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

+ **BAIL APPLN. 4363/2024**

PRABHAT SINH @ BAPU

.....Petitioner

Through: Mr.Sanjeev Kumar, Ms.Dolly
Sharma, Ms.Saivi Kumari,
Mr.S.Kumar and Mr.Sachin Kumar,
Advocates

versus

STATE OF NCT OF DELHI THROUGH SHO/INCHARGE

.....Respondent

Through: Ms.Richa Dhawan, APP for the State
alongwith ASI Sachin Singh, P.S.-
ARSC/Crime Branch

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

22.09.2025

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1. Claiming himself to be falsely implicated, the applicant herein seeks indulgence of this Court for grant of bail during pendency of the trial in the criminal proceedings arising out of FIR No. 44/2023 dated 20.02.2023 for the offences punishable under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'), registered at Police Station Crime Branch, South Delhi.

2. Briefly speaking, per FIR, on a secret information received on 19.02.2023 at around 4:15 PM in the area of Rohini, Delhi, it was reported that one Rakesh Thakur @ Sunny, a resident of Kalath, Himachal Pradesh, was involved in the supply of hashish and had recently supplied 2 kilograms of the contraband to a person from Gujarat named Prabhat Sinh @ Bapu (applicant herein). It was further informed that Rakesh @ Sunny, along with



his associates, had arrived in Delhi to collect his commission and was presently in the area near Kalra Hospital, Palam.

2.1 Acting on this input, the police party reached the said location at around 5:00 PM and found a car parked nearby, which was identified by the informer as a being one rented by Rakesh. It was further revealed that Rakesh was staying in Hotel Ramada-Inn along with three other persons. Upon visiting the hotel, the police found four individuals smoking in Room No. 106, who identified themselves as Rakesh Thakur @ Sunny, Tarun Guleria @ Tanu, Rahul Chauhan, and Aas Mohammad @ Aashu. When questioned about the alleged drug supply, Rakesh confessed that the applicant/Prabhat Singh @ Bapu was present in the Arjun Nagar area and had the hashish with him. He further received a phone call from Prabhat Singh asking to meet him at a parking in Arjun Nagar.

2.2 Subsequently, the police team along with the accused left for Arjun Nagar and reached the location around 6:30 PM. With the assistance of Rakesh @ Sunny, the applicant/Prabhat Singh @ Bapu was located and apprehended while descending the stairs of a house numbered G-186, Arjun Nagar. After informing the applicant/Prabhat Singh of his legal rights under Section 50 of the NDPS Act and obtaining his refusal to be searched before a Magistrate or Gazetted Officer (duly recorded), a search of the bag he was carrying, revealed two packets wrapped in khaki tape containing a black-coloured substance. Upon testing, the substance was confirmed to be hashish weighing a total of 2.020 kilograms.

2.3 The contraband was sealed and seized according to legal procedure, and a seizure memo was prepared. The accused persons, along with the sealed case property, were taken to the police office. The information was



duly entered into the Daily Diary, and further procedural compliance under Sections 42, 50, and 55 of the NDPS Act was ensured. A body search of Prabhat Singh was conducted before a Gazetted Officer, but no further contraband was recovered.

2.4 Based on the recovery, the applicant/Prabhat Singh @ Bapu was thus found in possession of 2.020 kilograms of hashish in contravention of Section 20 of the NDPS Act. Additionally, the co-accused persons, i.e., Rakesh Thakur @ Sunny, Tarun Guleria @ Tanu, Rahul Chauhan, Aas Mohammad @ Aashu, and Rakesh Thakor, were found to have supported and acted in furtherance of a common design to facilitate the trafficking of narcotics. Hence, they were all booked under Section 29 of the NDPS Act for abetment and criminal conspiracy.

3. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

4. Learned counsel for the applicant would inter alia argue on the grounds pleaded in the petition as below:

4.1 That the applicant has been falsely implicated in the present case. No contraband has been recovered from the possession of applicant. The contraband which is alleged to have been recovered, has been planted upon the applicant by the police.

4.2 That as per case of prosecution applicant has committed offences under section 20 and 29 of the NDPS Act involving commercial quantity of Charas. Charas which was allegedly recovered from the bag of the applicant-accused is 2020 grams which falls in commercial quantity. Charas upto 1000 grams falls in intermediate quantity.

4.3 That section 37 of the NDPS Act regulates the grant of bail in cases



involving offences under the NDPS Act. The twin conditions specified in clause (b) of sub-section (1) of section 37 of the NDPS Act are required to be satisfied for granting bail in case involving commercial quantity and sections 19, 24, 27A.

4.4 That the principle of melting down the legislative policy against the grant of bail has now become norm and general rule. As per said principle the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time. The prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty.

4.5 That in ***Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240***, Hon'ble Supreme Court has evolved the principle that the evolution of bail jurisprudence in India underscores that the 'issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process.

4.6 That in case of ***Union of India v. K. A. Najeeb, AIR 2021 SC 712*** has expanded the principle evolved [in *Gudikanti Narasimhulu* (supra)] even in a case under the provisions of the Unlawful Activities (Prevention) Act, 1967 notwithstanding the statutory embargo contained in Section 43-D(5) of that UAPA Act, laying down that the legislative policy against the grant of bail will melt down where there is no likelihood of trial being completed within a reasonable time. The prolonged incarceration of an accused person, pending trial, amounts to an unjust deprivation of personal liberty. Similar approach was taken in NDPS Act cases also.

4.7 That in ***Badsha SK v. The State of West Bengal*** (order dated



13.09.2023 passed in Special Leave Petition (Crl.) 9715/2023), the accused therein had been in custody for more than two years and four months with the trial yet to begin. The accused was released on bail.

4.8 That the applicant is in custody since 19.02.2023. The charge has not been framed and therefore trial has not been commenced. There are 19 (nineteen) witnesses cited by the prosecution. As trial has not been commenced and after commencement of trial the prosecution has to examine 19 witnesses and therefore, there is no likelihood of trial being completed within a reasonable time. The prolonged incarceration of an applicant, pending trial, amounts to an unjust deprivation of personal liberty.

4.9 That in the present case, the raiding team purportedly entered into a house/building and detained/arrested applicant inside the said house and allegedly recovered charas from the bag carrying by applicant in his hand at 07.30 PM on 19.02.2023. At that point of time during winter season, there was sunset, and therefore, the recovery was allegedly effected between sunset and sunrise from the applicant when he was in the house and same could be recovered on secret information received by the police officer. Therefore, the raiding team was supposed to comply the proviso second to sub-section (1) of section 42 of the NDPS Act and obtain a search warrant or authorisation. And if a search warrant or authorisation could not have been obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, then this fact/reason must have been recorded before entering said house but there is neither search warrant nor authorisation to enter the house nor recording of grounds of said belief and therefore, there is total non-compliance of said second proviso to sub-section (I) of section 42 of the NDPS Act.



4.10 That Section 50 of the NDPS Act was not complied with by the investigating authorities, at the time of giving notice under Section 50 of NDPS Act accused is informed his legal right to get himself searched in the presence of any Gazetted Officer or Magistrate and not in the presence of nearest Gazetted Officer or Magistrate, then this is in violation of mandatory provisions of Section 50 of the NDPS Act and said notice amount to no notice in the eyes of law. On the said violation, Delhi High Court had granted bail in commercial quantity observing that rigors of section 37 of NDPS Act would not be an obstacle in the release of the accused. The counsel places reliance on ***Mohd Jabir v. State of NCT of Delhi***.

4.11 He would also submit that 8 co-accused persons of the applicant have already been granted bail by the learned Sessions Court.

5. Learned APP for the State would oppose the bail plea arguing that the applicant deserves no indulgence from this Court as commercial quantity of charas is involved in the incident and there remains a genuine risk of him absconding or tampering with the evidence.

5.1 She would further submit that the petitioner is the king pin of the entire racket and other co-accused persons were acting at his instance.

5.2 She submits that the drug menace is affecting the entire society and especially, it is targeting the younger generation which in turn is adversely affecting the economy of the country. Moreover, illicit money is being used for drug trafficking and further promotion of the same is highly alarming and undesirable for the society at large.

6. Having heard, I am of the view that there may be some substance in certain arguments on merits addressed by the learned counsel for the applicant but the same are matter of trial. However, I am of the view that at



this stage, in light thereof, it is a case for bail. Let us see how.

7. Section 37 of the NDPS Act restricts the grant of bail in cases involving commercial quantity and certain serious offences, requiring satisfaction of twin conditions. However, prolonged incarceration without progress in trial amounts to an unjust deprivation of liberty, and in such situations, the legislative embargo against bail melts down.

8. In the present case, the applicant has been in custody for about two years and seven months. The charge has not been framed, and 19 witnesses are yet to be examined, making an early conclusion of trial unlikely. Further, procedural lapses are alleged i.e. non-compliance with Section 42 regarding search between sunset and sunrise without warrant or recorded reasons, and violation of Section 50 by failing to properly inform the accused of his right to be searched before a Magistrate or Gazetted Officer.

9. Eight co-accused have already been granted bail.

10. Investigation is over qua the applicant as the charge sheet has been filed. He is thus not required for any custodial investigation. The testimony of prosecution witnesses is being recorded. As far as tampering of the evidence is concerned, the same seems to be an unfounded suspicion since most of the evidence is documentary in nature, which has already been seized by the prosecution and is beyond the reach of the applicant. As regards influencing the witnesses, they are all officials of the prosecution and thus, it is an unfounded suspicion that she may try to reach out.

11. It transpires that the role attributed to the applicant is that of the carrier of the contraband which was physically recovered from him, though, it is also the case of the prosecution that the other co-accused as many as 8 of them are on bail, but since they were arrayed as accused under Section 29



of NDPS being the mastermind and conspirators of the entire racket of indulging in the illicit sale/purchase of the contraband. Therefore, the bail is being opposed that applicant's case stands on different footing.

12. I am unable to persuade myself with the aforesaid argument, inasmuch as, role of the applicant stands on equal footing if not lesser than the conspirators, the alleged suppliers of contraband, on whose behalf he was allegedly working as a carrier of the contraband.

13. Not only the applicant has undergone inordinate incarceration since 20.02.2023 (2 years and 7 months) but even otherwise, given the snail's pace of the proceedings in the learned Trial Court, it may so happen that before the same concludes, the applicant may end up undergoing the entire sentence without being held guilty.

14. Be that as it may, trite as it may sound, until proved guilty the presumption is of the innocence, and therefore, giving benefit of the same, the applicant is entitled to be enlarged on bail, at this stage.

15. It transpires that the applicant was arrested on 20.02.2023. He has no criminal antecedents of any kind. Further, the applicant has deep roots in society. Thus, the suspicion of flight risk or absconding is unfounded. Moreover, the applicant was granted interim bail on medical condition vide an order dated 09.01.2025 which was time and again extended and he has not misused the liberty granted to him.

16. Accordingly, the applicant is directed to be released on bail on his furnishing personal bond with solvent surety of like amount to the satisfaction of the Trial Court/Duty Judge concerned as the case may be, subject to the other usual conditions to be imposed by the learned Trial Court/Duty Court. In case, the applicant is found involved in any repeat



offence while on bail, the prosecution shall be at liberty to seek cancellation of the bail granted to the applicant in the present case vide instant order.

17. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same.

18. Accordingly, the bail application stands disposed of.

ARUN MONGA, J

SEPTEMBER 22, 2025/dy