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

Date of decision: 03rd March, 2025

+ **BAIL APPLN. 4673/2024**

SHAZEB

.....Petitioner

Through: Mr. Aditya Aggarwal, Mr. Naveen
Panwar and Mr. Manas Agarwal,
Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the State
SI Soamya Kulhar, PS ANTF/Crime
Branch

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) read with Section 36 (A)(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) seeking grant of regular bail in FIR No. 0222/2021 registered under Sections 20/25 of the NDPS Act at Police Station (P.S.) Crime Branch on 16.11.2021.

Brief Facts

2. As per the case of the prosecution set out in the Status Report, on 15.11.2021 a call was received on the mobile phone of the Constable Anuj

Kumar from one Zakir Hussain¹ resident of Bareilly, UP, driver of a Tata Vehicle². It is stated that the caller stated that Applicant/Shazeb herein had hired his Tata Vehicle from Bareilly to Balagir, Odisha and has loaded some gunny bags containing goods in the said Tata Vehicle, beneath empty plastic crates, which according to caller/informer was *Ganja*.

2.1. It is stated that as per the caller they were likely to reach Majnu Ka Tila around 12:30 AM to 1:30 AM of 16.11.2021 climbing down Wazirabad bridge/flyover going towards Burari. It is stated that the said caller disclosed that some persons had gone to Balagir, Odisha along with his Tata Vehicle in their own Car³, to bring the goods, which were loaded in the Tata Vehicle. It is stated that those persons were accompanying the Tata Vehicle in the said Car.

2.2. It is stated that after taking necessary approvals as per Section 41 of the NDPS Act the information given by the caller was lodged vide GD No. 0001A dated 16.11.2021.

2.3. It is stated that raiding team was setup and public persons were requested to join, but none of the public persons joined the raiding team. It is stated that after reaching the spot, the Tata Vehicle of the caller was spotted and stopped. It is stated that the Tata Vehicle was being driven by Zakir Hussain (i.e., the caller), the person accompanying the driver was identified as Shahnawaz Khan who was the helper to the driver. It is stated that a third person namely Shazeb Chaudhary (i.e., the Applicant herein) was also identified.

¹ Zakir Hussain alias Aakir.

² No. UP-25-DT-2874.

³ Renault Car bearing no. DL-9C-AS/AC-1936.

2.4. It is stated that on being asked, Applicant/Shazeb as to what was loaded in the Tata Vehicle, Applicant/Shazeb could not answer the same. It is stated that Section 50 NDPS Act notice was issued to the Applicant/Shazeb, however he refused being searched before any nearest Gazetted Officer or Magistrate. It is stated that on search of Applicant/Shazeb nothing was recovered from him.

2.5. It is stated that during the search of the Tata Vehicle in the presence of the ACP Narcotics Cell, Crime Branch, a total of 300 Kgs of *Ganja* in 12 white plastic/gunny bags was recovered, hidden beneath the plastic crates. It is stated that both the contraband and the Tata Vehicle was seized vide seizure memo dated 16.11.2021.

2.6. It is stated that in this regards FIR No. 222/2021 under Sections 20/25 of the NDPS Act was registered at PS Crime Branch.

2.7. It is stated that Applicant/Shazeb disclosed that co-accused Sushil⁴, Akram⁵ and Mahesh had gone to Odisha on the instructions of one co-accused Abrar⁶ and had the *Ganja* loaded in the Tata Vehicle. It is stated that co-accused Sushil was arrested on 18.11.2021. It is stated that the Car used for travelling to Odisha was also seized.

2.8. It is stated that during investigation chargesheet against Applicant/Shazeb and accused Sushil was filed on 26.04.2022. It is stated that during investigation it was revealed that accused persons Abrar, Akram, Sushil and Mahesh had planned to procure *Ganja* from Odisha and bring it back by truck to Delhi to earn big money. It is stated that Applicant/Shazeb

⁴ Sushil alias Sonu.

⁵ Akram alias Raju.

⁶ Abrar alias Bale.

was directed by co-accused Abrar (uncle of the Applicant) to hire a truck from Bareilly, UP for this purpose.

2.9. It is stated that Applicant/Shazeb reached at the location with said truck/Tata Vehicle. It is stated that co-accused Akram and Abrar got loaded empty sacks and crates in the truck and then reached Raygadha, Odisha. It is stated that co-accused Akram and Sushil accompanied the Tata Vehicle in their own Car.

2.10. It is stated that charges have been framed against all the accused on 22.12.2023 by the Trial Court and 3 PWs out of 38 witnesses have been examined. It is stated that the next date of hearing before the Trial Court is 03.03.2025.

Arguments of the Applicant

3. Learned counsel for the Applicant states that Applicant was arrested on 16.11.2021 and since then he has been in jail.

3.1. He states that the only role ascribed to the Applicant herein is that he accompanied the Tata Vehicle on the instruction of the co-accused Abrar who is his uncle.

3.2. He states that there is no connection of the Applicant with any of the persons from whom the contraband was purchased. He states that there is no CDR and/or transaction connectivity to prove the purchase of contraband by the Applicant.

3.3. He states that Applicant was not in the conscious possession of the contraband.

3.4. He states that the Applicant was released on interim bail on two (2) prior occasions and has not violated any of the conditions imposed therein.

3.5. He states that the case is at the stage of prosecution evidence and out of total 38 witnesses (21+17)⁷ only three (3) independent witnesses have been examined till date.

3.6. He states that the Applicant has no criminal priors and has roots in the society. He states that the Applicant has a family to support being the sole bread earner of the family.

3.7. He states that the Applicant had earlier approached the Session Court seeking regular bail and the same was dismissed vide the order dated 30.04.2024.

Arguments of the State

4. In reply, Mr. Khanna, learned APP states that 300 Kgs of *Ganja* has been recovered from the Tata Vehicle in which the Applicant was present. He states that the quantity of the contraband recovered is commercial in nature as per the NDPS Act.

4.1. He states that the rigors of Section 37 of the NDPS Act would be applicable in the facts of the present case. He states that the twin conditions as mentioned in Section 37 of the NDPS Act are not satisfied by the Applicant and therefore he is not entitled to bail.

4.2. He states that name of the Applicant was disclosed by the informer and Applicant was the one who had hired the Tata Vehicle used for carrying the *Ganja*.

4.3. He states that prior to going to Odisha the Applicant was in touch with the co-accused Abrar and on the intervening night of 07.11.2021 and 08.11.2021 the Applicant along with co-accused persons Akram and Abrar had loaded empty gunny bags/crates in the Tata Vehicle.

⁷ As per the charge-sheet and supplementary charge-sheet.

4.4. He states that there is apprehension that the Applicant might jump the bail if granted and may involve in similar nature of crime.

4.5. He states that Applicant has been in custody for 3 Years, 1 Month and 2 days as on 28.12.2024.

4.6. He states that there are total of 5 accused persons in the present case and three (3) out of them namely Sushil, Akram and Mahesh have been granted bail.

4.7. On instructions the learned APP confirms that as per charge-sheet and supplementary charge-sheet there are total of 38 witnesses and 3 witnesses have been examined so far.

Analysis and Conclusion

5. This Court has heard the learned counsels for the parties and perused the record.

6. In the facts of the present case the recovery made from the Tata Vehicle is 300 Kgs of *Ganja* which is a commercial quantity as per the NDPS Act. The said recovery of commercial quantity of *Ganja* would attract Section 37 of the NDPS 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.

7. As per the Nominal Roll dated 30.12.2024 the Applicant has been in jail for 3 Years 1 Month 2 Days since the date of his arrest i.e., 16.11.2021. Thus, as on date the Applicant has been in Jail for 3 Years 3 Months (approx.). The said Nominal Roll also reflects that the Applicant has no criminal antecedents under NDPS Act or any other FIR pending against him and his conduct in the jail has been satisfactory. The Nominal Roll also

reflects that the Applicant herein was granted interim bail twice and has not misused the liberty granted.

8. The chargesheet against the Applicant and the co-accused persons has been filed and there are total of 38 witnesses, who have to be examined by the prosecution; and out of the said 38 witnesses as on date only three (3) witnesses have been examined. In light of the said fact, it appears to this Court that a considerable time will take to conclude the trial.

9. 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.

10. The Supreme Court in **Rabi Prakash v. State of Odisha**⁸ 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 criminal antecedents, the Court held as under:

“4. As regard to the twin conditions contained in Section 37 of the 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.”

⁸ 2023 SCC OnLine SC 1109.

(Emphasis supplied)

11. In **Man Mandal v State of West Bengal**⁹ where the seizure was of commercial quantity and the accused 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)

12. In **Mohd. Muslim alias Hussain v State (NCT of Delhi)**¹⁰ 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.

⁹ 2023 SCC OnLine SC 1868.

¹⁰ 2023 SCC OnLine SC 352.

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)

13. The above judgments clearly hold that if prosecution is unable to conclude trial in NDPS matters speedily it cannot rely upon the fetters of Section 37 of the NDPS Act to oppose the bail of the accused who are facing trial. The Applicant in this case has no criminal priors under the NDPS Act

and his conduct during his incarceration of 3 Years 3 months and 2 days approx. has been recorded as satisfactory in the Nominal Roll.

14. In the aforementioned facts, it is evident that the Applicant who was arrested on 16.11.2021 has not contributed to any delay in trial. It is correct that the quantity of contraband recovered is commercial in nature and the provisions of Section 37 of the NDPS Act are attracted. However, in these facts where the 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.

15. Therefore, this Court is of the opinion that Applicant has satisfied the conditions for grant of bail. As a result, 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. 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.
- (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 every 2nd Monday of every month, at 4:00 PM, and will not be kept waiting for more than an hour. The IO will inform the jurisdictional SHO about the present 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.

16. 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.

17. The address of the Applicant as per the Nominal Roll is of Bareilly, U.P. The IO shall inform the jurisdictional SHO with respect to the passing of the present order.

18. 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.

19. The learned counsel for the Applicant had also made submissions with respect to the independent witnesses to the seizure not supporting the case of the prosecution. In response, learned APP had submitted that there are police officials who are witness to the seizure and therefore, no doubt can be cast on the seizure from the Applicant. The said submissions of the parties have not been considered and/or deliberated upon, since this Court has granted bail on the ground of delay in trial.

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

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

22. 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.

MARCH 03, 2025/sk

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any