



2025:DHC:479



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

% ***Pronounced on: 27th January, 2025***

+ **BAIL APPLN. 4720/2024**

MONIKA

..... Petitioner

Through: Mr. Arvind Kumar, Mr. Mritunjay Kumar Singh, Mr. Abhay Kumar Mishra, Mr. Ankit Kumar Vats & Mr. Subit Singh, Advocates.

versus

STATE GOVT.OF NCT OF DELHI

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State.
S.I. Bijender Singh & HC Lokender Kumar, Anti Narcotics Cell, Dwarka, Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Bail Petition under Section 483 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* ('B.N.S.S.' hereinafter) read with Section 439 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' hereinafter) has been filed on behalf of the Petitioner seeking Regular Bail in FIR No. 112/2023 under Sections 8/21/29 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* ("NDPS Act, 1985" hereinafter) registered at Police Station Dwarka North, Delhi.



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2. The Applicant states that the case of the State is that based on a secret information received on 07.02.2023, the prime accused Ruby was arrested who in her Disclosure Statement, gave the name of the Petitioner as also a person who sells drugs from her residence. Pursuant thereto, the accused Monica was arrested near House No. RZ-99, Shiva Enclave, Vikash Nagar, Uttam Nagar on 09.02.2023 and the alleged recovery of 265 gms. Heroine was effected from her.

3. The *grounds for seeking bail* are that insofar as offence under Section 29 of the NDPS Act, 1985 for *abetment and/or criminal conspiracy* is concerned, no material has been spelled out in the Chargesheet. The Prosecution has merely made up some story about some alleged co-accused persons namely, Ruby whose details have not been incorporated in the Chargesheet making the entire prosecution story baseless and vague. Also, the prosecution has also failed to establish the source of supply of drugs to the Petitioner.

4. Moreover, the alleged recovery has not been made by following the due process of law. There is *no independent witness* to the alleged search and seizure. On such vague and bald allegations, the personal liberty of the individual cannot be curtailed, contrary to the mandate of the Article 21 of the Constitution of India.

5. The prosecution has *completely relied on the confessional statement of the Petitioner* which is inadmissible piece of evidence. Reference has been made to Indra Dalal vs. State of Haryana, Criminal Appeal No. 1261/2009, wherein the Apex Court observed that where a confession is extorted by the Police Officials by practicing oppression and torture or



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inducement, then it is inadmissible in evidence in terms of Section 25 of the *Indian Evidence Act, 1872*.

6. Similar observations have been made in *Gopal Sah vs. State of Bihar*, (2008) 17 SCC 128, that an extra-judicial confession on the face of it, is a weak piece of evidence and the Courts are reluctant in the absence of chain of cogent circumstances, to rely on it for the purpose of recording a conviction.

7. Reliance has been placed on the decision in *Kashmira Singh vs. The State of Madhya Pradesh*, AIR 1952 SC 159 and to the decision of the Privy Council in *Bhuboni Sahu vs. The King*, 76 Indian Appeals 147, wherein it was observed that the proper way to approach a case involving confession of a co-accused is first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it.

8. Similar observations have been made by the Apex Court in *Pancho vs. State of Haryana*, Criminal Appeal No. 1050/2005.

9. It is argued that the confession of a co-accused against the Petitioner is a weak piece of evidence and in the absence of any other independent cogent evidence, cannot be relied upon by the prosecution to establish the involvement of the Petitioner in the alleged crime.

10. The ***second ground*** which has been taken for seeking Regular Bail is that *the recovery of contraband has been effected contrary to the provisions of Section 50 of NDPS Act, 1985, thereby vitiating the search and seizure.*

11. Reliance has been placed on *Bail Appl. No. 1156/2023 Aabid Khan vs. State Govt of NCT of Delhi*, decided by the Co-ordinate Bench of this Court



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wherein it was observed that it is an imperative requirement on the part of the Officer intending to search, to inform the person to be searched, of his right to get the search done in the presence of a Gazetted Officer or a Magistrate as the provision of Section 50 of NDPS Act, 1985 is mandatory.

12. The Apex Court in State of Punjab vs. Balbir Singh, (1994) 3 SCC 299 while considering whether the conditions laid down in Section 50 of NDPS Act, 1985 of getting the search conducted by the empowered or the authorised person, concluded that it is a valuable right given to a person since the search would impart much more authenticity and credibility to the proceedings while equally providing an important safeguard to the accused.

13. The 2-Judge Bench of the Apex Court in State of Rajasthan vs. Parmanand and Another, (2014) 5 SCC 345 decided on 28.02.2014 referred to the Constitution Bench judgment of the Supreme Court in Baldev Singh's case, State of H.P. vs. Pawan Kumar, (2005) 4 SCC 350, Dilip vs. State of M.P., (supra), Union of India vs. Shah Alam, (2009) 16 SCC 644, wherein it has been held that the failure to conduct the search before a Gazetted Officer or a Magistrate, may not vitiate the trial, but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused.

14. Similar observations have been made in Arif Khan @ Agha Khan vs. State of Uttarakhand, AIR 2018 SC 2123, Ali Hussain Seikh vs. Narcotics Control Bureau, C.R.A. 744/2019 (CRAN 3/2021), State of Delhi vs. Ram Aytar @ Rama, (2011) (3) JCC 146, Mohd. Rahis Khan vs. State, (2014) (1) LRC 363 (Del), and Emeka Emmanuel vs. State, decided by the Co-ordinate Bench of this Court vide BAIL APPLN. 1231/2022.



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15. It is further submitted in the Petition that there is non-compliance of the statutory provisions of NDPS Act, 1985 by the Police Officials and therefore, twin conditions under Section 37 of the NDPS Act, 1985 are not satisfied, entitling the Petitioner to be enlarged on bail.

16. Reliance has been placed on Ms. Betty Rame vs. Narcotics Control Bureau, decided by the Coordinate Bench of this Court *vide* CRL.M.(BAIL) 1324/2022 in CRL.A. 338/2021, wherein the bail was granted to the accused on the ground of non-compliance of statutory provisions of NDPS Act, 1985. It was held that non-compliance necessarily imparts element of doubt, moreover, a reasonable doubt. This, therefore, would segway into an issue of proving guilt, considering that the guilt has to be proved beyond reasonable doubt. It would, therefore, not be enough to contend that such issues of non-compliance were to be considered at the time of trial. However, a *fortiori* at the stage of granting bail, it would be even more important to consider this possibility, even if it is just a possibility.

17. *In the end*, it is contended that the Petitioner is in prolonged incarceration and there is delay in the trial, entitling the Petitioner to bail, for which reliance has been placed on the decision in Union of India vs. K.A. Najeeb, (2021) 3 SCC 713, wherein while considering the bail in the context of *Unlawful Activities Prevention Act, 1967* ('UAPA'), it was held that when the accused is in jail for extended period of time with little possibility of early completion of trial, the constitutionality of harsh conditions for bail under special enactments can be justified primarily on the touchstone of speedy trial to ensure protection of innocent civilians.

18. In numerous judgments, it has been held that owing to the



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practicalities of real life to secure an effective trial and ameliorate the risk to society in case a potential criminal is left at large pending trial, the Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely Trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge them on bail.

19. Similar observations have been made in Rabi Prakash vs. State of Odisha, 2023 SCC OnLine SC 1109.

20. Further, reliance is placed on Nitish Adhikary @ Bapan v. State of West Bengal 2022 SCC OnLine SC 2068; Vishwajeet Singh v. State of NCT of Delhi 2024 SCC OnLine Del 1284; Kashif v. Narcotics Control Bureau Bail Appln. 253.2023 dated 18.05.2023; Mohd. Ibrahim v. State of NCT of Delhi 2012:DHC:7073; Mahfooz v. NCB 2024:DHC:6917; Pankaj @Pankaj Vaid @Amit@Sanju Baba v. State 2024:DHC:7679; Vikas Kashyap v. State of NCT of Delhi 2024:DHC:5163; Govind v. State Govt. of NCT of Delhi 2024:DHC:7527; Deen Mohammad Alias Bhola v. State of NCT of Delhi 2024:DHC:6618; Sameer Beg v. State of NCT Bail Appln. 3704/2024; and Nagesh Sharma v. State (N.C.T. of Delhi) 2023:DHC:2180 wherein bail has been granted by various Courts under Section 37 of NDPS, 1985.

21. Furthermore, the investigations are complete and further custody of the Petitioner is not required. She undertakes to abide by any terms that may be imposed. It is, therefore, prayed that the Petitioner may be granted Regular Bail in the given facts and circumstances of the case.

22. ***The Status Report has been filed on behalf of the State*** wherein it is



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submitted that on 07.02.2023 on the basis of information received through a secret informer, *one woman Ruby was apprehended* from the front of her House bearing No. B-36, J.J. Colony, Pocket-3, Sector-16, Dwarka, Delhi and was found in possession of 30 gm. of Heroine. She, in her Disclosure Statement, revealed the involvement of Petitioner and led to her apprehension.

23. The Notice under Section 50 of NDPS Act, 1985 was duly given to Applicant, but she refused to get her search done in front of the Gazetted Officer or Magistrate. On her search, one white colour polythene was recovered from her bag which she was holding tightly in her right hand. The substance on checking, was found to be Heroine Drug and the weight was found to be 265 gms. The recovered Heroine was seized and sealed with the seal of 'DK'. The Petitioner thus, was arrested after being informed the grounds of arrest and produced before the learned Trial Court on 10.02.2023.

24. It is further submitted that the due procedures as detailed in Section 50 of NDPS Act, 1985 were followed. The independent witnesses were requested to join the raiding team, but they refused due to the various exigencies.

25. An Application under *Section 52A of NDPS Act, 1985* for drawing samples recovered from the Petitioner was moved before the learned Trial Court on 10.02.2023 and the samples were drawn on 13.02.2023 as permitted by the learned Trial Court.

26. It is further submitted that the FSL Report has been received, wherein the samples drawn from the Heroine Drug recovered from the Petitioner



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were found to contain 'Diacetylmorphine', 'Acetaminophen', 'Caffeine', 'Dextromethorphan', 'Acetylcodeine', and 'Monoacetylmorphine'. The FSL Report has been submitted before the learned Trial Court along with the Supplementary Chargesheet, on 25.09.2023.

27. It is also submitted that as per SCRB Report, the Petitioner is involved in 13 Cases in total, out of which 7 cases are under *Punjab Excise Act, 1914*, 5 cases are under *Delhi Excise Act, 2009* and the present case under the NDPS Act, 1985.

28. There are total 28 public witnesses, out of which three witnesses have already been examined.

29. Therefore, the present Bail Petition is opposed on behalf of the State.

30. **Submissions heard and record perused.**

31. The parameters for grant of bail to an accused under the NDPS Act, 1985 have been provided in various cases by the Hon'ble Supreme Court. The Supreme Court in *Collector of Customs v. Ahmadalieva Nodira*, (2004) 3 SCC 549 has observed as under:

"6. As observed by this Court in Union of India v. Thamisharasi, (1995) 4 SCC 190, clause (b) of subsection (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are : (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are : the satisfaction of the court that there are reasonable grounds for



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believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence...”

32. Further, in State of Kerala v. Rajesh, (2020) 12 SCC 122, the Hon'ble Supreme Court while discussing the expression 'reasonable grounds' has observed as below:

*“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. **The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.** In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”*

33. As per the case of the Prosecution, the Applicant was found in possession of 265 gms. of Heroin which is a commercial quantity, thereby mandating the satisfaction of the stringent twin conditions under Section 37 of the NDPS Act, 1985 which are necessarily required to be satisfied.

34. The *first contention* of the Applicant is that the case of the Prosecution rests on the Disclosure Statement of co-accused Ruby, which is a weak piece of evidence. The proposition of law in this regard is well



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settled and needs no reiteration, but it is not a case where a confession of the co-accused is the only cogent evidence against the Petitioner; rather it only led the raiding team to the Petitioner and on her search, 265 gms. of Heroine has been recovered from a white polythene in her hand bag, which she was clutching tightly in her right hand.

35. The strenuous arguments on the aspects of confession of a co-accused is, therefore, not relevant at this stage. What is required to be seen is the recovery of Heroine from the Petitioner and whether due procedures as detailed in NDPS Act, 1985 were followed by the Police.

36. The *main plank of procedural deficiency agitated on behalf of the Applicant is the non-compliance of Section 50 of the Act*. State has contended that the Notice under Section 50 of NDPS Act, 1985 was duly served upon the accused-Petitioner, though she refused to get her search conducted in the presence of a Gazetted Officer/Magistrate.

37. Whether there was due compliance of Section 50 of NDPS Act, 1985 and whether it is the accused-Petitioner who refused to get her search done before the Magistrate or a Gazetted Officer and whether the non-compliance was so blatant as to render the recovery of illicit article suspect and vitiate the entire proceedings, is a matter of trial.

38. In the Case of Baldev Singh (supra) and Arif Khan @ Aga Khan, (supra) also, it has been held that the failure to get the search conducted by a Gazetted Officer or a Magistrate, may not vitiate the search and seizure itself, but is a matter of evidence to be appreciated at the time of convicting and sentencing the accused person. At this stage of considering the Bail, when the truthfulness of witnesses in regard to the procedure followed in



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effecting recovery, is yet to be tested by way of evidence, there can be no conclusion of blatant non-compliance of Section 50 of the Act whereby making the alleged recovery of the drug itself doubtful.

39. *Therefore, it may be observed that the first condition of Twin Test, to prove the circumstances establishing her innocence, is prima facie not satisfied to entitle the Applicant for Bail.*

40. *The second aspect to be considered to meet the threshold of Section 37 of NDPS Act, 1985, is that she is likely to commit the offence, if released on Bail. As per the Petitioner's Nominal Roll, she has been previously involved in five FIRs under the Delhi Excise Act, 2009 including one FIR under Sections 186/353/332/224/34 of the Indian Penal Code, 1860.*

41. However, along with the Status Report, Crime Report from Crime Criminal Information System has also been annexed which shows previous involvement of the Petitioner in as many as 12 Cases, out of which 7 cases are under *Punjab Excise Act, 1914*, and 5 cases are under *Delhi Excise Act, 2009*.

42. Considering her antecedents and her previous involvement in 12 cases, many of which are under the Excise Act, it cannot be concluded that she is not likely to commit similar offence in future, if released on Bail.

43. The Applicant fails to meet the twin conditions of Section 37 of NDPS Act, 1985, disentitling her to bail, at this stage.

44. Further, insofar as the delay in trial and long incarceration of the Petitioner is concerned, it is pertinent to observe that she is in judicial custody from 09.02.2023 and the Charges have already been framed and the witnesses are being recorded. The assertion of inordinate delay and



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prolonged incarceration, it also not tenable in the circumstances of this case.

45. It is not a case where there is an inordinate delay in the trial which in itself could have been a ground for bail, independent of requirements of Section 37 of NDPS Act, 1985.

46. The judgements relied upon by the Applicant in Vishwajeet Singh (supra); Kashif v. Narcotics Control Bureau (supra); Mohd. Ibrahim (supra); Mahfooz v. NCB (supra); Vikas Kashyap v. State of NCT of Delhi (supra); Govind v. State Govt. of NCT of Delhi (supra); Deen Mohammad Alias Bhola v. State of NCT of Delhi (supra) and Nagesh Sharma v. State (N.C.T. of Delhi) (supra) do not aid the case of the Applicant as they pertain to substances other than heroine and are therefore, distinguishable on facts.

47. Further, Nitish Adhikary @ Bapan v. State of West Bengal (supra); Pankaj @Pankaj Vaid (supra) and Sameer Beg v. State of NCT Bail Appln. 3704/2024 are distinguishable on facts in light of the role and criminal antecedents of the Applicant.

48. Since the threshold of Section 37 of NDPS Act, 1985 has not been met, no bail can be granted to the Petitioner at this stage.

49. Accordingly, in the light of aforesaid discussion, the Bail Petition is hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 27, 2025
S.Sharma