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

\+ **BAIL APPLN. 3329/2023**

BABU KHAN .....Applicant

Through: Mr. UA Khan & Mr. Tushar Upadhyaya, Advs.

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Akhand Pratap Singh, Special Counsel
Inspector Rakesh Kumar, Special Cell

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% 11.07.2025

1. The present application is filed seeking regular bail in FIR No. 16/2018 dated 12.02.2018, registered at Police Station Special Cell for the offences under Sections 3/4 of the Maharashtra Control of Organised Crime Act, 1999 (‘**MCOCA**’).

2. The brief facts of the case are that on 23.07.2017, on the basis of a secret information, a raid was conducted and co-accused Rajesh Kumar @ Raje was apprehended and a recovery of 3 Kgs of heroin was made. The same led to the registration of FIR No. 51/2017 at Police Station Special Cell under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (‘**NDPS Act**’). During the course of the investigation, co-accused Rajesh Kumar @ Raje disclosed that he used to supply heroin to co-accused Deepak and Neeraj @ Sunil in Delhi. He further disclosed about the involvement of the applicant.

3. Thereafter, accused Deepak (kingpin) was arrested on 24.07.2017 and a recovery of 2 kg heroin was made. During the course of investigation, accused Deepak disclosed that he used to procure heroin from the applicant through co-accused Rajesh Kumar @ Raje. Thereafter, co-accused Neeraj @ Suni was also arrested on 24.07.2017 and a recovery of 100 grams of heroin was made.

4. It is alleged that thereafter several attempts were made to trace the applicant who kept evading his arrest. Subsequently, on receipt of a secret information, the applicant was found at his rented accommodation at Qila Chhawni, Bareilly, Uttar Pradesh on 24.10.2017. Further, a recovery of 200 gram heroin was made from the house of the applicant in Village Behara, Faridpur, Bareilly, Uttar Pradesh. The applicant was thereafter arrested on 15.02.2018.

5. It is the case of the prosecution that the criminal profile of accused Deepak indicates that he has indulged in committing various offences, particularly drug trafficking, in association with the other accused persons, including the applicant. It is alleged that the financial investigations carried out thus far reveal that the accused persons have accumulated huge wealth from the sale proceeds of narcotic drugs. During investigation, it was found that the accused Deepak had purchased several properties, vehicles and other things by paying huge amounts in cash, however, he had no legitimate source of income.

6. It is further alleged that the applicant has had huge transactions of money in his accounts. It is alleged that the accused persons are running an organised crime syndicate and carrying out unlawful activities for pecuniary gain, due to which, the present case was registered.

7. The learned counsel for the applicant submits that the applicant is innocent and that the provisions of MCOCA have erroneously been invoked against the applicant. He submits that the applicant is only named as an accused in one FIR being FIR No. 51/2017. He further submits that the applicant has already been granted bail in that case.

8. He submits that the applicant has spent more than 5 years and 5 months in custody, and only 11 out of 100 witnesses have been examined. He submits that the trial is not likely to conclude in the near future and that no purpose would be served by subjecting the applicant to undergo further incarceration.

9. He submits that the co-accused Rajesh Kumar @Raje has already been enlarged on bail by this Court by order dated 08.05.2025 from whom a recovery of 3 Kg of heroin was made. He consequently prays that the applicant be enlarged on bail on the ground of parity.

10. *Per contra*, the learned Special Counsel for the State vehemently opposes the grant of any relief to the applicant. He submits that the allegations against the applicant are serious in nature, and one of abetting in the commission of the alleged offence.

11. I have heard the counsel and perused the record.

12. 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. However, at the same time, period of incarceration is also a relevant factor that cannot be overlooked.

13. It is unequivocally established that to be granted bail for offences under MCOCA, the conditions stipulated in Section 21 of MCOCA are to be satisfied. The relevant portion of the aforesaid Section reads as under:

> *"(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—*
> *(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and*
> *(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."*

14. It is the case of the prosecution that the accused persons (including the applicant), who are members of a syndicate, acted in an organised manner and committed illegal activities, particularly drug trafficking, for the basic purpose of pecuniary gain and accumulated huge wealth.

15. The applicant essentially seeks bail on the ground of delay in trial and the period of incarceration. It is further argued that the provisions of MCOCA have erroneously been invoked against the applicant.

16. It is pointed out that the applicant has already spent more than 5 years and 5 months in custody, and that the matter is still at the stage of examination of prosecution witnesses. It is urged that only 11 out of 100 witnesses have been examined. On such a conspectus of facts, speedy trial does not seem to be a possibility.

17. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb*** **: AIR 2021 SC 712**, while dealing with an application for bail under Unlawful Activities (Prevention) Act,

1967, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

18. Recently, in the case of ***Arun v. State of NCT of Delhi* : BAIL APPLN. 3348/2023**, a Coordinate Bench of this Court granted bail to an accused charged for offences under MCOCA, who had spent more than 8 years in custody. It was observed that right to a speedy trial is entrenched under Article 21 of the Constitution of India and the same cannot be whittled down merely because the case arises under a special statute such as MCOCA. Reliance was placed on precedents in a number of cases, including, ***Mohd. Muslim v. State (NCT of Delhi)* : (2023) 18 SCC 166**, where while dealing with the analogous provision of Section 37 of the NDPS Act which envisages a similar bar, the Hon'ble Apex Court had held that if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 of the NDPS Act will receive a jolt.

19. From the foregoing, it is pertinent to note that the stringent requirements imposed on the accused under Section 21 of the MCOCA for the grant of bail do not *ipso facto* preclude the grant of bail on account of undue delay in the conclusion of trial. Various courts have recognized that prolonged incarceration undermines the right to life and liberty guaranteed under Article 21 of the Constitution of India. For this reason, the conditional liberty ought to take precedence over the statutory restrictions provided under Section 21 of the MCOCA.

20. The prosecution's case is not that the applicant is the kingpin of the alleged syndicate. Further, the applicant has already been enlarged on bail in the case under the NDPS Act.

The nominal roll further indicates that the conduct of the applicant in jail was satisfactory.

21. It is also pointed out that the co-accused Rajesh Kumar @Raje has already been enlarged on bail by this Court by order dated 08.05.2025. This Court while granting bail to the co-accused Rajesh Kumar @Raje observed as under:

> *"21. Moreover, it is relevant to note that undisputably, the activities of the alleged syndicate did not lead to death and therefore, the minimum sentence for the alleged offences will be only 5 years. Certain orders are placed on record by the applicant to show that lesser sentence has been awarded for the alleged offences to accused in other cases post-conviction. While any comment on the potential sentence that may be awarded in the present case will be premature, at this stage, it cannot be ignored that the applicant has spent much more time in custody than 05 years and that the trial is unlikely to be concluded in near future.*
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> *22. It is not the case of the prosecution that the applicant is the kingpin of the alleged syndicate. It is pertinent to note that the applicant has already been enlarged on bail in the case under NDPS Act and acquitted in the other case that was registered against him."*

22. The role attributed to the applicant is similar to that of the co-accused Rajesh Kumar @ Raje.

23. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;

c. The applicant shall appear before the learned Trial Court on every date of hearing;

d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO;

e. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep his mobile phone switched on at all times;

f. The applicant shall report to the concerned IO on every Monday at 4PM and he shall not be kept waiting for more than an hour.

24. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

25. 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.

26. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 11, 2025