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

+ **BAIL APPLN. 4791/2024**

TOURE MOHAMMEDPetitioner

Through: Mr. Deepanshu Goswami,
Ms. Kirti Chauhan, Mr.
Rohit Sahrawat, Advs.

versus

NARCOTICS CONTROL BUREAURespondent

Through: Mr. Arun Khatri, SSC
NCB, Ms. Shelly Dixit,
Mr. Sahil Khurana, Ms.
Poonam Rani, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **09.07.2025**

1. The present application is filed seeking regular bail in Case No. VIII/57/DZU/2020, registered By NCB DZU, R.K. Puram, for offences under Sections 8(c), 9A, 21(c), 22(b) and 25A of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. It is the case of the prosecution that on 17.12.2020, on the basis of secret information, the applicant was apprehended near Karola mor, near metro pillar no. 793, Uttam Nagar, New Delhi. During the personal search of the applicant, one polythene was found in both the pockets of his jeans. From one of the polythenes, 10g of methamphetamine was recovered and from the other, 114g of Cocaine was recovered. It is alleged that the applicant admitted in his disclosure statement that he used to buy and sell drugs. The applicant also disclosed that he had come to



deliver drugs to a customer when he was apprehended.

3. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case and he is innocent. He submits that the applicant was arrested in the present case on 18.12.2020 and he has been in custody since then. He submits that the trial is likely going to take long to conclude as only six prosecution witnesses have been examined till now.

4. He submits that in the present case, there is non-compliance of the procedural requirements under Section 50 of the NDPS Act as the applicant was not searched in the presence of an independent Gazetted Officer or Magistrate. He submits that the officer who was supervising the raiding team had acted as the Gazetted Officer which is impermissible.

5. He further submits that the absence of public independent witnesses to substantiate the recovery effected from the applicant casts a doubt on the case of the prosecution, even though the applicant was apprehended on the basis of secret information. He submits that no photography or videography was conducted either.

6. *Per contra*, the learned Senior Standing Counsel for NCB vehemently opposes the grant of any relief to the applicant. He submits that the present case involves recovery of commercial quantity of contraband and the rigours of Section 37 of the NDPS Act are attracted against the applicant.

7. I have heard the counsel and perused the record.

8. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence;



circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

9. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfill the conditions stipulated in Section 37 of the NDPS Act.

10. It is argued that no independent witness was joined by the prosecution even though the applicant was apprehended at a public place on the basis of secret information. Furthermore, it is argued that no photography or videography was done by the prosecution in the present case.

11. Undoubtedly, the case of the prosecution cannot be rejected merely on account of the case being tethered on the testimonies of official witnesses and non-examination of independent witnesses or absence of photography and videography of the recovery. The same would not be fatal to the prosecution's case. Reliance on the testimonies of official witnesses is sufficient to secure conviction once it is established that the police witnesses have no animosity against the accused person so as to falsely implicate him. The testimonies of the official witnesses cannot be disregarded merely on account of them being police officials.

12. However, it cannot be denied that the lack of independent witnesses and photography or videography, in some circumstances, casts a shadow over the case of the prosecution.

13. This Court in the case of **Bantu v. State Govt of NCT of Delhi: 2024: DHC: 5006** has observed that while the testimony



of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

14. It is stated in the complaint that although 2-3 persons were asked to join investigation, however, they refused to join the same. While the veracity of the explanation of the prosecution for non-joinder of independent witnesses and for absence of photography and videography will be tested during the course of the trial, at this stage, the benefit cannot be denied to the applicant, especially since he has already spent a substantial time in custody.

15. Much emphasis has been laid by the counsel for the applicant on the period spent by the applicant in custody. In the present case, the applicant was arrested on 18.12.2020. Despite the applicant having spent more than four years in custody, the matter is still at the stage of examination of prosecution witnesses and only six out of the listed thirteen prosecution witnesses have been examined till now. It is argued on behalf of NCB that the applicant is not entitled to bail as the rigours of Section 37 of the NDPS Act are attracted against him.

16. It is trite that grant of bail on account of delay in trial and long period of incarceration cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of **Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352** has observed as under:



“21....Grant of bail on account 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 country²⁰. 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. State²¹ 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”²² (also see Donald Clemmer's ‘The Prison Community’ published in 1940²³). 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)

17. The Hon’ble Apex Court in the case of *Man Mandal & Anr. v. The State of West Bengal* : SLP(CRL.) No. 8656/2023



had granted bail to the petitioner herein, in an FIR for offences under the NDPS Act, on the ground that the accused had been incarcerated for a period of almost two years and the trial was likely going to take a considerable amount of time.

18. The Hon'ble Apex Court in ***Rabi Prakash v. State of Odisha*** : 2023 SCC OnLine SC 1109, while granting bail to the petitioner therein held as under :

*“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.**”*

(emphasis supplied)

19. Various courts have recognized that prolonged incarceration undermines the right to life, and liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedence over the statutory restrictions under Section 37 of the NDPS Act.

20. It cannot be denied that the applicant has already spent substantial period in custody and the trial is unlikely to conclude in the near future. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. delay in the completion of the trial.

21. Certain other arguments have also been raised in relation to non-compliance of Section 50 of the NDPS Act in the present case as the search of the applicant was conducted by the same



officer who was supervising the trial and infirmities in the case of the prosecution, however, considering that this Court has already observed that speedy trial is not a possibility in the present case, this Court does not consider it apposite to comment on the aforesaid aspects.

22. The applicant is also stated to be of clean antecedents and is thus not likely to commit any offence whilst on bail.

23. The applicant is, therefore, directed to be released on bail (if not in custody in any other case) on furnishing a personal bond for a sum of ₹1,00,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the NCT of Delhi without the permission of the Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall, after his release, appear before the concerned IO once every month;
- e. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/SHO;
- f. The applicant is directed to submit his passport



before the learned Trial Court;

- g. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep her mobile phone switched on at all times.

24. The respondent department is directed to immediately communicate the present order to the concerned Registration Officer appointed under Rule 3 of the Registration of Foreigners Rules, 1992.

25. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the respondent to seek redressal by filing an application seeking cancellation of bail.

26. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

27. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 9, 2025