and seizure is effectuated, the Courts ought to take a serious view and the benefit, in some circumstances, could be extended to the accused.

21. This Court in the case of *Sovraj v. State* : **2024:DHC:5009**, advertent to a number of judgments, has concurred with the view of a Coordinate Bench of this Court in



Somdutt Singh @ Shivam v. Narcotics Control Bureau : 2023:DHC:8550, and held that the accused persons cannot be allowed to go scot free on minute irregularities in procedure of sampling or belated compliance of the procedure under Section 52A of the NDPS Act and Standing Order No.1/88, especially when the prosecution has not had the opportunity to furnish an explanation. It was held that the alleged violation in manner of mixing of seized substances and whether the same has caused any prejudice to the applicant would be a matter of trial.

22. Admittedly, there is a delay of about 84 days in compliance of the procedure under Section 52A of the NDPS Act. The prosecution has vehemently contested that the sampling was done in accordance with law.

23. While it is open to the applicant to press the aforesaid defence at the time of trial and contest that the drawn samples were not true representatives of the seized substance, however, at this stage, the applicant has failed to establish a *prima facie* case as to how he has been prejudiced on account of the delayed compliance or the alleged irregular procedure of sampling. Prejudice caused to the applicant by any procedure anomalies, including any infirmity in the procedure of drawing samples or delay in compliance of the procedure under Section 52A of the NDPS Act, will be tested during the course of the trial.

24. Being conscious of the fact that individual liberty holds immense significance, it is incumbent upon the Courts to examine and evaluate, *albeit* briefly, factors such as the *prima facie* case, the severity of the crime, and the accused's likelihood to tamper with evidence, among other considerations.

25. The present case relates to recovery of commercial quantity of contraband from the truck. The said truck is owned by



the applicant. The statement of the applicant recorded by the IO may not be admissible in evidence but it cannot be denied. He stated that he procured the contraband from Odisha, and after loading the same, he handed over the truck to the driver Sonelal @ Sonu. This statement is thus corroborated with the material evidence of recovery of the contraband from the truck which is owned by the applicant.

26. It is pertinent to note here, that the applicant was released on interim bail, during which time not only was he declared a Proclaimed Offender and remained absent for more than 3 years, which has also lead to a supplementary chargesheet being filed against the applicant under Section 174A of the IPC, but also allegedly tampered with evidence of the case, by disposing of the truck which was released to his brother on superdari. The Hon'ble Apex Court in *State of U.P. v. Amarmani Tripathi* : (2005) 8 SCC 21 observed as under:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.....”

(emphasis supplied)

27. The conduct of the applicant while enlarged on interim bail



also *prima facie* discloses the involvement of the applicant in the alleged offence. In view of the above there are reasonable grounds of believing that the applicant is guilty of the offence alleged in the present case.

28. The grant of bail to the co-accused persons does not have a bearing on the case of the applicant. Co-accused Sonelal @ Sonu and Raju Pandit have been admitted on bail by the learned Trial Court *vide* order dated 22.01.2024 and 30.01.2024, respectively. A perusal of the orders granting bail to the co-accused persons makes it amply clear that the learned Trial Court has noted the admission made by the present applicant in the statement recorded by the IO that he had indulged in drug trafficking and the contraband recovered from the truck was loaded by him in the plastic drums and handed over to Sonelal @ Sonu, who was the driver of the said truck and Raju Pandit who was the helper. The learned Trial Court also took note of the conduct of the present applicant while being enlarged on interim bail, to record that a *prima facie* case against the co-accused persons Sonelal @ Sonu and Raju Pandit, has not been made out. Moreover, it was observed that, the co-accused persons had been in custody since 03.12.2019, and the trial was not likely to conclude in the near future.

29. The benefit of these orders cannot be granted to the applicant who has only spent over a year in custody. It would not be apposite to grant bail to the applicant at this stage as the past conduct of the applicant *prima facie* reflects the possibility of the applicant absconding or intimidating the witnesses and tampering with evidence.

30. In view of the above, this Court is of the opinion that the applicant has not made out a *prima facie* case for grant of bail.



31. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

32. The bail application is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 19, 2025