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

+ **BAIL APPLN. 1779/2024**

JONIAL

.....Petitioner

Through: Mr. Aditya Aggarwal, Mr. Manas
Aggarwal, Mr. Naveen Panwar, Mr Vineet
Chawla, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP
SI Sachin, PS SP Badli

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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10.01.2025

1. This is an application seeking grant of regular bail in the FIR No. 504/2021 dated 17.07.2021 registered at PS Samaipur Badli under Sections 20/29/85 of Narcotic Drugs and Psychotropic Substances Act, 1985. ("**NDPS Act**").
2. As per the prosecution, a secret information was received that the petitioner would be supplying *Ganja* in his Ertiga Car bearing Registration No. DL3CCF3172 near Mukarba Chowk Bypass. The ASI gave information under Section 42 of NDPS Act to the concerned officer and after direction from the concerned officer, a raiding team was constituted. The passers-by were asked to join the raiding party, but citing their legitimate compulsions, no independent witness agreed to join.



3. At 3:15 AM, the Ertiga car of the petitioner was intercepted. The petitioner was explained about his right to be search in the presence of Gazetted Officer or Magistrate and by complying other provisions, noitice under section 50 of NDPS Act was given to the petitioner. During the search, about 25 kg of *ganja* was recovered in the *katta* on the back seat of the Ertiga car.
4. On weighing the said contraband, the weight was found to be 24.68 kg. Hence, the present FIR.
5. Mr. Aggarwal, learned counsel for the petitioner states that in the present case, the petitioner has been in custody for more than three and a half years i.e. since the date of his arrest being 17.07.2021.
6. He further states that 16 witnesses have been cited by the prosecution and, as of today, only 6 witnesses have been examined and the seventh witness would be examined on 07.05.2025 i.e. the next date of hearing.
7. He states that the petitioner has a right of speedy trial as contemplated under Article 21 of the Constitution of India and the trial is far from nearing conclusion.
8. His second submission is with regard to lack of independent witnesses, the video and the CCTV recording.
9. He states that the information, as per the prosecution, was received at 9:45 PM and the petitioner was intercepted at 3:15 AM giving adequate time to the respondent to make arrangement for videography and independent witnesses. Since the same has not been done, it also affects the right of the petitioner and serious prejudice is caused to him.
10. Learned counsel for the petitioner has relied upon the judgment of ***Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109*** and more



particularly on paras 4 and 5 which read 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.

5. However, we find some merit in the contention of learned counsel for the respondent – State that the petitioner being not a resident of the State of Orissa, some stringent conditions are required to be imposed upon him.”

11. He also relied upon ***Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352, Man Mandal v. State of W.B., 2023 SCC OnLine SC 1868*** and ***Badsha SK vs. The State of West Bengal, SLP (Crl) 8658/2023***.
12. *Per Contra*, Ms. Dalal, learned APP opposes the above noted contention and states that in the present case, the delay in trial and long incarceration may be a factor but cannot be a deciding and sole factor for grant of bail.
13. She relies upon the judgment passed by a Coordinate Bench of this Court in ***Umar Sebandeke v. Customs, 2024 SCC OnLine Del 4826*** more particularly on para 35 and 38 which read as under:-



“35. It was argued by the learned counsel for the applicant that the applicant is in custody since 24.01.2021 and the Fundamental Rights as guaranteed under Article 21 of the Constitution of India will override the statutory embargo created under Section of the 37 of the NDPS Act.

.....

38. The substance recovered in the present case was tested with the help of Field Test Kit and found to be positive for Heroin. The applicant, thus, in the opinion of this Court, has failed to satisfy that no reasonable ground exists for believing that he is guilty of the offence. It is trite law that long period of incarceration is a relevant factor for considering the application for bail. However, the same cannot be the sole ground for grant of bail unless the accused person falls within the parameters of Section 436A of the CrPC.”

14. Reliance is also placed on ***Pauline Nalwoga v. Customs, 2024 SCC OnLine Del 7255*** and more particularly on paras 40, 41 and 43 which read as under:-

“40. Assessment of these decisions of the Supreme Court cited above shows that bail has been granted in cases having differing facts, some with incarceration of more than 3 years, and some in cases of seizure of ganja. The assessment, therefore, on prolonged custody and delay in trial will depend of facts and circumstances of the case. Whether 2 or 3 years or more, or any other time period is “prolonged”, is clearly left to the assessment of the Court.

41. In this case, the petitioner has undergone 2.5 years of custody and the trial is progressing. An attempt may be made by the Trial Court to expedite the trial. In the event, that the trial does not proceed ahead expeditiously, needless to state that the applicant will have the right to approach the Court at



a subsequent stage.

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43. In light of the above discussion, taking into consideration four times the commercial quantity of contraband seized from the instance of the applicant, there being no prejudicial infirmity in the process adopted by the respondent, rigours of Section 37, NDPS Act, and progressing trial, this Court is unable to reach a prima facie conclusion that applicant is not guilty of the offences and is unlikely to commit the same if enlarged on bail. The threshold of Section 37, NDPS Act not having been crossed, the application for bail cannot be granted.”

15. Lastly, she also relies upon the judgement of the Hon’ble Supreme Court in ***Narcotics Control Bureau v. Mohit Aggarwal, (2022) 18 SCC 374*** and more particularly on para 18 which reads as under:-

“18. Even de hors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by the learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be



premature at this stage.”

16. I have learned counsel for the parties.
17. Time and again, the Hon’ble Supreme Court in catena of judgments has observed that the rights guaranteed under Article 21 of Constitution of India cannot be restricted. The statutes putting restrictions on grant of bail can be relaxed when the Court is of the view that the accused has undergone substantial period of incarceration and there is no likelihood of the trial to be concluded in near future. Hence, the parameters of Article 21 will take primacy. The Hon’ble Supreme Court in ***Union of India v. K.A. Najeeb, (2021) 3 SCC 713*** observed as under:-

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a



timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

18. Relying on the said judgment, the Hon’ble Supreme Court in **Mohd. Muslim (supra)** observed as under:-

“13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values,



i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly.....

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. State*²¹ 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.”

19. Again the Hon’ble Supreme Court relying on Article 21 in ***Rabi Prakash (supra)*** has categorically observed that the statutory provisions putting embargo cannot override the fundamental rights guaranteed under Article 21 of the Constitution. Therefore, the twin conditions as mentioned under section 37 can be dispensed with. The aforesaid judgment is dated 13.07.2023 and thereafter, the Hon’ble Supreme Court in ***Man Mandal (supra)*** dated 14.09.2023 observed as under:-

“2. Learned counsel for the petitioners submitted that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future.

4. It is further submitted that in similar cases other persons have been granted bail by this Court.

5. Learned counsel appearing for the State submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the quantity being commercial in nature, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the petitioners have



been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.”

20. In the present case, as noted above, the petitioner is in custody since 17.07.2021. The prosecution has cited 16 witnesses and as of now, only 6 witnesses have been examined and 10 witnesses are yet to be examined. The 7th witness is to be examined on 07.05.2025. The same is not disputed by the learned APP.
21. In view of the above noted principles and factual matrix, I am of the view that it does not seem that the trial will be concluded in the immediate future as after examination of 7th witness, there are still 9 witnesses yet to be examined. The nominal roll of the petitioner shows that the petitioner has already undergone more than 3 years of incarceration. The nominal roll further reflects that the petitioner is already on bail in FIR No.793 of 2024 under section 323/509/34 of IPC.
22. The judgment of ***Rabi Prakash (supra)*** and ***Man Mandal (supra)*** are subsequent to the judgment of ***Mohit Aggarwal (supra)***. Further, in ***Mohit Aggarwal (supra)***, the contention with regard to Article 21 was neither raised by the learned counsel for the accused nor considered by the Hon'ble Supreme Court.
23. The judgments cited by the learned APP are distinguishable. As per the paragraph 40 of the judgment of ***Pauline Nalwoga (supra)***, the Coordinate Bench has noted that in cases where the seizure is of *ganja*, the Courts have passed orders based on long incarceration of the accused. Further, the contraband was 4 times of the commercial



quantity whereas in the present case, the recovered contraband from the petitioner is 24.68 Kgs of *ganja* which is little above the threshold of the commercial quantity being 20 Kgs.

24. In *Umar Sebandeke (supra)*, the confiscation was 7500 grams of heroin, whereas the threshold for commercial quantity is 250 grams.
25. For the foregoing reasons, the petitioner has made out a case for grant of bail on the ground of long incarceration and delay in trial.
26. In view of the above, the petitioner is released on bail subject to the following terms and conditions:-
 - (a) The petitioner shall furnish a personal bond in the sum of Rs. 10,000/- (Rupees Ten Thousand Only) with one surety of the like amount to the satisfaction of the concerned Trial Court;
 - (b) The petitioner shall appear before the concerned Court on every date of hearing till exempted;
 - (c) The petitioner shall provide his mobile number to the concerned IO, which shall be kept in working condition and switched on at all times. The petitioner shall also provide his permanent residential address and in case of change of residential address or contact details, the petitioner shall promptly inform the same to the concerned IO;
 - (d) The petitioner shall not leave the country without permission of the concerned Court during the bail period and surrender his passport, if any, at the time of release before the concerned Court;
 - (e) The petitioner shall not directly/indirectly try to get in touch



with any prosecution witnesses or tamper with the evidence.
27. The petition is disposed of along with pending applications, if any.

JANUARY 10, 2025 / (MS)

JASMEET SINGH, J

Click here to check corrigendum, if any