



2025:DHC:1385



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.03.2025

+ **BAIL APPLN. 3617/2024, CRL.M.A. 30205/2024 & CRL.M.A. 30206/2024**

SHAINU R HATWARApplicant

versus

NARCOTICS CONTROL BUREAU Respondent

Advocates who appeared in this case:

For the Applicant :Mr. Aditya Aggarwal, Ms. Kajol Garg & Mr. Naveen Panwar, Advocates

For the Respondent : Mr. Arun Khatri, Sr. Standing Counsel with Ms. Shelly Dixit, Ms. Shreya Lamba, Ms. Anoshuka, Mr. Sahil & Mr. Akshay, Advocates.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present bail application is filed seeking regular bail in Case No. VIII/24/DZU/23, registered for offences under Sections 8 (c), 20 (b), 22(c), 23(c), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. The brief facts of the case are as follows:



2.1. On 29.05.2023, a secret information was received that one person, namely, Gajender Singh, will come for booking a parcel containing narcotic drugs at DTDC Courier. On the basis of the said information, accused Gajender was intercepted by the raiding team when he arrived at the DTDC Office. It is alleged that accused Gajender was carrying a light green envelop. A recovery of 15 LSD paper blots, weighing 0.3 g, was effectuated from the said envelop. It is alleged that at the instance of accused Gajender, a recovery of 650 LDS Blots was made from his home as well.

2.2. It is alleged that the accused Gajender admitted his complicity in the offence in his statement under Section 67 of the NDPS Act. He further disclosed that he used to book parcels on the directions of the applicant. It is alleged that the applicant also admitted to her involvement in her disclosure statement and further disclosed that she had purchased the LSD Blots from her friend– Sarabjeet Singh and gave his details. She disclosed that whoever wanted LSD papers would contact her through Wickerme app and pay her in BTC, whereafter, the parcel was shipped by accused Gajender, who was her boyfriend.

2.3. A search was conducted at the disclosed address of co-accused Sarabjeet Singh in Jaipur and a recovery of 9006 LSD Blots and 1.116 Kg of Ganja along with ₹4,65,500/- in cash was made from there.

2.4. It is alleged that co-accused Sarabjeet disclosed about a few other consignments in his disclosure statement.



2.5. One such consignment bearing no. W60822411 had been delivered to one Manthan Raina in Noida. During search of the address in Noida, a recovery of a total of 84 LSD paper blots was made from there. Co-accused Manthan in his statement under Section 67 of the NDPS act disclosed the name of another co-accused Ravi stating that the said accused had paid ₹30,000/- for procuring the concerned parcel and further sent the tracking number of the parcel to him. He also disclosed that the order for the said parcel had been placed by co-accused Yuvanshu.

2.6. During follow up action in relation to other parcels (the details of which had been disclosed by co-accused Sarabjeet), the following recoveries were affected:

- a. Parcel no. RR673997169L: Intercepted at Post Office Mahasainik, Pune and a recovery of 5006 LSD blots was made from the parcel.
- b. Parcel No. W60803432: Intercepted at the DTDC courier Service, Kerala and a recovery of 100 LSD blots was made from the parcel. Further, co-accused Saneesh Soman was apprehended when he came to collect the said parcel.
- c. Parcel No. W60803434: Intercepted at the DTDC Express Ltd., Aminji karai, Chennai, and a recovery of 100 LSD blots was made from the parcel.

3. The learned counsel for the applicant submitted that the applicant is innocent and she has been implicated on the basis of the



disclosure statement of co-accused Gajender and no recovery has been effectuated from her.

4. He further submitted that the applicant has been implicated in another case on the basis of disclosure statement as well and the only material against the applicant in that case is disclosure statement of the co-accused against her. He submitted that there is a major discrepancy in the case of the prosecution in respect of the quantity of the recovered LSD Blots in the other case as well.

5. He submitted that it is an admitted case of the prosecution that the applicant was a friend of co-accused persons, namely, Gajender and Sarabjeet, and there is nothing incriminating in their chats to implicate the applicant.

6. He further submitted that the applicant is suffering from thalassemia, which is a chronic disease that requires special treatment, from a long time and she has been granted interim bail by this Court as well due to the same.

7. He submitted that the applicant was arrested on 29.05.2023 and the charges are yet to be framed in the present case. He submitted that there are thirty-nine witnesses and the trial is likely to take long.

8. *Per contra*, the learned Senior Standing Counsel for the respondent vehemently opposed the grant of bail to the applicant and submitted that the present case involves recovery of commercial quantity of contraband, and therefore, the rigours of Section 37 of the NDPS Act are attracted against the applicant.



9. He submitted that the applicant is involved in another case for offences under the NDPS Act and she is a habitual offender who is a member of drug syndicate which is involved in illicit trafficking of contraband.

10. He submitted that co-accused Sarabjeet has been apprehended on the basis of the disclosure statement of the applicant and a huge amount of contraband has been recovered from his home and also from parcels, the details of which were disclosed by him.

ANALYSIS

11. 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. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

12. 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 27-A 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 oppose 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.”*

13. It is the case of the applicant that she has been falsely implicated in the present case and she was merely friends with the co-accused persons— Gajender and Sarabjeet, from whom recovery was effectuated in the present case. It is also argued that the applicant is suffering from thalassemia and she has been granted interim bail on the said ground previously.

14. The learned Senior Standing Counsel for the NCB has contested that the rigours of Section 37 of the NDPS Act are attracted against the applicant and she cannot be granted bail merely on account of her medical condition. It is stated that the applicant is also embroiled in another case.

15. This Court had granted interim bail to the applicant previously by considering that the applicant is suffering from a chronic disease. It



was noted that the jail hospitals did not have adequate infrastructure for the treatment of Thalassemia Major. It was also noted that a patient suffering from such a disease requires special care and medical attention while undergoing the treatment and not providing the same can also result in loss of life.

16. Even so, there is no dispute that it is not open to this Court to grant bail on the sole ground of the gravity of the ailment. In the case of *The State of Meghalaya v. Lalrintluanga Sailo & Anr. : 2024 INSC 537*, the Hon'ble Apex Court set aside the impugned order whereby bail had been granted to the accused on the solitary ground of being HIV positive. It was observed that a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible and the Court cannot avoid to record its satisfaction in relation to the same.

17. It cannot be ignored that the present case is one where the applicant was arrested on 29.05.2023, despite which, the charges are yet to be framed. Thirty-nine witnesses have been listed by the prosecution. In such circumstances, speedy trial does not seem to be a possibility. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

18. 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 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)



19. 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 therein, 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 considerable amount of time.

20. 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)

21. This respondent has been given an opportunity to be heard. It is not denied that the primary evidence against the applicant is the disclosure statements of co-accused persons and the recoveries that were allegedly made from the co-accused at her instance. Whether the applicant is involved in the commission of the offences will only be tested after evidence has been led by the parties. However, at this



stage when charges are yet to be framed despite lapse of around two years, this Court does not deem it appropriate to make any comments on this aspect.

22. In the case of *Salim Valimamad Majothi v. State of Gujarat* : **2023 SCC OnLine SC 659**, the Hon'ble Apex Court granted bail to an accused involved in a case under the NDPS Act by considering his medical condition as well as the fact that he had been in incarceration for more than 1 year and 7 months.

23. It is undisputed that the applicant is suffering from Thalassemia Major and she requires blood transfusion every two to three weeks. While granting interim bail, it had been noted by this Court that the jail hospitals did not have the adequate medical infrastructure for the treatment of Thalassemia Major due to which the applicant was taken to Lady Hardinge Medical College for regular treatment. It was also noted that the said hospital, at certain occasions, also lacked requisite medical facilities for the treatment of Thalassemia Major. Thus, undisputedly, the disease suffered by the applicant requires special treatment.

24. It is undisputed that the applicant did not misuse the liberty granted to her on earlier occasion.

25. In such circumstances, this Court considers it apposite to grant bail to the applicant on the ground of delay in trial coupled with her medical condition.

26. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of



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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 boundaries of the country 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 her release, appear before the concerned IO once in every week;
- e. The applicant shall provide the address where she would be residing after her release to the concerned IO/SHO and shall not change the address without informing the concerned IO;
- f. The applicant shall, upon her release, give her mobile number to the concerned IO and shall keep her mobile phone switched on at all times.

27. 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.

28. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not



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influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

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

30. All pending applications stand disposed of.

AMIT MAHAJAN, J

MARCH 03, 2025