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

+ **BAIL APPLN. 4460/2024**

ALOK SAXENA

.....Petitioner

Through: Mr. Shiv Ram Sharma, Mr. Trilok Nath Saxena, Mr. H.C. Kharbanda, Dr. Shiv Kumar Tiwari, Mr. Abhinav Saxena, Mr. Aakash Shankar and Mr. Amit Saxena, Advocates.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State with SI Amit, NR-1, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

17.03.2025

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1. This hearing has been done through hybrid mode.
2. This is the 2nd bail application filed under Section 439 of the Cr.P.C. seeking regular bail in case FIR No. 141/2021, under Section 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), registered at P.S. Crime Branch, New Delhi. However, chargesheet in the present FIR was filed for the offence punishable under Section 22 of the NDPS Act and charges in the present case were also framed under the same provision *vide* order dated 21.10.2023.
3. The first application on behalf of the applicant bearing **BAIL APPLN. 56/2022** was dismissed by a Coordinate Bench of this Court *vide* judgment dated 13.04.2022. The case of the prosecution as per the status report dated



15.01.2025 is that on 24.07.2021, an information was received at Crime Branch that the applicant will be supplying smack in Delhi. On the said information, a raiding party was constituted under the supervision of ASI Brahmdev. On pointing out of the informer, the present applicant was stopped and apprehended. It is stated that after compliance of notice under Section 50 of the NDPS Act, the applicant was searched and from his possession two packets of 1009 grams and 1001 grams were recovered. A total recovery of 2 Kgs and 10 Grams of smack was alleged to be recovered from the applicant. Subsequently, the FIR No. 141/2021 under Sections 21/25 of the NDPS Act was registered at PS Crime Branch. After the investigation the chargesheet stands filed before the Court of competent jurisdiction.

4. Learned counsel appearing on behalf of the applicant submits that initially the case was registered on an alleged recovery of smack however after the FSL report was submitted before the concerned Court it was revealed that what was recovered from the possession of the applicant was i.e. (i) Acetylcodeine, (ii) Tramadol and (iii) Dextromethorphan. In view of the above, it is submitted that it creates a serious doubt in the prosecution's case and the same should go in the favour of the applicant.

5. It is further submitted that the material recovered from the applicant does not come under the purview of the NDPS Act and in fact, the applicant has a valid license in his favour issued by Drug Control Department, Govt. of NCT of Delhi and is authorized to sell, stock, exhibit, offer, sale or distribute Tramadol. It is submitted that the alleged offence, if any, would be of the violation of the license issued and would, therefore, will not be liable to be prosecuted under the Narcotic Drugs and Psychotropic Substances Act, 1985. It is further submitted that there is non-compliance of Section 42(2) of the



NDPS Act, inasmuch as the information reduced into writing was not sent to the immediate superior officers within 72 hours as laid down in the aforesaid provision. It is further submitted that the aforesaid grounds had not been taken before the Coordinate Bench at the time of dismissal of the bail application on 13.04.2022. Reliance is placed on the judgment of Hon'ble Supreme Court in **Beckodan Abdul Rahiman v. State of Kerala, (2002) 4 SCC 229**, wherein it was held that the compliance of Section 42(2) of the NDPS Act was mandatory in nature.

6. Learned counsel for the applicant further submitted that the present applicant has been in judicial incarceration since 25.07.2021 and the delay in trial is violating his rights under Article 21 of the Constitution of India. Reliance has been placed upon a judgment of a Coordinate Bench of this Court in **Kanchan Yonjan vs. State (Govt. of NCT of Delhi) in BAIL APPLN. 2845/2023** dated 08.07.2024. Reliance has been placed on the aforesaid judgment to submit that even after a dismissal of a bail application by a Coordinate Bench of this Court, the matter can be re-considered specially in view of the delay in trial. Following paras of the said judgment have been relied upon:-

“27. The Hon'ble Apex Court in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan : (2004) 7 SCC 528 had observed as under:

“20. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier application.”

28. It has been held in a catena of judgments that there must be



30. The Hon’ble Apex Court in a catena of judgments has observed that every day spent in custody can provide a new cause of action for a bail application under certain circumstances. This leads to the principle that each additional day in custody could potentially alter the circumstances under which bail is considered, thereby necessitating a fresh evaluation of the bail application.”

(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.”

In the present case, the said information was reduced into writing by way of DD entry No. 0039A, Crime Branch, Delhi dated 24.07.2021. The said entry shows that there is an endorsement by way of some initials, however, the concerned person to whom the initials belongs is not mentioned thereon. It is further noted that in the list of witnesses, the concerned ACP to whom the said information was allegedly forwarded as compliance under Section 42(2) of the NDPS Act has not been made a witness. In these circumstances, compliance of mandatory provisions of Section 42(2) of the NDPS Act, *prima facie* has not been done. Non-compliance of the mandatory provisions Section 42(2) of the NDPS Act and the fact that the present applicant is not involved in any other offence satisfies the condition of Section 37 of the NDPS Act. It is also an admitted fact that the aforesaid ground was not taken at the time when the first application on behalf of the applicant was dismissed by the Coordinate Bench of this Court.

10. Moreover, the present FIR was registered on 24.07.2021 and the present applicant was arrested on 25.07.2021. The charge-sheet in this case was filed on 08.06.2022. The prior bail application of the present applicant was dismissed by a Coordinate Bench of this Court on 13.04.2022. The charges in the present case were framed on 09.10.2023 by the learned Special Court under Section 22 of the NDPS. The prosecution has cited 16 PWs and since then only 3 Prosecution Witnesses have been examined. The applicant has been in custody since 25.07.2021. As per the nominal roll dated 14.12.2024 received from the Superintendent of Prison, Central Jail, No. 8/9,



Tihar, Delhi, the applicant has undergone approximately 3 years 7 months in custody.

11. 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.”

12. The Hon'ble Supreme Court in **Man Mandal and Anr. 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.



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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.””

13. In view of the aforesaid 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.

14. The application is allowed and disposed of accordingly.

15. Pending application(s), if any, also stand disposed of.

16. 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.



17. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
18. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MARCH 17, 2025/bsr/sc

Click here to check corrigendum, if any