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

+ **BAIL APPLN. 863/2024**

RANA SINGHApplicant

Through: Mr. Tahir Ali, Mr. Sharafat Ali, Mr. Rahil Qureshi, Mr. Shahid Ahmad and Ms. Sameeha Siddiqui, Advs.

versus

THE STATE NCT OF DELHIRespondent

Through: Mr. Sanjeev Bhandari, ASC for the State with Insp. Chandan Kr., Special Cell, NR & STF, Rohini, Delhi.

+ **BAIL APPLN. 2849/2024 & CRL.M.A. 23888/2024**

SATISH KUMARApplicant

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

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Ajay Vikram Singh, APP for the State with Insp. Chandan Kr., Special Cell, NR & STF, Rohini, Delhi.

+ **BAIL APPLN. 3461/2024**

FIROZ ALAMApplicant

Through: Mr. Tahir Ali, Mr. Shahid Ahmad and Ms. Sameeha Siddiqui, Advs.

versus

THE STATE NCT OF DELHIRespondent

Through: Mr. Ajay Vikram Singh, APP for the State with



Insp. Chandan Kr., Special
Cell, NR & STF, Rohini,
Delhi.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

16.10.2024

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1. The present applications are filed seeking grant of regular bail in FIR No. 67/2022 dated 01.04.2022, registered at Police Station Special Cell, Delhi, for offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
2. It is alleged that on 01.04.2022, on the basis of a secret information, the applicants/accused (Firoz and Rana Singh) were apprehended by the police at around 4:50am at Mangolpuri Industrial Area, Delhi and a recovery of 2 kg and 2.5 kg of contraband/smack respectively was effected from the bags carried by them in the car.
3. It is alleged that during investigation, on the basis of disclosure statement of accused – Firoz, two more accused persons namely Satish Kumar (taxi driver)/applicant and Teeka Ram were arrested on 03.04.2022 and 04.04.2022 respectively, and 550 grams of smack was recovered from the accused person, Satish Kumar. It is alleged that upon the disclosure statement of the accused Satish Kumar, one Ganpat was arrested as the source of illegal drugs so recovered from the possession of Satish Kumar.
4. The learned counsel for the applicants submits that the applicants/accused are completely innocent and have not committed the alleged offence as stated in the FIR.

BAIL APPLN. 863/2024 & connected matters

Page 2 of 11



5. They submit that the applicants are in judicial custody for more than two years in as much as the applicants have been incarcerated since 01.04.2022 and 03.04.2022 respectively. They submit that charges are yet to be framed and 26 witnesses are to be examined. The trial would take a long time to conclude and there is no likelihood of the applicants/accused absconding or fleeing from justice.

6. They submit that there was no public witness at the time of the alleged recovery as mentioned in the FIR, which evidently proves that the applicants/accused have been falsely implicated by the police and that the alleged recovery has been planted by the police. They further submit that no endeavour was made by the prosecution to photograph or videotape the recovery either.

7. *Per Contra*, the learned Additional Public Prosecutor for the State opposed the grant of bail to the applicants. He submitted that since the recovered quantity of contraband in the present case is commercial in nature, the bar under Section 37 of the NDPS Act is attracted.

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 fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“37. Offences to be cognizable and non-bailable. —
(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—*
(a) *every offence punishable under this Act shall be cognizable;*
(b) *no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—*
(i) *the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
(ii) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
(2) *The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”*

10. The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail – (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

11. The learned counsel for the applicant/accused submitted that the strict rigors of section 37 of the NDPS Act are not



attracted in the present case in as much as a liberal interpretation must be followed on the basis of the following grounds:

- a) No public witnesses at the time of alleged recovery which puts the case of Prosecution under a suspicious light
- b) No photography/videography
- c) Non-examination of any witnesses causing delay in trial

12. It is true that the search and seizure of the contraband so seized is a serious aspect during the investigation and if there is any violation of the mandatory requirements as prescribed under the NDPS Act as to the manner in which search and seizure is effectuated, the courts ought to take a serious view and the benefit, in some circumstances, could be extended to the accused.

13. The learned counsel for the applicants has raised the issue that no public witnesses were joined by the prosecution even though the applicants were apprehended on the basis of secret information and the applicant – Satish Kumar was apprehended later on the basis of disclosure statement. It is argued that no independent witnesses were associated by the prosecution and no photography or videography was done by the prosecution in the present case despite the applicant being apprehended in a public place.

14. 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.

15. 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.

16. In the present case, no notice under Section 100 (8) of the CrPC was given to any person on the refusal to support the Investigating Agency during the search procedure. The secret information was received almost a day prior to the applicants being apprehended. It is peculiar that the Investigating Agency was unable to associate even a single public witness in the same time, especially since the prosecution had prior secret information and the applicants were apprehended at a public place.

17. This Court in *Bantu v. State Govt of NCT of Delhi* (*supra*), noted that the Hon'ble Apex Court, way back in the year 2018 in *Shafhi Mohd. v. State of H.P.* (*supra*), after taking note of the technological advancements, had passed certain directions. The Hon'ble Apex Court had emphasised the role of audio-visual technology in enhancing the efficacy and transparency in the Police investigations.

18. This Court also noted that realising the need of change in time, the Legislature has now passed the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), where the practice of photography and videography has now been made mandatory as part of the investigation.

19. This Court also noted that the procedure prescribed in NCB Handbook which has been adopted by the Delhi Police may be argued to be not binding, however, it cannot be denied that the same has been prescribed as the best and crucial practice for



obtaining evidence in order to avoid the allegation in regard to foul play.

20. Thus, while it is true that the effort, if any, made by the prosecution to have the search conducted in the presence of the independent witnesses would be tested during the course of trial and the same may not be fatal to the case of the prosecution, however, the benefit, at this stage, cannot be denied to the accused.

21. In the present case, none of the witnesses have been examined yet and charges are yet to be framed. As noted above, the applicants have been in custody since 01.04.2022 and 03.04.2022 respectively. There is no likelihood of the trial being completed in the near future.

22. It is trite law that grant of bail on account of delay in trial 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 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.

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)

23. 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.”



24. The Hon'ble Apex Court in ***Badsha SK. v. The State of West Bengal*** (order dated 13.09.2023 passed in ***Special Leave Petition (Crl.) 9715/2023***), granted bail to the petitioner therein who had been in custody for more than two years with the trial yet to begin.

25. Similarly, in ***Man Mandal & Anr. v. The State of West Bengal*** (order dated 14.09.2023 passed in ***Special Leave Petition (Crl.) 8656/2023*** decided on 14.09.2023), the petitioner therein had been in custody for almost two years and the Hon'ble Apex Court found that the trial is not likely to be completed in the immediate near future. The petitioner was, therefore, released on bail.

26. In ***Dheeraj Kumar Shukla v. State of U.P. : 2023 SCC OnLine SC 918***, the Hon'ble Apex Court released the petitioner therein on bail, and observed as under:

“3. It appears that some of the occupants of the Honda City” Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

27. From the foregoing, it is evident that despite the stringent requirements imposed on the accused under Section 37 of the NDPS Act for the grant of bail, it has been established that these requirements do not preclude the grant of bail on the grounds of undue delay in the completion of the trial. 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 precedent over the statutory restrictions under Section 37 of the NDPS Act.

28. In such circumstances, this Court is of the opinion that the applicants have made out a prima facie case for grant of bail on the grounds of absence of independent witnesses, absence of photography or videography of the alleged search and recovery and prolonged custody.

29. The applicants are also stated to be of clean antecedents belonging to humble background and have family including minor children to take care of. Therefore, I am satisfied that reasonable grounds exist for believing that the applicant/accused is not likely to commit any offence while on bail.

30. The applicants are, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- each with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicants 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 applicants shall under no circumstance leave the country without the permission of the learned Trial Court;
- c. The applicants shall appear before the learned Trial Court as and when directed;
- d. The applicants shall provide the address where they would be residing after their release and shall not change the address without informing the concerned IO/ SHO;



- e. The applicants shall, upon their release, give their mobile numbers to the concerned IO/SHO and shall keep their mobile phones switched on at all times.
31. In the event of there being any FIR/DD entry / complaint lodged against the applicants, it would be open to the State to seek redressal by filing application(s) seeking cancellation of bail.
32. It is clarified that any observations made in the present order are for the purpose of deciding the present bail applications 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.
33. The present applications are allowed in the aforesaid terms. Pending application(s) also stand disposed of.
34. A copy of this order be placed in all the matters.

AMIT MAHAJAN, J

OCTOBER 16, 2024