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

+ **BAIL APPLN. 3425/2024**

OKEKE ONYEDIKA NELSONPetitioner

Through: Mr. Rohan Gupta, Adv.
versus

STATE (NCT OF DELHI)Respondent

Through: Mr. Utkarsh, APP for the State.
SI Sandeep Kumar, Narcotics
Squad, South District.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **11.03.2025**

1. This hearing has been done through hybrid mode.
2. The present second bail application under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeks regular bail in case FIR No. 554/2021 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and Section 14 of the Foreigner's Act, 1946 registered at P.S. Mehrauli.
3. The case of the prosecution is that on the basis of secret information a raiding party was organised on 30.09.2021. At 10:30 P.M., the present applicant was detained at the instance of secret informer. After complying with the provisions of the NDPS Act, a search was conducted and *charas* weighing 1032 grams was recovered from the bag carried by the present applicant. After completion of the investigation, the chargesheet stands filed before the Court of competent jurisdiction.



4. Learned counsel for the applicant submits that he was apprehended by the police officials on 30.09.2021 while he was returning from Church at about 10:00 P.M. It is also his case that the applicant's signatures were taken by the police on some written, semi-written and blank papers which were later used to implicate the applicant in the present case after planting the alleged contraband on him. It is further submitted that the proceedings under Section 52A of the NDPS Act were held on 08.10.2021 before the learned Duty Metropolitan Magistrate, Saket Courts, Delhi, however the samples of the alleged contraband being '*Charas/ Marijuana*' were sent to the FSL Rohini for chemical examination on 08.12.2021, *i.e.*, after almost 2 months. Thus, it is alleged that there has been an undue delay in sending the samples of the contraband to the FSL which is contrary to the procedure. It is also pointed out by the learned counsel that as per the seizure memo dated 30.09.2021, 1032 grams of *Charas* (including the weight of the polythene) was recovered from the possession of the applicant, however, the quantity of the contraband produced before the learned Duty Metropolitan Magistrate during the proceedings under Section 52A of the NDPS Act was found to be 1052 grams. It is submitted that the said proceedings were conducted in the absence of the present applicant. Thus, there is a clear violation of the provisions under Section 52A of the NDPS Act.

5. Learned counsel further submits that the investigation in the present case is complete and chargesheet has been filed on 28.03.2022 and charges have been framed *qua* the present applicant. He further submits that the alleged contraband recovered from the possession of the applicant in the present case is 1032 grams, which is marginally above the prescribed



commercial quantity for *Charas* under the NDPS Act, i.e., 1 Kg. It is further submitted that the petitioner has undergone a long period of incarceration of approximately 3 years and 5 months in judicial custody and since only 5 prosecution witnesses out of the 17 witnesses cited have been examined so far and trial is not likely to be completed in the near future. Reliance is placed upon the order passed by the Hon'ble Supreme Court in **Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109**.

6. *Per Contra*, learned APP for the State submits that the quantity involved in the present case is commercial in nature and therefore, rigours of Section 37 of the NDPS Act would be squarely applicable.

7. Heard learned counsels for the parties and perused the records.

8. It is a matter of record that the earlier bail application being BAIL APPLN. 3119/2023 filed by the applicant was dismissed as withdrawn *vide* order dated 26.07.2024 passed by Coordinate Bench of this Court.

9. The Hon'ble Supreme Court in **Rabi Prakash (supra)** 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 Nandapur-Semiliguda 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.”

10. The Hon’ble Supreme Court in **Man Mandal and Anr. v. State of West Bengal, 2023 SCC Online SC 1868**, has observed and 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.

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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.”

11. The applicant was arrested on 02.10.2021. The investigation in the present case stands complete and the chargesheet has been filed. Further, the charge has been framed against the applicant under Section 20(b)(ii)(C) of the NDPS Act *vide* order on charge dated 08.06.2022 by the learned Special Judge-NDPS/ASJ (South), Saket Courts. Perusal of the nominal roll dated 12.10.2024 reflects that the applicant has been in custody since 02.10.2021 *i.e.*, for more than 3 years 5 months approximately. Out of 17 witnesses cited by the prosecution, only 5 witnesses have been examined



so far. The earlier bail application filed before this Court was dismissed as withdrawn *vide* order dated 26.07.2024 by a Coordinate Bench of this Court. The applicant is not involved in any other previous offences and there is no likelihood of the trial being completed within a reasonable time. Considering the delay in trial and long incarceration of more than 3 years and 5 months the embargo under Section 37 of the NDPS Act, in view of the aforesaid judgments passed by the Hon'ble Supreme Court, at this stage, will not be applicable in the facts and circumstances of the present case.

12. In totality of the facts and circumstances of the case, the applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to 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.

13. The application is allowed and disposed of accordingly.



14. Pending application(s), if any, also stand disposed of.
15. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present bail application.
16. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
17. Order be uploaded on the website of this court *forthwith*.

MARCH 11, 2025/nk

AMIT SHARMA, J

Click here to check corrigendum, if any