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

Date of decision: 25.02.2025

+ BAIL APPLN. 4606/2024

MUSHIR ALAM

.....Petitioner

Through: Mr. Tarish Vijay Sathe, Adv.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, SSC with Ms.
Poonam Rani and Ms. Shelly Dixit I.,
Advocates.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This present bail application has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking regular bail in Case No. VIII/37/DZU/2022 for offences under Sections 8C/22/23/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') registered at Police Station (P.S.) NCB/DZU RK Puram.

2. The case of the prosecution as borne out from the status report is that on 23.04.2022, on the basis of secret information, a parcel bearing AWB No.3658 lying at 'Universal Express', E- 114, Ground Floor near DDA Community centre, Mohammad Pur, New Delhi was suspected to contain contraband, accordingly, a raiding party was constituted. It was discovered that the said parcel was dispatched by the consignor Nikhil Verma, a resident of Kanpur, India and the consignee was named as Neetu, resident of USA.



The parcel was cut opened and it was found to contain 10 foot-mats of different colours wrapped in polythene. Each mat contained 995 strips containing *tramadol* with 10 tablets in each strip and total tablets were 9950 and total weight was calculated to be 3.29 kgs. Thereafter, Panchnama was prepared on the spot in the presence of independent witness.

2.1. It is stated that during investigation 'Universal Express' informed that that the parcel had been received from an agent in Kanpur namely 'New Classic Courier Company' through its proprietor Sh. Sonu Kapoor. Thereafter, on 13.06.2022, IO issued a notice under section 67 of NDPS Act to Mr. Sonu Kapoor and in his reply which he tendered on 28.06.2022 he stated that parcel in question was booked by 'Master Marine Logistics', whose proprietor is Mohd Siraj.

2.2. Thereafter, on 18.07.2022 notice was issued to Mohd Siraj, who on disclosure on 03.08.2022 stated that the parcel was given to him by the Applicant/Mushir Alam¹ on 22.04.2022. He further disclosed that on instructions of Applicant/Mushir Alam the parcel was picked up by Akash Gupta, who is an employee of the courier company and he received Rs. 15,000/- from Applicant/Mushir Alam in cash and Rs. 12000/- as well was paid to Sh. Sonu Kapoor, proprietor of 'New Classic Courier Company' in cash.

2.3. He further disclosed that copy of Adhaar and PAN card of Nikhil Verma (consigner) was provided by the Applicant/Mushir Alam and details of the consignee as well were sent by the Applicant through WhatsApp for booking the parcel. He further disclosed the mobile number of the

¹ alias Bablu



Applicant/Mushir Alam and the same was saved by him as 'Bablu Bhai MS Logistic'.

2.4. Thereafter, the I.O visited Tihar Jail on 03.01.2023 for the purpose of interrogation of the Applicant/Mushir Alam, who was found to be lodged in the said jail in pursuance of Case No. VIII/36/DZU/2022. It is stated that the Applicant disclosed that parcel in question and the details of the consignor i.e. Nikhil Verma was given to him by the co-accused namely Mohd Babar. Further on the very same day the Applicant/Mushir Alam was arrested in the subject case i.e., NCB Case No. VIII/37 /DZU/2022.

2.5. It is stated that the co-accused Mohd Babar had further disclosed that the parcel which contained Contraband was received by him from one person namely Aneesh, however, the said person has not been traced or arrested in the matter yet.

2.6. It is stated that in his statement the Applicant disclosed that he is aware about hiding of NRx medicine in the doormats and that he had received an amount of Rs. 5,000 from Mohd. Babar for the parcel booking and the amount was received in cash always.

Arguments of the Applicant

3. Mr. Sathe, learned counsel for the Applicant states that the Applicant has been falsely implicated in the captioned FIR only on the basis of the disclosure statements of the Applicant and co-accused Mohd. Babar. However, such disclosure statements are not admissible per se. In this regard, he relies upon the order passed the Supreme Court in **Bharat Chaudhary v. Union of India**².

² (2021) 20 SCC 50 Para 12 and 13



3.1. He states that no recovery of contraband has been affected from Applicant or at his instance and neither he is part of any conspiracy to sell or receive any drug or psychotropic substance.

3.2. He states that as per the disclosure statement of Applicant/Mushir Alam as well, he had simply forwarded the parcel that he had received from Mohd Babar. He states that the Applicant had no knowledge of the contents of the parcel and even as per the prosecution, the Applicant only received Rs. 5,000/- for handling the parcel.

3.3. He states that as per the disclosure statement of Mohd. Babar, the alleged source of the contraband found in the said parcel is one Aneesh; however, the said Aneesh has not been traced out till date.

3.4. He states that co-accused Mohd Babar has already been granted bail vide order 23.10.2024 passed by the coordinate bench of this Court in BAIL APPLN. 1094/2024. He states that the Applicant is entitled on parity with the co-accused Mohd Babar, since at this stage the allegation levelled against the Applicant and accused Mohd Babar in the subject case is that they simply forwarded the parcel containing contraband. Hence Applicant as well is entitled to bail on the principles of parity.

3.5. He states that the NCB is alleging CDR connectivity of present Applicant with co-accused persons, however, same is a matter of trial and cannot be a ground to deny the bail application of the Applicant.

3.6. He states that the SMS filed as Annexure R-1 to the status report is inadmissible as the same do not form part of the chargesheet. He states that no inference can be drawn against the Applicant as no amount of Rs. 45,000/- alleged in the SMS was actually credited to the bank account of the Applicant. He states that even the statement recorded under Section 67



NDPS Act do not refer to any such payment of Rs. 45,000/- from Mohd. Babar to the Applicant herein.

3.7. He states that the Applicant was arrested on 03.01.2023 and he has already undergone a substantial period of incarceration of 2 Years 10 days as per the Nominal Roll dated 14.01.2025 and an additional 45 days have gone by. He states that charges have been recently framed by the Trial Court on 22.02.2025 and examination of witnesses has to commence which includes examination of 17 witnesses, therefore there is no certain period in which the Trial will be completed and the Applicant cannot be detained for an indefinite period which would as a result violate right of the Applicant under Article 21 of the Constitution of India. He states that the chargesheet has already been filed and the investigation qua the Applicant is complete and therefore, no useful purpose would be served by keeping the Applicant in jail.

3.8. He further states that the Applicant undertakes to make himself available as and when directed by this Court or as required by the police officials /IO.

3.9. He states that similar circumstances where parcel AWB No. 3330874654 was intercepted containing *tramadol* tablets, both the Applicant herein³ and co-accused Mohd Babar⁴ have been granted bail by this Court.

Arguments of the State

4. In reply, learned SSC opposes the bail application of the Applicant. He states that the Applicant herein has been accused of in the offence of contraband (*tramadol*) supply.

³ BAIL APPLN. 1777/2024

⁴ BAIL APPLN. 1110/202



4.1. He states recovery of contraband in the present case from the Applicant is of commercial quantity, therefore, rigours of Section 37 of the NDPS Act are applicable and the Applicant should not be enlarged on bail.

4.2. He relies upon the SMS exchanged by the Applicant with co-accused Mohd. Babar annexed with the status report as Annexure R-1.

4.3. He states that previously as well the regular bail application of the Applicant filed before the Special Judge, NDPS-02, Patiala House Court, New Delhi (Trial Court) has already been dismissed by the Trial Court vide order dated 11.12.2024.

4.4. He states the investigation qua the Applicant stands complete and charges have been framed by the Trial Court vide order dated 22.02.2025.

Findings and Analysis

5. This Court has considered the submission of the parties and perused the material on record.

6. In the facts of the present case the recovery made in total was of 3.29 kgs of *tramadol* tablet which is a commercial quantity as per the NDPS Act. The said recovery of commercial quantity of *Ganja* would attract Section 37 of the NPDS Act and therefore, ordinarily the Applicant will have to satisfy the Court that the twin conditions of Section 37 of the NDPS Act for grant of bail are made out. However, the delay in conclusion of trial and long period of incarceration is also a vital factor which has to be kept in mind, while deciding the bail application under the NDPS Act.

7. As per the Nominal Roll of the Applicant dated 14.01.2025, the Applicant has been in jail for about 2 Years 10 days since the date of his arrest i.e., 03.01.2023. The said period currently stands at 2 years and 2 months approximately. The investigation qua Applicant is complete;



chargesheet against the Applicant has been filed and charges against the Applicant as well stands framed vide order 22.02.2025. Further it has been pointed out that there are 17 witnesses which have to be examined by the prosecution and since the stage of the examination of witnesses is yet to commence, therefore, in light of the said facts, it appears to this Court that a considerable time will be taken to conclude the trial.

8. 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 for bail if the accused is not liable for the delay. The following decisions are relevant in this regard:

8.1. In **Man Mandal v State of West Bengal**⁵ where the seizure was of commercial quantity and the accused had been incarcerated for almost 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)

8.2. 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

⁵ 2023 SCC OnLine SC 1868.

⁶ 2023 SCC OnLine SC 352.



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 Malik¹⁹). **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, 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)

9. In the aforementioned facts, it is evident that the Applicant was arrested on 03.01.2023 and he has not contributed to any delay in trial. Further the Nominal Roll as well reflects that his conduct in the jail has been recorded as satisfactory. It is correct that the quantity of contraband recovered from the Applicant is commercial in nature and the provisions of Section 37 of the NDPS Act are attracted. However, in these facts since the conclusion of trial cannot be foreseen in near future, therefore, this Court is satisfied that the conditions of Section 37 of the NDPS Act can be dispensed with at this stage.

10. The Applicant along with co-accused Mohd. Babar has been booked in two separate criminal cases simultaneously. The subject case no. is VIII/37/DZU/2022 and the other case no. is VIII/36/DZU/2022. The Applicant was arrested in the other case i.e. VIII/36/DZU/2022 on 26.04.2022 and he was arrested in the subject case on 03.01.2023. Though, the raid which is the subject matter of the present case was conducted on 23.04.2022 and the witness Mohd. Siraj had duly disclosed on 03.08.2022 that he received the parcel from the Applicant herein, the complaint fails to



explain as to why the Applicant herein was questioned belatedly on 03.01.2023 and formally arrested for the subject case on the same date.

11. The Applicant and co-accused Mohd. Babar have already been enlarged on bail in other Case No. VIII/36/DZU/2022; and co-accused Mohd. Babar has also been enlarged on bail in the subject Case No. VIII/37/DZU/2022. The Applicant is similarly placed as co-accused Mohd. Babar as they both have been arrested on the basis of this CDRs and disclosure statement. The transactions appear to have an identical modus-operandi and were discovered around the same time.

12. The Applicant has raised the plea that the Applicant cannot be held merely on the basis of the disclosure statements and the CDR can only be used as supporting or corroborative piece of evidence, admissibility whereof only be seen at the time of Trial. However, this Court is not considering the aforesaid pleas raised by the counsel for the Applicant since this Court has taken into consideration the submission of the Applicant with regard to her period of incarceration and the considerable delay in conclusion of the trial.

13. In the opinion of this Court, after a holistic assessment of all the facts and circumstances in the said matter, and that the trial in the matter is likely to take some time, it would not be prudent to keep the Applicant behind bars for an indefinite period, therefore, this Court deems fit that that Applicant be entitled to bail. As a result, the Applicant is directed to be released on bail upon providing a personal bond in the sum of Rs. 50,000/- with one 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 Trial Court.



- ii. Applicant shall provide his permanent address to the Trial Court. The Applicant shall intimate the said 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.
- 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 concerned IO of P.S. NCB/DZU, RK Puram, New Delhi every 1st Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.
- 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.
- viii. The Applicant shall not threaten the prosecution witnesses or tamper with the evidence of the case.

14. 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.

15. 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.



16. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. 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 25, 2025/ms

Click here to check corrigendum, if any