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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 23rd September, 2024*+ **BAIL APPLN. 1090/2024**

GOVIND

.....Petitioner

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

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for the State

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. This Bail Application under Section 439 of the Code of Criminal Procedure, 1973 (“Cr.P.C.” *hereinafter*) has been filed on behalf of the Applicant seeking grant of regular bail in *FIR No. 64/2021* dated 12.02.2021 registered under Section 20 the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as “NDPS Act, 1985”*) at Police Station Baba Haridas Nagar, Delhi.

2. ***Briefly stated***, on 12.02.2021 on the basis of secret information the Applicant was apprehended at Dichaun Enclave, Najafgarh by Raiding team and was found in possession of a Blue Brown Colour Suitcase which had a White Polythene bag containing 8.190 Kg of Ganja along with leaves and stalks, as evident from the seizure memo.

3. During further investigation, the petitioner led the Investigating



Officer to his house from where 15.100 Kg of Ganja was also recovered. The Applicant submits that there is a discrepancy in the weight of the recovered contraband at various stages. The total quantity of contraband recovered is 23.290 Kg i.e. commercial quantity on the same day in two instances. The weight at the stage of Section 52A was as under:

Weight at the time of seizure	Weight in 52A proceedings	Weight of samples drawn in 52A proceedings	Weight of each sample received by FSL including the weight of the cloth	Total difference of weight in alleged seized contraband at the time of seizure and contraband received by the FSL
8.190 Kg of ganja	8.250 Kg	100 gm of sample +20 gm of cloth 120 gm	88.3 gm including the weight of the cloth	32 Grams difference in 100 Gm. Then 1000 gm i.e. 1 Kg of contraband makes a difference of 320 gm 32*10==320 gm Accordingly 8Kg of contraband makes a difference of 2 Kg 560 gm i.e.



				32*80 = 2 Kg 560 Gm
15.100 Kg of Ganja	15.05 Kg	100 gm of sample + 20 gm of cloth + 120 gm	96.8 gm including the weight of the cloth	23 Grams difference in 100 gm Then 1000 gm i.e. 1 Kg of contraband makes a difference of 230 gm 23*10+230 gm Accordingly 15 kg of contraband makes a difference of 3 Kg 450 gm i.e. 23*150 + 3 kg 450 gm.

4. The petitioner has thus, submitted that though as per the Seizure memo 23.290 Kg i.e. commercial quantity was recovered. However, at the time of taking samples under Section 52 A of the Act, the weight varied and when compared with the FSL report, there is a discrepancy of 6 Kg which makes a total recovery of 17.290 Kg which falls under the *intermediate quantity* under the NDPS Act, 1985.

5. The Applicant had moved the applications seeking *Regular Bail* on 08.04.2021, 17.09.2021 and 24.11.2021 which were dismissed by the learned Trial Court. Further, the Regular Bail filed before this Hon'ble court also got



dismissed *vide* Order dated 30.05.2023.

6. The Applicant has sought the Regular Bail on the grounds that there is a discrepancy of about 6 Kgs. in the amount of seized Ganja, making the total seizure of Ganja as an intermediate quantity. Reliance has been placed on Kadir v. State Bail Appln. No. 553/2023 and Mohd. Ramzan v. State (NCT of Delhi) 2005 (82) DRJ 435.

7. Further, it is argued that he is in judicial custody from 12.02.2021 and out of 21 total Witnesses only 6 Witnesses have been examined and the trial is likely to take a long time. Reliance is placed on Badri Singh v. The State (Govt. of NCT of Delhi) Bail Appln. 3533/2023; Gurpreet Singh v. State of NCT of Delhi; Bharat Choudhary & Ors. v. Union of India Bail Appln. 857/2023; and Biswajit Mondal @ Biswajit Mandal v. The State of West Bengal SLP (Crl.) No. 11731/2022. The investigations in the present FIR are complete and the Chargesheet has also been filed before the Trial Court.

8. The Applicant submits that further detention of the Applicant would not serve any purpose as the investigations are complete. He is a law abiding citizen who has clean antecedents and belongs to a respectable family with deep roots in the Society. He is not a flight risk and is ready to abide by any terms that may be imposed while granting regular bail.

9. Therefore, the Applicant has sought regular bail in the present FIR.

10. ***Ld. Prosecutor on behalf of the State*** has opposed the Bail on the ground that it is a case of recovery of about 23.290 kgs of Ganja and comes within the Section 20 of the NDPS Act, 1985. The FSL has confirmed that the contraband recovered was *Ganja*. The bar of Section 37 of the NDPS Act, 1985 would thus, be applicable.



11. It is further submitted that discrepancy of 6 Kgs between the seizure memo and the FSL is on account of evaporation of moisture from the contraband/Ganja and even otherwise it is a matter of trial. Moreover, the prosecution witnesses are yet to be examined. If the bail is granted, there is likelihood of the Applicant jumping the bail.

12. **Submissions heard.**

13. It is not in dispute that there was a recovery of Ganja from the Applicant, however, the discrepancy in weight of Ganja from 23.290 Kg at the time of seizure to 17.290 Kg in the Section 52A proceedings and the FSL report is questioned by the Applicant. However, the discrepancy is sought to be explained by the State by asserting it to be attributable to loss of moisture and drying up of the leaves. Moreover, the discrepancy pertaining to weight, is a matter to be decided at the stage of Trial.

14. The definition of Ganja is provided under section 2 (iii)(b) of the NDPS Acts which reads as under :-

“(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated;”

15. From the framework of the entire NDPS Act, 1985 and a reading of Section 2 (iii)(b), it emerges that if the material seized is a heterogenous mixture/Category C, constituting of Category A mixed with Category B, the placebo material such as stalks/leaves/stems (Category B) would not constitute an actual part of the drug and only the actual content and weight of the narcotic drug (Category A) would be relevant for determining whether it would constitute small quantity or commercial quantity.



16. It has been consistently held that if there is a *prima facie* discrepancy in what was seized and what was analysed and weighed and there are reasonable grounds to believe that the petitioner is not guilty of offences dealing in commercial quantity. Consequently, the rigors of Section 37 of the NDPS Act, 1985 for grant of regular bail, would not become applicable as has been held in the case of Ibrahim Khwaja Miya Sayyed Vs State of Maharashtra 2023 SCC Online Bom 2873.

17. In the case of Suresh Kumar Vs State 2016 SCC Online Del 1209, the Coordinate Bench of this Court gave benefit to the accused under Section 20 (b) (C) to 20 (b)(ii)(B) by observing that the weight of the contraband was not precise and the actual quantity of Ganja seized could not be determined because the FSL reflected that seeds, which do not come within the definition of Ganja, were weighed along with the flowering and fruiting tops. Thus, when there is a doubt on the actual amount of recovery of contraband, then this unexplained discrepancy would result in a benefit accruing in favour of the bail applicant.

18. Similar observations have been made in the case of Rajesh Sharma Vs State of Rajasthan 2024 SCC Online Raj 485, Bettanayaka Vs State of Karnataka 2020 SCC Online Kar 3916, Ratanlal Kharadi Vs State of M.P. 2019 SCC Online MP 6083, and Ratnesh Vs State 2017 SCC Online Del 9883.

19. Admittedly, the Applicant has not been involved in any other crime previously and has clean antecedents. Moreover, there is nothing to show that the Applicant is likely to tamper with the evidence or influence the witnesses. Considering the background, it can also not be said that he is a flight risk.



20. Furthermore, the accused is in judicial custody since 12.02.2021 and there are only 6 witnesses examined out of total 21 witnesses till date, while 15 witnesses remain. The Charges have been framed and the trial is still ongoing which may take long to get concluded.

21. The Supreme Court in the case of Union of India v. K.A. Najeeb, (2021) 3 SCC 713 observed that if the timely trial is not possible, Courts should ordinarily release the undertrials on bail and statutory restrictions do not exclude discretion of the constitutional Courts to grant bail on the ground of fundamental right enshrined in Part III of the Constitution. The Personal Liberty guaranteed by Part II of the Constitution, would cover not only the protective but also bring within its ambit not only due procedure and fairness but also access to speedy trial.

22. The Supreme Court in the case of Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731 had observed that undertrials cannot be indefinitely detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same has been established before a neutral arbiter. However, owing to the practicalities of real life were to secure an effective trial and to 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 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.

23. In Mohd. Muslim v. State (NCT of Delhi), Special Leave Petition (Criminal) No. 915/2023, the Supreme Court held that undue delay in trial



can be a ground for grant of bail under the NDPS Act, 1985.

24. Guided by the principles as enunciated by the Apex Court in the aforementioned judgments, the onus rests on this Court to balance a right of the Society of protection against the crime, but this right of the Society needs to be balanced with the individual fundamental rights of the accused to speedy trial.

25. Considering the nature of allegations and that the Applicant has no previous involvement, coupled with the fact that the trial may take long to get concluded, the present petition is allowed and the Applicant is admitted to regular bail in FIR No. 64/2021 registered under Section 20 of NDPS Act, 1985 at Police Station Baba Haridas Nagar, upon his furnishing a personal bond in the sum of Rs. 25,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions: -

- a) Applicant shall appear before the Court as and when the matter is taken up for hearing;
- b) Applicant shall provide his mobile number and also the mobile number of their wife/surety to the IO concerned, both of which shall be kept in working condition at all times and they shall not change the mobile numbers without prior intimation to the Investigating Officer concerned;
- d) Applicant shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;
- e) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

26. The Registry is further directed to communicate this Order to the



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learned Trial Court and as well as to the concerned Jail Superintendent.

27. Accordingly, the present Bail Application is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 23, 2024