



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

% Judgment reserved on : 21.08.2023
Judgment pronounced on: 29.08.2023

+ **BAIL APPLN. 2881/2022**

SURAJ Petitioner

versus

STATE GOVT. OF NCT OF DELHI Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Aditya Aggarwal, Mr. Naveen Panwar & Ms. Pooja Roy, Advocates.

For the Respondent : Mr. Yudhvir Singh Chauhan, APP with ASI Neerja Kumar, PS Crime Branch.

**CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

JUDGMENT

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. This is a bail application filed under Section 439 Cr.P.C., 1973 seeking regular bail in respect of FIR No.311/2019 dated 16.10.2019 under Sections 20/29 Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") registered at Police Station Crime Branch.



2. Mr. Aditya Aggarwal, learned counsel appearing for the applicant submits at the outset that the applicant was arrested on 16.10.2019 under Section 29 of NDPS Act and has been in judicial custody since then and has spent almost 3 years and 8 months (approx.) of incarceration.

3. Learned counsel submits that it is the case of the prosecution that on 16.10.2019, the applicant namely Suraj S/o. Chhering was coming to Delhi to supply *charas* to a person, namely, Priyaranjan (Co-accused in the subject FIR) between 10:30 A.M. to 11:00 A.M. near bus stop, Vande Mataram Marg, Dhaula Kuan Road, Delhi.

4. On apprehending the petitioner and co-accused, both of the accused persons refused their search in front of gazetted officer therefore, a notice under section 50 of NDPS Act was served to both the accused. It is further the case of the prosecution that a blue zip bag was recovered from the hands of the petitioner wherein on opening the bag, two heavy packets were found and on checking, the bags were containing wet black colour pungent material which on checking with the field testing kit was found to be *Charas*.

5. Learned counsel further submits that it is further the case of the prosecution that on weighing the two packets, the weight of the bags were 5 kgs. each and the total weight of the blue bag containing the two packets was 10 kgs. Learned counsel vehemently submits that it is also the admitted case of the prosecution that two samples of 25 grams



each from both the packets along with their duplicate samples were taken. Thereafter the petitioner and co-accused were arrested and the chargesheet was filed before the learned Trial Court after the investigation.

6. Learned counsel for applicant submits that even if going by the story of the prosecution, at 10:47 A.M., the applicant's location must be near bus stand, Dhaula Kuan, Vande Mantaram Marg, as the secret informer has already identified him at 10:40 A.M. and even by assuming that the co-accused was nearby to the applicant, the location of the co-accused was NDMC Complaint Center, Clive Square New Delhi-110001 which is roughly around 4.7 Km from the location of applicant. Learned Counsel submits that there is a doubt about the presence of the Applicant at the place of seizure.

7. Learned counsel for the applicant also seeks the grant of present bail application on the grounds of parity since the co-accused Priyaranjan Sharma has already been released on bail *vide* the order of this Court in **BAIL APPLN. 3649/2022** titled as ***Priyaranjan Sharma versus State of NCT Delhi***, as also emphasizes that apart from the alleged recovery of contraband from the present applicant, the other relevant facts of the case are actually pretty much the same on which the co-accused Priyaranjan was granted bail by this Court.

8. On the aforesaid basis, learned counsel bases his argument on Article 21 of Constitution of India to submit that liberty as enshrined



in the Constitution is fundamental and thus, requests that the applicant be released on regular bail.

9. *Per Contra*, Mr. Yudhvir Singh Chauhan submits that there is a clear and major distinction with the case of Priyaranjan Sharma in the sense that, it is undisputed that the contraband, i.e., *Charas* weighing 10 kgs., was seized from the present applicant namely Suraj whereas there has been no recovery effected from the co-accused Priyaranjan Sharma.

10. Learned APP further submits that it is beyond cavil that the *Charas* which was seized, was of commercial quantity and the rigors of Section 37 of NDPS Act would be squarely applicable. He submits that keeping in mind the fact that this is a commercial quantity and both the applicants were apprehended at the spot, lends credence to the fact that the complicity of the applicant cannot be ruled out.

11. Learned APP also refers to the status report filed on behalf of State dated 07.12.2022 particularly to paragraphs 6, 7 and 12 to submit that the mobile phone seized from the applicant shows calls being made across the other mobile phone numbers wherefrom the contraband in different times were seized and that they were in constant touch. Learned APP points out to paras mentioning the call records and the number of calls made across to and from the mobile phone of the applicant are indicated to submit that the applicant has been actively in touch with the other accused persons and therefore,



the complicity and culpability of the applicant in the present case cannot be ruled out.

12. Learned APP further refers to para 12 of the said Status Report to rebut the theory so raised by the learned counsel for the applicant, on the grounds of applicant's location on the date of apprehension being different from the alleged place from where the applicant was apprehended on the basis of the location of the cellphone. In that, according to the learned APP, the aerial distance between the said mobile towers is around 1000-1200 meters and the place of apprehension is surrounded by ridge area having various towers and therefore, such theory of applicant can be debunked outrightly and scientifically. Moreover, learned APP submits that this issue would be a subject matter of trial.

13. Learned APP also relies upon the FSL report chemically certifying that the recovered contraband was indeed *Charas*. In that view of the matter, learned APP submits that the applicant does not deserve to be released on bail.

OPINION & DECISION OF THE COURT:

14. This Court has heard the arguments of Mr. Aggarwal, learned counsel for the applicant and Mr. Chauhan, learned APP for the State and considered the submissions and the records so placed.

15. The issue in the present case lies in a narrow compass for the reason that the co-accused of the applicant, namely, Priyaranjan



Sharma, has already been enlarged on regular bail vide the order dated 16.08.2023 passed by this Court **BAIL APPLN. 3649/2022** titled **Priyaranjan Sharma vs. State of NCT Delhi**. Though, in the case of Priyaranjan, there was no recovery at all, whereas, it is alleged that contraband to the extent of 10 kgs was recovered from the present applicant.

16. This court had also, in the case of **Praveen Saini vs. State of NCT of Delhi** in **Bail Application No. 2321 of 2022**, passed on 26.07.2023 and after considering the ratio laid down by the Supreme Court in **Rabi Prakash vs. The State of Odisha** in SLP (Crl.) No.(s). 4169/2023 rendered on 13.07.2023, **Mohd Muslim @ Hussain vs. State (NCT of Delhi)** in SLP No. Crl. 915/2023 rendered on 28.03.2023, as also judgment of the Supreme Court in **Biswajit Mondal @ Biswajit Mandal vs. The State of West Bengal**, Crl. A. Nos. 450/2023 rendered on 14.02.2023 held that the liberty enshrined in Article 21 of the Constitution would whittle down the rigours of section 37 of the NDPS Act, 1985, particularly where the applicant has been incarcerated for a fairly long period. Though, there is no doubt that the Legislature intended the provisions to be strictly applied across board, however, the liberty of an individual, in the aforesaid judgments of the Supreme Court have been held to be paramount in nature. The relevant paragraphs of **Praveen Saini (supra)** are extracted hereunder:



“32. Keeping in view the ratio of the judgments of the Supreme Court giving primacy to the provisions of Article 21 of the Constitution of India and considering relaxation of the twin conditions contained in Section 37 of the NDPS Act, 1985, this Court does not find any reason to deny enlarging the applicant on regular bail on stringent conditions, which shall be enumerated subsequently.

33. This Court is fortified in its aforesaid view in the judgments of the Supreme Court as under :-

Rabi Prakash vs. The State of Odisha (SLP (Crl.) No(s). 4169/2023 rendered on 13.07.2023 :-

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.

Mohd Muslim @ Hussain vs. State (NCT of Delhi) (Crl.A. No. 943/2023 rendered on 28.03.2023 :-

A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act. 20.



The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik 19). 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. 21. 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 country 20. Of these 122,852 were convicts; the rest 4,27,165 were under trials.

Biswajit Mondal @ Biswajit Mandal vs. The State of West Bengal (Crl. A. No. 450/2023) rendered on 14.02.2023 :-

The appellant seeks enlargement on bail in FIR No.303/2021 under Sections 21(c)/29 of the NDPS Act. The appellant has undergone a sentence of about 1½ years. The trial has just begun and no other criminal antecedents qua the aforesaid act of drug use. The material detected is the medicine Codenine but of 10 litres. Taking in to consideration the period of sentence undergone by the appellant and all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court."



17. It is manifest from the perusal of the Nominal Roll on record that the applicant has already spent 03 years 08 months and 10 days (approx.) in judicial custody and is thus entitled to be released on regular bail by virtue of the ratio laid down by the Supreme Court in ***Rabi Prakash (supra)*** and ***Mohd Muslim (supra)***.

18. Though the FIR was registered on 16.10.2019, the trial is still at the stage of examination of prosecution witnesses and it appears that it would take some time for the prosecution evidence to be concluded and thus, the liberty of an individual cannot be restrained without any reasonable cause.

19. Moreover, the applicant has no other previous involvement and no such material has been placed on record by the respondents to indicate that the applicant, if released, would involve himself in similar offences or that there indeed exists a reasonable apprehension. The words “reasonable reading” have already been interpreted to mean, *prima facie*, examination of the material available on record for appreciation by the Court and not material which needs the Court to reach a definite conclusion. This has been held so by the Supreme Court in ***Mohd. Muslim (supra)***. The relevant paras of the said judgment in this context are extracted hereunder:

“21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the



accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). 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.....”

20. Thus, keeping in view the ratio laid down by the Supreme Court in ***Mohd. Muslim (supra)***, *prima facie* and as of now, there is no material placed on record by the respondent to show that the applicant, if released, may involve himself in similar offences. It is also clear from the aforesaid that there has to be tangible or ascertainable material for the Court to reach any such conclusion. The absence whereof cannot be read against the individual.

21. Therefore, the applicant is entitled to be and is released on regular bail upon furnishing a personal bond of Rs.2,00,000/- with one surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:-



- a. He shall surrender his passport, if any, to the Court concerned and shall under no circumstances leave Delhi without prior permission of the Court concerned;
- b. He shall cooperate in the trial and shall appear before the Court as and when required;
- c. He shall provide his mobile number(s) to the SHO/IO of concerned Police Station and keep it on his person and operational at all times;
- d. He shall drop a PIN on the Google map to ensure that his location is available to the SHO/IO of the concerned Police Station;
- e. He shall not indulge in any criminal activity of any nature whatsoever.
- f. He 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 ; and
- g. In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/ Court concerned by way of an affidavit.

22. Any infraction of the abovesaid conditions shall make the applicant liable for revocation of the present bail so granted.



23. Nothing in this Order shall be construed as an expression of opinion on the merits of the pending matter.

24. With the aforesaid conditions, the bail application stands disposed of.

TUSHAR RAO GEDELA, J.

AUGUST 29, 2023

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