



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

Reserved on : 28.11.2023

% **Pronounced on : 22.12.2023**

+ **BAIL APPLN. 3069/2023**

YOGESH @ GOVARDHAN

..... Petitioner

Through: Mr. Aditya Aggarwal and Mr. Manas
Agarwal, Advocates.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Vikas Deep, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 183/2018 under Sections 20/25 of NDPS Act registered at Police Station Crime Branch.

2. In brief, the facts of the case are that on 14.07.2018 at about 04:30 A.M, the accused Yogesh @ Govardhan was apprehended near the gate of Gandhi National Museum, Delhi, while he was driving a silver colored Honda City car. His car was searched and three plastic bags were recovered from the backseat of the car which contained



ganja measuring 110 Kg. Thereafter, samples were drawn, sent to FSL for examination and the accused was taken into custody.

3. I have heard the arguments of the learned counsel for the petitioner, learned APP for the state and have also perused the records of this case.

4. It is submitted by the learned counsel for the petitioner that the main ground on which the petitioner is seeking bail is that the petitioner has been in judicial custody for about 5 years and 5 months and according to the law laid down by the Hon'ble Supreme Court in Supreme Court Legal Aid Committee representing Undertrial Prisoners v. UOI & Ors. (1994 (6) SCC 731), once an accused person who is under trial, has been charged with an offence that carries a punishment of minimum of 10 years and has spent time more than half of the minimum sentence, prescribed in those sections, in jail, then he is entitled to be released on bail as the same would be deprivation of his Fundamental rights, as enshrined under Articles 20 and 21 of the Constitution of India. It is further submitted that this hon'ble court has time and again relied on the abovementioned judgment in different cases having similar facts and circumstances. It is further submitted that since the trial is going to take a long time to conclude and the fact that the petitioner has already spent a considerable amount of time in jail, no purpose would be served by keeping in judicial custody, thus, he may be released on bail till the end of the trial.



5. In support of his contentions, learned counsel for the petitioner has relied on the following judgments passed by this court:

- ***Gurmito versus CBI* (Bail Application No. 1621/2022 decided on 20.07.2022);**
- ***Sarvan Kumar @ Kishan Versus State* (Bail Application No. 956/2022 decided on 18.07.2022)**
- ***Anil Kumar @ Nillu versus State* (Bail Application No. 1724/2022 decided on 21.03.2022).**

6. On the other hand, learned APP has opposed the present bail application. It is submitted by the learned APP that the quantity of ganja recovered from the petitioner is 110 kg, which falls in the category of commercial quantity. It is further submitted that the judgment of the Hon'ble Supreme Court, on which the petitioner has relied upon, does not have a binding effect on other cases as each case has its own facts and circumstances. It is also submitted that the petitioner is involved one other case, FIR 237/2016 which is also pending.

7. The relevant portion of the judgment of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee representing ***Undertrial Prisoners v. UOI & Ors.*** (1994 (6) SCC 731) is produced herein:



“ 15...

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”

8. The relevant portion of the judgment passed by this hon’ble court in **Sarvan Kumar (supra)** is also produced herein:

“The rigors of Section 37 of the NDPS Act would thus not come in the way while dealing with a bail application moved by an undertrial who has remained in custody for more than half of the minimum sentence.”

9. Further, a coordinate bench of this Hon’ble Court in **Anil Kumar @Nillu (supra)** has also held that rigors of Section 37 NDPS Act would not stand in the way while dealing with a bail application moved by an undertrial who has remained in custody for more than half of the minimum sentence prescribed in the sections under which the undertrial has been charged with.

10. Reliance can also be placed on the order passed by a coordinate bench of this court in **Bail Appln.3068/23 Saroj Subudhi v. State**, whereby bail was granted to the accused person therein who was charged under the same sections and had been in judicial custody for about 6 years.

11. In the present case, the minimum sentence prescribed under section 20 of NDPS Act is rigorous imprisonment for 10 years.



12. As per the nominal roll on record, the applicant has been judicial custody for about 5 years and 5 months and even the jail conduct of the petitioner has been satisfactory

13. Considering the circumstances of this, the fact that the petitioner has already been in custody for more than 5 years, taking into account that the trial is likely to take considerable time and the judgments passed by the Hon'ble Supreme Court and by this Hon'ble Court, I am of the view that the petitioner cannot be kept in custody for an indefinite period of time. Therefore the present bail application is allowed and the petitioner is admitted to bail on the following conditions:-

- (i) The Petitioner shall furnish personal bond in the sum of Rs.50,000/- with two sureties in the like amount to the satisfaction of the concerned trial court/jail superintendent;
- (ii) The petitioner shall provide his mobile phone number to the Investigating Officer (IO) concerned – at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail;
- (iii) The petitioner shall not leave the country without the prior permission of the concerned trial court.;
- (iv) The petitioner shall not indulge in any criminal activity during the bail period.

14. The application stands disposed of in the aforesaid terms.



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15. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

DECEMBER 22, 2023