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

+ **BAIL APPLN. 3660/2024 & CRL.M.As. 3976/2025, 3977/2025**

SALMAN

.....Petitioner

Through: Mr. Karan Verma, Mr. Nayan Maggo
and Ms. Khushi Mangla, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
along with SI K. G. Yadav, NDR,
Crime Branch

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **11.02.2025**

1. The present application has been filed under Section 483 read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of regular bail to the Applicant in FIR No. 207/2022 registered under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) at Police Station (PS) Crime Branch.

Brief Facts

2. As per the case of the prosecution set out in the status report, on 13.09.2022 a secret information was received at ER-III Crime Branch Office and ASI Satish was informed about one person namely Applicant/Salman that the said Salman along with his associate are running a syndicate of illegal supply of *Ganja* in wholesale in Delhi and Meerut. As per the said secret information Salman along with his associate was to travel on the same



day between 3:00 AM to 4:00 AM in a Honda City Car from Seelampur to supply *Ganja* towards Bhopara, Uttar Pradesh.

2.1. It is stated that a GD No. 02A at 2:41 AM dated 13.09.2022 was lodged and a raiding party was formed. It is stated that near the DTC Bus Depot, the raiding team requested people to join the investigation, however, all the said persons left the spot and did not join.

2.2. It is stated that at 04:50 AM a Gold Colour Honda City Car was identified at the spot, by the informer which was being driven by the Applicant/Salman. It is stated that the raiding party tried to stop the said car but driver of the said Car tried to escape. It is stated that the said Car was ultimately stopped.

2.3. It is stated that in the said Car two (2) people were found, one was driving the car and other was sitting at the back. It is stated that one (1) white gunny bag (Katta) was kept on the front seat of the car and two (2) white gunny bag (Katta) were kept at the back seat. It is stated that the said two (2) people were interrogated and their identity was revealed as (i) Applicant/Salman (who was driving the car) and (ii) Talim alias Talib (who was sitting on the rear seat of the car). It is stated that the both of them were informed about the raid and their legal rights to get searched in the presence of a Gazetted Officer or Magistrate. It is stated that ASI Satish gave them notice under Section 50 of the NDPS Act which was thereafter, signed by them. It is stated that the said two (2) persons denied to exercise their legal rights.

2.4. It is stated that while the search of the car was conducted the raiding party found *Ganja* in all the three (3) white colored gunny bag(s) (Katta). It is stated that thereafter the Applicant and co-accused Talim alias Talib



confessed that they had bought the said contraband from Andhra Pradesh. It is stated that the said gunny bags were weighed and were found to be 17 Kgs each, totaling to 51 Kgs of *Ganja*. It is stated that thereafter, the captioned FIR was registered.

2.5. It is stated that during the investigation Applicant/Salman disclosed that he was illiterate and was a daily wager. It is stated that he further disclosed that due to financial constraints he came in contact with one Sharukh who used to illegally import *Ganja* from Andhra Pradesh and supply it in Meerut and other areas.

2.6. It is stated that the Applicant/Salman further disclosed that 6-7 days earlier i.e., before the date of arrest, he along with the co-accused Talim alias Talib went to Ankapalli, Andhra Pradesh by Honda City Car.

2.7. It is stated that the accused persons were arrested and are currently in JC.

Arguments of the Applicant

3. Learned counsel for the Applicant states that the Applicant has been falsely implicated in the captioned FIR as the allegedly recover made of the substance is not *Ganja*.

3.1. He states that the Applicant moved an application for bail before the Trial Court which was dismissed vide order dated 19.09.2024.

3.2. He states that in the present case there is non-compliance of Section 42 of the NDPS Act. He states that the prosecution has not placed on record any authorization which was obtained by the ASI Satish Kumar to conduct the search and seizure after the sunset and before the sunrise. In this regards he relies upon the judgment of this Court in the case of **Tannu Ruhela v.**



GNCTD¹, and of the Supreme Court in the case of **State of Punjab v. Balbir Singh²** and **Sukhdev v. State of Haryana³**.

3.3. He states that no photography and videography was done by the raiding party during the course of search and seizure and further no efforts were made to trace any CCTV footage of the cameras installed in the vicinity from where the recovery was made.

3.4. He states that as per the prosecution the recovery was made near a DTC Bus Depot which is a crowded place and independent witnesses could have easily been joined, which was not done by the raiding party.

3.5. He states that the Applicant has been in custody since 13.09.2022 and the trial is to take long time to conclude. He states that there are approximately 25 witnesses and majority of them are yet to be examined by the Court. He states that the Applicant herein has clean antecedents and has no similar cases pending against him. He states that since the chargesheet has been filed there is no requirement of keeping the Applicant in jail.

3.6. He states that the Applicant will reside at the residential address given in the Nominal Roll.

Arguments of the State

4. In reply, Mr. Khanna, learned APP states that the Applicant herein along with the co-accused was apprehended with 51 Kgs of *Ganja* which is a commercial quantity and in-fact double the threshold commercial quantity.

4.1. He states that the Applicant herein was working with co-accused Talim alias Talib and was operating as a part of an organized inter-state drug

¹ Bail APPL No. 792/2024 decided on 10.07.2024.

² 1994 AIR 1872.

³ AIR 2013 SC 953.



syndicate originating from Andhra Pradesh, spreading to the other far away states and cities in India.

4.2. He states that the Applicant herein is threat to the society at large and is also putting people in the danger of getting addicted to the illegal narcotics.

4.3. He states that the Applicant if released on bail there is a possibility that the accused might get involved in other offence of same nature.

4.4. He states that there are 23 witnesses, out of which 7 have been fully examined and 5 witnesses have been partly examined.

4.5. He states that the co-accused Talim alias Talib was denied bail by a co-ordinate bench of this Court in Bail APPL No. 1907/2024 vide judgment dated 02.08.2024.

4.6. He states that Section 42 of the NDPS Act was duly complied with the relevant GD entry forms part of the charge-sheet.

4.7. He states that supplementary chargesheet qua a co-accused Saddam is to be filed and there would be two (2) additional witnesses which will have to be examined qua the said accused. He states that none of the witnesses (who are already examined) will have to be re-examined qua the supplementary chargesheet which has to be filed.

5. He has handed over a brief note dated 11.02.2025 setting out the grounds urged for not granting bail to the Applicant.

Analysis and conclusion

6. The Supreme Court has consistently held that delay in trial/prolonged trial is antithetical to the fundamental right enshrined in Article 21 of the Constitution of India. The Supreme Court has held that even in cases relating to NDPS if the prosecution is unable to conclude the trial within a



reasonable period the accused would be entitled to pray for bail if the accused is not liable for the delay.

6.1. The Supreme Court in **Rabi Prakash v. State of Odisha**⁴ where a recovery of 247 Kgs of *Ganja* was made and the accused had been in custody for more than three and a half years, with no other criminal antecedents, the Court held as under:

“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.”

(Emphasis supplied)

6.2. In **Man Mandal v State of West Bengal**⁵ where the seizure was commercial in nature and the accused therein had been incarcerated for about two years and there was no hope for the trial to be concluded soon, the Supreme Court while granting bail stated as under:

“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.”

(Emphasis supplied)

⁴ 2023 SCC OnLine SC 1109.

⁵ 2023 SCC OnLine SC 1868.



6.3. In **Mohd. Muslim alias Hussain v State (NCT of Delhi)**⁶ the Court stated that, grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act. The Supreme Court noted as under:

“21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*¹⁹). **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,

⁶ 2023 SCC OnLine SC 352.



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 1940). 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)

6.4. The above judgments emphasized that if prosecution is unable to conclude trial in NDPS matters speedily it cannot rely upon the fetter of Section 37 to oppose the bail of the accused who are under trial.

7. In the facts of the present case, as per the Nominal Roll dated 05.11.2024 the Applicant has been in jail for 2 Years 1 Month 17 Days (which period as on date would be approx. 2 Years and 4 Months) since the date of his arrest i.e., 13.09.2022. The said Nominal Roll also reflects that the Applicant is 29 years old and has no criminal antecedents under NDPS Act and his conduct in the jail has been satisfactory.

7.1. The chargesheet against the Applicant has been filed. Admittedly there are 23 witnesses which have to be examined and out of said 23 witnesses as on date only 12 witnesses have been examined/partly examined. Further out of the said 12 witnesses, 5 witnesses have been partly examined. The witnesses were last examined on November, 2024 and the next date of hearing before the Trial Court is 13.02.2025. As per the record



supplementary charge-sheet is yet to be filed against co-accused Saddam and two (2) additional witnesses are to be examined qua the said co-accused Saddam. It is thus apparent that conclusion of trial is likely to take long time.

8. In the aforementioned facts, it is evident that the Applicant who was arrested on 13.09.2022 has not contributed to any delay in the trial and yet the trial has been proceeding slow. It is correct that the quantity recovered from the Applicant is commercial in nature and the provisions of Section 37 of the NDPS Act are attracted. However, in these facts where conclusion of trial cannot be foreseen in near future, this Court is satisfied that the conditions of Section 37 of the NDPS Act can be dispensed with at this stage especially in view of the fact that the Applicant does not have any criminal priors.

9. In view of the foregoing, without adverting to the merits and commenting thereon and in view of the overall facts and circumstances, this Court deems this to be a suitable case for the Applicant's release on bail. Therefore, the Applicant is directed to be released on bail upon providing a personal bond in the sum of Rs. 1,00,000/- with one sound surety of the like amount subject to the satisfaction of the Trial Court, and further subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Court.
- (ii) Applicant shall provide permanent address to the Trial Court and the I.O. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.



- (iii) Applicant shall appear before the Court as and when the matter is taken up for hearing; and not seek any adjournment.
 - (iv) Applicant shall join investigation as and when called by the IO concerned.
 - (v) Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - (vi) Applicant will report to the jurisdictional SHO in which the Applicant resides on every fourth Thursday of every month, at 4:00 PM, and will not be kept waiting for more than an hour. The concerned I.O. will inform the jurisdictional SHO about the passing of this order.
 - (vii) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.
10. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
11. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter
12. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
13. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.



14. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 11, 2025/sk