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

+ BAIL APPLN. 3068/2023

SAROJ SUBUDHI

..... Petitioner

Through: Mr. Aditya Aggarwal and Md. Yasir,
Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State.

SI Manoj Kumar, PS A.E.K.C. Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

22.11.2023

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1. By way of the present application, the applicant seeks grant of regular bail in FIR No.155/2017 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered at Police Station Crime Branch.

2. Counsel for the applicant submits that the applicant was arrested on 6th September, 2017 and has completed 6 years in custody.

3. Counsel for the applicant places reliance on the judgments of the Supreme Court in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoner) v. Union of India*, (1994) 6 SCC 731 and *Satendra Kumar Antil v. CBI*, (2022) 10 SCC 52. He further places reliance on the judgments/orders passed by the Co-ordinate Benches of this Court in *Anil Kumar @ Nillu v. State*, 2022/DHC/000979 and *Paramjit Singh Gulati v. Directorate of Revenue Intelligence*, 2023/DHC/000272, which have



followed the aforesaid judgments of the Supreme Court.

4. Learned APP appearing on behalf of the State submits that the applicant would not be granted bail automatically even if the applicant has completed 50% of the minimum sentence and the discretion still rests with the Court. It is further submitted that the applicant also has a previous involvement under the NDPS Act.

5. I have heard the counsels for the parties and perused the material on record.

6. The Supreme Court in *Supreme Court Legal Aid Committee* (supra) has laid down the following principles for grant of bail in respect of undertrials charged with offences with minimum punishment of 10 years. The observations of the Supreme Court relevant for the purposes of the present case are set out below:

“15...

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

7. In the case of *Satendra Kumar Antil* (supra), the Supreme Court made the following observations:

“86. Now we shall come to Category C. We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence



of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person.
We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

8. The aforesaid directions were followed by the Co-ordinate Bench of this Court in **Anil Kumar @ Nillu** (supra) wherein it was held that rigours of Section 37 of the NDPS Act would not stand in the way while dealing with a bail application moved by an undertrial who has remained in custody for more than half of the minimum sentence.

9. In **Paramjit Singh Gulati** (supra) it was held that merely because the applicant was involved in another NDPS case, that cannot be the sole basis for denial of bail.

10. In the present case, the minimum sentence prescribed under Section 20 of the NDPS Act for possession of commercial quantity of contraband is rigorous imprisonment for ten years.

11. As per the Nominal Roll on record, the applicant has been in custody for 6 years and his conduct in Jail has been satisfactory. The applicant was granted interim bail during this period and he did not misuse the liberty granted to him.

12. As per the submission of the learned APP, only 7 out of the 18 witnesses have been examined till date.

13. Considering the totality of aforesaid facts and circumstances including the fact that the applicant has undergone more than 6 years in custody and



taking into account that the trial is likely to take considerable time, the applicant cannot be kept under incarceration for an indefinite period of time. Therefore, this Court considers it fit to grant bail to the applicant.

14. For the foregoing reasons, the application is allowed and the applicant is directed to be released on bail on furnishing 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. The applicant shall not leave the country without the prior permission of the Court.
- ii. The applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
- iii. The applicant shall join investigation as and when called by the Investigating Officer (IO) concerned.
- iv. The applicant shall provide his latest/fresh mobile number(s) to the IO concerned, which shall be kept in working condition at all times and shall not switch it off or change the mobile number(s) without prior intimation to the IO concerned.
- v. The applicant shall provide his 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 his residential address.
- vi. The 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.

15. Accordingly, the application is disposed of in above terms.

AMIT BANSAL, J.

NOVEMBER 22, 2023/at