

Bail Matters 3781/2022
STATE Vs. MOHD ANWAR @ KUTUB
FIR No 380 /2017
PS (Badarpur)

17.03.2023

Present: Sh. Wasi-Ur- Rahman, Ld. Addl. PP for the State.
Sh. Mohd Yasin, Ld. Proxy Counsel for accused.

अरुल वर्मा
ARUL VARMA
अतिरिक्त सत्र न्यायाधीश-04 एवं विशेष न्यायाधीश
(एन.डी.पी.एस.) दक्षिण-पूर्व
Additional Sessions Judge-04 & Special Judge
(NDPS) (South-East)
दक्षिण-पूर्व जिला, कक्षा नं. 312
South-East District, Room No. 312
साकेत कोर्ट परिसर, नई दिल्ली
Saket Court Complex, New Delhi

ORDER ON REGULAR BAIL APPLICATION

1 Vide this order, this Court shall adjudicate upon the regular bail application filed on behalf of the applicant/accused Mohd Anwar @ Kutub. It is pertinent to note that this Court has been directed by the Hon'ble High Court of Delhi in CrI M.C No 1568/2023 to dispose of the bail application today itself. Arguments have already been heard *in extenso*, the gist whereof is discussed hereunder.

2 Ld. Counsel for accused Mohd. Anwar @ Kutub submitted that the accused has spent more than 5 years in judicial custody and is such entitled to be granted bail in term of verdict of ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union Of India (1994) 6 Supreme Court Cases 731***. Ld. Counsel further submitted that he is conscious that this Court has passed an order dated 16.11.2022 qua co-accused Rajesh Kumar wherein this Court has given interpretation on ***Supreme Court Legal Aid Committee (supra)***, but he submitted that much water has flown thereafter, and there are now a catena of verdicts whereby the Hon'ble High Court of Delhi has been granting bail to accused persons who

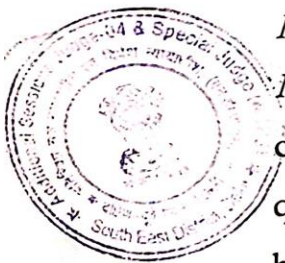


have been incarcerated for a period of more than 5 years. Ld. Counsel also submitted that in terms of ***Tasawwur Hussain @ Tasawwur Versus DRI, Bail Application No. 891/2022***, passed by Hon'ble High Court of Delhi, this Court is bound by the interpretation of the Hon'ble High Court of Delhi and as such the accused ought to be granted bail.

3 Ld. Counsel also fairly conceded that the verdict of ***Tasawwur Hussain @ Tasawwur (supra)*** would reveal that the accused therein was involved in a single criminal case, whereas in the case at hand, the accused Mohd. Anwar @ Kutub has been shown to be involved in multiple cases. Ld. Counsel further contended that the mere involvement of the accused in other cases ought not to be impediment in the grant of bail to him. In this Context, Ld. Counsel has placed reliance on ***State of West Bengal Vs Rakesh Singh SLP(Crl) No. 9470 of 2021***, to contend that in a similar matter where the accused was involved in 53 criminal cases, the accused was granted bail.

4 Ld. Counsel further placed reliance on ***Gaurav Mendiratta Vs Narcotics Control Bureau in Bail Application No 1610/2021***, passed by Hon'ble High Court of Delhi, to contend that in case of NDPS Act, involving in commercial quantity, previous involvements of accused would not dis-entitle him to obtain bail.

5 During the course of arguments, Ld. Counsel further placed reliance on ***Sarvan Kumar @ Kishan Vs State of NCT of Delhi Bail Application No. 956/2022***, to contend that the rigors of Section 37 of NDPS Act would not come in the way while dealing with a bail application moved by an under trial



who has remained in custody for more than half of the minimum sentence prescribed. It was contended that even **Sarvan Kumar @ Kishan (supra)** has placed reliance on **Supreme Court Legal Aid Committee case (supra)**. Ld. Counsel for accused thus submitted that accused ought to be granted bail as he has already been incarcerated for more than 5 years.

6 *Per Contra*, Ld. Addl PP for State opposed the bail application citing the gravity of offence as one of the main grounds. It was submitted that a perusal of the verdict of **Supreme Court Legal Aid (supra)** would reveal that these directions do not apply to the NCT of Delhi. The Hon'ble Supreme Court has categorically mentioned the name of the states to which its order applies and the NCT of Delhi does not find mention in the list of states to which this order applies (*The order is specifically made applicable to the states of Maharashtra, Andhra Pradesh, Assam, Kerala, Karnataka, Gujarat, Orissa, Bihar, West Bengal, Uttar Pradesh and Madhya Pradesh only*).

Ld. Addl PP for State further contended that commercial quantity of alleged contraband was recovered from the possession of accused. Thus, accused ought not to be granted bail as there is a likelihood of accused being involved in another offence of similar nature.

7 Submissions heard.

8 In essence, Ld. Counsel for accused has placed reliance on the abovementioned verdicts and also the following judgments to contend that the accused ought to be granted bail as he has been in custody for a period of 5 years:

i) **Peter Graham Wolledge Vs Narcotic Control Bureau**

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Bail Application No.1975 of 2022

ii) ***Vicky Singh @ Chiku Vs State (Govt of NCT of Delhi)***

Bail Application No.3493 of 2022

iii) ***Ved Prakash @ Mistri Vs The State (NCT of Delhi)***

Bail Application no 1225 of 2022

iv) ***Jeewan Mondal Vs State of NCT of Delhi Bail Application No 3925 of 2020***

v) ***Anil Kumar Vs Directorate of Revenue Intelligence Bail Application No. 3638 of 2021***

vi) ***Paramjit Singh Gulati Vs Directorate of Revenue Intelligence Bail Application No. 672 of 2022***

vii) ***Mumtaz Vs State (NCT of Delhi) & Anr. Bail Application No. 3165 of 2022.***

9 A perusal of the litany of judgments placed by Ld. Counsel for accused reveals that there is reliance of the verdict of ***Supreme Court Legal Aid (supra)*** in them, whilst granting bail. The leitmotif discernible from the above verdicts of the Hon'ble High Court of Delhi, is to the effect that the accused who has been incarcerated for period of more than 5 years, ought to be released on bail.

10 Under these circumstances, keeping in view the fact that the accused Mohd Anwar @ Kutub, who is in judicial custody for 5 years 01 month and 07 days, as reflected from his Nominal Roll, is hereby granted bail, on his furnishing personal bond with surety bond of Rs.50,000/- with one surety in the like amount, subject to following conditions:

i) The applicant/accused shall not try to contact or influence the complainant/victim in any manner;

ii) He shall not tamper with evidence in any manner and shall regularly appear before the Court on each and every date of hearing; and

iii) He shall also furnish his mobile phone and mobile phone of his surety to the IO and shall keep his mobile phone operational round the clock and shall share his Google PIN to IO.

iv) The applicant/accused shall commit no offence whatsoever during the period that he is on bail and in the event of his being involved in any other case and lodging of FIR or DD entry against him, it would be open to the State to seek redressal in accordance with law.

11 Needless to say, the abovementioned observations are predicated solely on the facts as alleged, and brought forth at this juncture, and are not findings on merits, and would also have no bearing on the merits of the case. With these conditions, and observations, the regular bail application stands disposed of.

12 In compliance of ***Sanjay Singh Vs. State (Govt of N.C.T of Delhi) Writ Petition Criminal 974/2022***, copy of this order be sent to concerned Jail Superintendent to convey the order to inmate.

Order be given dasti.



ARUL VARMA

(ARUL VARMA)
ASJ-04 + Spl. Judge (NDPS) South East District,
Saket Court, New Delhi: 17.03.2023

अतिरिक्त सत्र न्यायाधीश-04 एवं विशेष न्यायाधीश (न.न.डी.पी.एस.) दक्षिण-पूर्व
Additional Sessions Judge 04 & Special Judge, (NDPS) (South-East)
साकेत कोर्ट परिसर, नई दिल्ली
Saket Court Complex, New Delhi