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

Judgment delivered on: 21.10.2024

+ **BAIL APPLN. 599/2024 & CRL.M.A. 5232/2024,**
CRL.M.A. 5233/2024

VEER SINGH

.....Applicant

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Aditya Aggarwal, Ms. Ishita Kumar, Mr. Manas Agarwal, Mr. Ankit Mutreja and Ms. Shipali Garg, Advs.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State with SI Satnarayan, Anti Narcotic Squad, South East District.
Mr. Sanjeev Bhandari, ASC for the State with Ms. Charu Sharma, Mr. Arjit Sharma, Mr. Vaibhav Vats and Mr. Nikunj Bindal, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed seeking regular bail in FIR No. 529/2022 dated 09.12.2022 registered at Police Station



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Kalindi Kunj for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. It is alleged that on 08.12.2022, on the basis of a secret information, a raiding team reached at Pusta Road, near Kalindi Kunj metro station canal road. It is alleged that at about 09:30 pm, at the instance of a secret informer, the applicant was apprehended, who was carrying two black coloured plastic bags, and was approaching the canal road. It is alleged that thereafter a notice under Section 50 of the NDPS Act was served upon the applicant who then tendered his refusal on the notice. It is alleged that when the black colour kattas were checked, the same were found to contain greenish brown colour leaves, which prima facie appeared to be Ganja. It is alleged that thereafter the applicant confirmed that the recovered leaves were Ganja. The recovered contraband, when weighed on electronic machine, was found to be 22.400kg. The recovered items were then placed in the same plastic Kattas, and were sealed. The exhibit containing Ganja was seized and marked as "A" and the same was taken in possession through seizure memo. The applicant was thereafter arrested on 09.12.2022.

3. During interrogation, the applicant disclosed that he used to supply Ganja with the help of his brother-in-law Rajender, and the accused Rajkumar @ Baba in various areas in Delhi/NCR. He disclosed that he came to supply ganja in Kalindi Kunj area on the instance of accused Rajender. It is alleged that the applicant further disclosed that he purchased the said ganja with the help of the accused Rajkumar @ Baba from one Rama of Damanjodi,



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Odisha (the source of the contraband). On the instance of the applicant, co-accused persons namely Rajender, and co-accused Rajkumar @ Baba were arrested on 09.12.2022. During interrogation, accused Rajender disclosed that he came in contact with the accused Rajkumar @ Baba recently who lived in the neighboring place, and allegedly also told him that the accused Rajkumar @ Baba was engaged in the business of supplying ganja after purchasing the same from co-accused Rama, and was earning substantial profits. During interrogation, accused Rajkumar @ Baba disclosed that in order to earn money, he used to supply ganja after purchasing the same from accused Rama.

4. At the instance of the accused Rajkumar @ Baba, accused Rama was arrested from Damanjodi, Odisha, who during his interrogation, disclosed that he came in contact with the accused Rajkumar @ Baba recently, and that he supplied ganja to the accused Rajkumar @ Baba frequently for sale.

5. During investigation, on 13.12.2022, 22.400 kg Ganja was produced before the learned MM and an application under 52A of the NDPS Act was moved for seeking permission to draw sample from the recovered contraband. Two samples, subsequently were drawn, and the sample of Ganja was deposited in FSL Rohini on 14.12.2022. During investigation, FSL result was obtained, in consonance of which, the recovered contraband was found to be "Ganja."

6. During investigation, CDR & CAF of mobile numbers of accused persons were examined. From the said investigation, it



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transpired that the locations of all four accused persons were found connected with each other.

7. The applicant has been chargesheeted under Sections 20/29 of the NDPS Act.

8. The learned counsel for the applicant submitted that there has been a non-compliance of Section 50 of the NDPS Act inasmuch as the notice served on the applicant used the term “any” and not “nearest” Gazetted officer/ Magistrate. He submitted that there is a discrepancy in the weight of the alleged recovered contraband. He submitted that it is the case of the prosecution that the total recovered quantity was 22.400 kg. He submitted that the samples which were sent to FSL were 100gms each, however, in the results from FSL, the weight of the samples reduced by 11gm and 7.5 gm respectively.

9. He submitted that on an average 10% of the amount of recovered contraband has been reduced from the result, which, if reduced from the total quantity would fall within the parameters of intermediary/commercial quantity. He submitted that the discrepancy at the time of FSL will culminate the ratio of the quantity and the alleged recovery may then amount to intermediary quantity.

10. He submitted that the prosecution could not produce any CCTV footage even though as per the case of the prosecution itself, the applicant was apprehended at a public place at Agra Canal Road. He submitted that the prosecution additionally could not produce a single independent witness to corroborate its case. He submitted that the applicant has clean antecedents, and is not



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involved in any other case, and prays that the applicant be admitted on bail.

11. Per contra, the Additional Public Prosecutor for the State vehemently opposed the grant of any relief to the applicant. He submitted that commercial quantity of contraband was recovered from the applicant. He submitted that while it is evident that there was a calculation error, the variation of the weight in samples may also be caused because of the sensitivity of the weighing scale. He submitted that external factors like air pressure of the room and other environmental condition may also cause the variation in the weight of the samples. He submitted that the FSL Report has confirmed the authenticity of the seized Ganja.

12. 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.

13. In the present case, the applicant has raised the issue that no independent witness was joined by the prosecution even though the applicant was apprehended at a public place near Kalindi Kunj metro station canal road. This Court in the case of ***Bantu v. State Govt of NCT of Delhi : 2024: DHC: 5006*** has observed that while the testimony of independent witness is



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sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case.

14. In the present case, the recovery has been made at the instance of a secret informer, and it is possible that the Investigating Agency did not get sufficient time to prepare. However, given the crowded nature of the place from where the recovery was made, it is peculiar that no public witness has joined the search.

15. A bald statement has been made that some passers-by were asked outside the police station to take part in the police action, however, they refused to join the investigation and left the spot. The recovery in the present case was effectuated near Kalindi Kunj metro station canal road. It is unclear as to why the police officers only requested passers-by to join the investigation instead of the government employees or shopkeepers who must have been available near Kalindi Kunj metro station canal road. No notice under Section 100 (8) of the CrPC was given to any person on the refusal to support the Investigating Agency during the search procedure.

16. While it is true that the effort, if any, made by the prosecution to have the search conducted in the presence of the independent witnesses would be tested during the course of trial and the same may not be fatal to the case of the prosecution, however, the benefit, at this stage, cannot be denied to the accused. Undoubtedly, the search in the present case was



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conducted at a busy public place. It is not the case of the prosecution that no CCTV were installed around the area where raid/search was conducted.

17. It is pertinent to note that the applicant has been in custody since 09.12.2022. The discrepancies in the weight of the recovered contraband and whether the same amounts to commercial quantity or not would be tested during the course of trial, and cannot be a ground to deny bail to the applicant at this stage.

18. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

19. It is trite law 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)

20. 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.

21. 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.”

22. The applicant is also stated to be of clean antecedents. Therefore, I am satisfied that are reasonable grounds for believing that the applicant is not likely to commit any offence while on bail.

23. In view of the above, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

24. 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 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 appear before the learned Trial Court on every date;
- c. The applicant shall, after his release, appear before the



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concerned Investigating Officer once in every week;

- d. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

25. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

26. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

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

AMIT MAHAJAN, J

OCTOBER 21, 2024