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

+ **BAIL APPLN. 2570/2024**

VICTO VECENT JOSEPH

.....Petitioner

Through: Mr. Tanvir Quiser & Mr. Naved
Kesar, Advs.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
SI Jitendra Yadav, P.S. Mohan
Garden.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

07.04.2025

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1. This hearing has been done through hybrid mode.
2. The present application under Section 439 of the Cr.P.C. seeks regular bail in case FIR No. 105/2022 under Section 21 of the NDPS Act, registered at P.S. Mohan Garden.
3. The case of the prosecution is that on 24.01.2024, at about 10:45-11:00 P.M., secret information was received by SI Manish Halda, with regard to one foreigner supplying drugs in the nearby area. The said information was shared with the SHO, Mohan Garden, who after verifying the same, shared the same with the ACP Najafgarh, for further necessary action. Thereafter, it is alleged that a team was constituted and on the said date at about 10.55 P.M., the applicant was seen coming from Nala Road and the secret informer identified him as the person who was dealing in drugs. It is alleged that after confronting the applicant, notice under Section



50 of the NDPS was given and further information was shared with the SHO PS Mohan Garden, in pursuance of which the ACP came at the spot and a search was conducted. It is alleged that from the left side pocket of the applicant's jeans, a total of 263 grams of heroin was recovered from his possession. Consequently, the present FIR was registered. After investigation, chargesheet has been filed and the matter is now listed before the learned Special Court for prosecution evidence.

4. Learned counsel appearing on behalf of the applicant submitted that there has been violation of Section 42 of the NDPS Act. It is submitted that information reduced into writing by SI Manish Halda vide DD No. 0098A was never forwarded to the superior officials in terms of Section 42 (2) of the NDPS Act.

5. Reliance is placed on the following judgment **Karnail Singh vs. State of Haryana (2009) 8 SCC 539**.

6. It is further submitted that the applicant is in custody since 26.01.2022 and has undergone a custody period of approximately 3 years and 2 months. Further, it is submitted that out of 13 prosecution witnesses, only 7 have been examined so far.

7. Learned APP for the State, on instructions from the Investigating Officer, submits that the recovery in the present case is of commercial nature and therefore, in view of the same, Section 37 of the NDPS Act would be attracted and since the trial is pending, the applicant should not be released.

8. Heard learned counsel for the parties and pursued the records:-

9. Section 42 (2) of the NDPS Act, reads as under:-

42. Power of entry, search, seizure and arrest without warrant or authorisation.—



(1) ***

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

10. In the present case, the information was reduced into writing by SI Manish Halda *vide* DD No. 0098A dated 24.01.2022. The said entry does not have any endorsement to reflect that the same was forwarded to superior officials.

11. On a pointed query, learned APP, on instructions from the Investigating Officer, submits that there is no document on record to show that the said DD entry was forwarded to the immediate superior officials.

12. In these circumstances, compliance of mandatory provision of Section 42(2) of the NDPS Act, *prima facie*, has not been done. Non compliance of the said mandatory provision and the fact that the applicant is not involved in any other offence satisfies the requirement of Section 37 of the NDPS Act. The present FIR came to be registered on 25.01.2022 and the applicant was subsequently arrested on 25.01.2022. Chargesheet in the present case has been filed. The prosecution has cited 13 witnesses, out of which 7 witnesses have been examined. The trial is not likely to be completed in the near future.

13. The Hon’ble Supreme Court in **Rabi Prakash vs. State of Odisha, 2023 SCC Online SC 1109** *vide* order dated 13.07.2023 has observed and held as under:

“2.The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on NandapurSemiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and



detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

14. The Hon’ble Supreme Court in **Man Mandal and Another. vs. State of West Bengal, 2023 SCC Online SC 1868** has held as under:

“2. Learned counsel for the petitioners submitted that the 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.

5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the quantity being commercial in nature, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the 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 are inclined to grant bail to the petitioners.”

15. In totality of the facts and circumstances, the present application is



allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with one surety of the like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
16. The application is allowed and disposed of accordingly.
 17. Pending application(s), if any, also stands disposed of.
 18. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.
 19. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
 20. Order be uploaded on the website of this court, *forthwith*.

AMIT SHARMA, J

APRIL 7, 2025/nk/Pc

Click here to check corrigendum, if anyy