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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 4341/2024 & CRL.M.A. 35491/2024

SAHIRA KHATOON

.....Petitioner

Through: Mohd. Suza Faisal, Adv.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, SSC with Ms.
Anoushka Bhalla, Ms. Tracy, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

25.02.2025

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1. This is a petition seeking regular bail in NCB Case No. VIII/63/DZU/2022, under Section 21(C) read with Section 29 NDPS Act, registered at Police Station NCB.
2. As per the complaint filed by the NCB, Mr. Anup Kumar, JIO, received secret information that one parcel bearing no. 31670430934 is lying at Aramex India Pvt. Ltd., Plot No. 211, Village Bamnoli, Dwarka, Sector-28, New Delhi-110077 which is suspected to contain narcotic, psychotropic substances. Thereafter, on completion of formalities, the parcel was seized and checked by the NCB Team. On checking the parcel, besides containing shirts, buttons, etc., also contained narcotic, which on checking, was found to be Amphetamine (as per the CRCL report, Methamphetamine) and weighed total 174 grams. The sender of parcel was identified as Anusaya Manohar Singh and the receiver was in Australia. Subsequently, on further



investigation, the NCB discovered that it was one Nurshied Mansuri, who had booked the parcel.

3. During investigation, Mr. Mansuri, disclosed that he was introduced to Rahish Nadir Ali through his sister i.e. the petitioner. The conversations regarding the parcel were between Rahish and Nurshied Mansuri. He also provided evidence of payment made by Rahish Nadir Ali to the petitioner, hence, the petitioner was also arrested.
4. Further, one more parcel was recovered at the instance of Nurshied Mansuri containing 283 grams of methamphetamine.
5. Mr. Faisal, learned counsel for the petitioner states that in the present case, the petitioner has been arrested on 31.08.2022 and name of the petitioner has been disclosed by co-accused in his disclosure statement.
6. Learned counsel further submits that the only allegation against the petitioner is that of receiving an amount of Rs.12,860/- in her bank account from co-accused Rahish via UPI transaction. However, there is no evidence to show that the said amount was paid in connection with the recovered substance. Further, co-accused Nurshied Mansuri had given the petitioner's account details as he did not want to receive the amount in his account.
7. *Per Contra*, learned counsel for the respondent submits that since there is recovery of commercial quantity, the bar under section 37 of NDPS Act gets attracted. Further, the petitioner is a member of drug syndicate.
8. Furthermore, a sum of Rs. 12,860/- was transferred to the petitioner, , on 13.08.2022 from co-accused Rahish via UPI transaction using



phone number 9769652754. No satisfactory explanation has been provided by the petitioner regarding the receipt of this amount in her account, which indicates her involvement in the present case.

9. I have heard learned counsel for the parties.
10. In the present case, the petitioner has been arrested on the disclosure statement of her brother as well as the entry of Rs.12,860/- in her bank account. Admittedly, there is no recovery from the petitioner. With regard to the UPI transaction, the explanation offered by the petitioner that Rs.12,860/- was received in her account as co-accused Nurshied Mansuri did not want to receive the entire money in his account, and had, hence, given the details of his sister's account, is plausible.
11. Further, to grant bail in NDPS Act, the accused person has to cross the hurdles of twin conditions mentioned in section 37 of NDPS Act. Time and again, the Hon'ble Supreme Court in catena of judgments has laid down that the twin conditions can be relaxed provided the accused person has undergone substantial period of incarceration and the trial is unlikely to end in near future. The accused person has a right to speedy trial which flows from Article 21 of Constitution of India. In ***Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352***, the Hon'ble Supreme Court observed as under:-

“13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as



observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly.....

21. 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 country²⁰. 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*²¹ 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, 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”²² (also see Donald Clemmer's ‘The Prison Community’ published in 1940²³). 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.”

12. The Hon’ble Supreme Court in ***Man Mandal v. State of W.B., 2023 SCC OnLine SC 1868*** granted bail to the petitioners on the ground that they had undergone almost 2 years and the trial is not likely to be concluded in near future. Also, in ***Dheeraj Kumar Shukla v. State of U.P., 2023 SCC OnLine SC 918***, the Hon’ble Supreme Court dispensed the rigors of section 37 of NDPS Act and granted bail to the petitioner therein. Relevant para of the said judgment is extracted below:-

“3. It appears that some of the occupants of the „Honda City” Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

13. The Hon’ble Supreme Court in ***Badsha Sk. v. State of W.B., 2023 SCC***



OnLine SC 1867 has granted bail to the petitioner, who had been in custody for more than 2 years with trial yet to begin.

14. In the present case, the petitioner has been in custody for more than 2 years 5 months i.e. 31.08.2022. In addition, the prosecution has cited total 16 witnesses to be examined and as of now, charges have not been framed yet. I am of the view that the restrictions given under section 37 of NDPS Act cannot take precedence over the petitioner's rights guaranteed under Article 21 of Constitution of India. Hence, Article 21 of Constitution will prevail over the restrictions given under section 37 of NDPS Act as the petitioner has undergone more than 2 years 5 months of custody and the trial is not likely to conclude in near future.
15. Even though the petitioner has another case bearing SC No. 82/2023 which is pending, the petitioner in that case has already been granted bail by the learned ASJ.
16. Last and importantly, co-accused Nurshied Mansuri who had given the statement implicating the petitioner has already been granted bail by this Court *vide* Order dated 17.02.2025.
17. For the said reasons, the petition is allowed and the petitioner is granted bail subject to the following terms and conditions:-
 - A. The petitioner shall furnish a personal bond in the sum of Rs 10,000 (Rupees ten thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned trial court;
 - B. The petitioner shall provide her address at Delhi to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.



- C. The petitioner shall appear before the Trial Court as and when the matter is taken up for hearing.
- D. The petitioner shall provide her 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.
- E. The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
18. With these directions, the petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 25, 2025 /(MS)

Click here to check corrigendum, if any