

Jagannath vs State (Nct Of Delhi) on 7 September, 2022

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 1182/2022
JAGANNATH

Through: Mr. Rajiv Mohan, Mr. Swapni
Krishna, Ms. Shalini Sinha,
Abhay Sachan & Mr. Mohit Jo
Advocates.

versus

STATE (NCT OF DELHI)

Through: Mr. Shoaib Haider, APP for
with SI Sandeep, PS Special

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 07.09.2022 The applicant vide the present application has sought the grant of bail in relation to FIR No.28/2016, PS Special Cell, under Sections 18/29/61/85 of the NDPS Act, 1985.

It has been submitted on behalf of the applicant that he was arrested on 20.06.2016 and has been in custody ever since, and that the applicant is alleged to have been found in possession of 8 kgs of opium, with the charge sheet having been filed against seven accused persons, that charges were framed on 18.04.2018 against all accused qua alleged commission of offences punishable under Section 29 read with Section 8 of the NDPS Act, 1985 and under Section 18(b) of the said enactment, that only seven out of thirty-four witnesses have been examined till the date of the filing of the Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:12.09.2022 14:39:15 This file is digitally signed by PS to HMJ ANU MALHOTRA.

application, qua which it is submitted by the State that so far a total number of eight witnesses have been examined out of the thirty-four cited witnesses in view of the proceedings having been held up during the time of Covid-19.

The applicant has placed reliance on the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors. (1994) 6 SCC 731 submitting to the effect that he has been incarcerated for more than a period of five years and that subject to terms and conditions as detailed in the said verdict, the applicant is entitled to be released on bail.

Reliance is also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in Sagar Tatyaram Gorkhe Versus State of Maharashtra (2021) 3 SCC 725 with observations in para 3 thereof which read to the effect:-

"3. The Charges against the Accused are, undoubtedly, serious. However; as observed in the earlier order of this Court dated 04.05.2016 such charges will have to be balanced with certain other facts like the period of the custody suffered and the likely period within the trial can be expected to be completed. ", with reliance also placed on the verdict of the Hon'ble Supreme Court in Manoj Kumar Singh Versus The State of West Bengal & Anr. SLP(Crl) No. 4711-4712/2020 with observations therein to the effect:-

"Mainly it is the case of the petitioners that by this time they have completed more than seven years in judicial custody and in view of the judgment of this Court in the case of "Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India & Ors." reported in (1994) 6 SCC 731, they are entitled for grant of bail, as they have served more than five years under the judicial custody Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:12.09.2022 14:39:15 This file is digitally signed by PS to HMJ ANU MALHOTRA.

In spite of various directions by this Court and the High Court for reasons beyond the control, it appears that trial is at the stage of examination of PW-1 only. Though we are conscious of that huge quantity of Ganja was seized, but at the same time keeping in mind that the petitioners have already served more than seven years in judicial custody, we deem it more appropriate a fit case to enlarge the petitioners on bail", submitting to the effect that despite a stated alleged huge quantity of Ganja seized in that matter, the applicant therein having been in custody for more than seven years was held entitled to be released on bail.

Reliance is also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in Tapan Das Versus Union of India SLP (Crl) No. 5617 of 2021, with observations therein to the effect:-

"Taking into consideration the fact that the petitioner is reported to be in custody since 16.10.2017 and has thus, suffered incarceration for around 4 years and there is no likelihood of completion of trial in the near future, which facts are not controverted by learned Additional Solicitor General appearing for the Union of India during the course of hearing, we are inclined to grant bail to him. ", and the verdict of the Hon'ble Supreme Court in Union of India Versus K.A. Najeeb (2021) SCC Online SC 50 submitting to the effect that the trial in the instant case is not likely to be completed soon.

Inter alia, it has been submitted on behalf of the applicant as was submitted during the course of proceedings on 24.08.2022 that in view of the verdict of the Hon'ble

Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra), and the verdict of the Coordinate Bench of this Court in Atul Aggarwal vs. Directorate of Revenue Intelligence (2021) SCC OnLine Del 5489, Anil Kumar @ Nillu Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:12.09.2022 14:39:15 This file is digitally signed by PS to HMJ ANU MALHOTRA.

vs. State in Bail Appln. 1724/2021 and the verdicts of this Court in Bail Appln. 3705/2020 and Bail Appln. 4187/2020 in cases of Ebera Nwanaforo and Frank Vitus vs. Narcotics Control Bureau decided on 31/05/2022, the applicant is entitled to be released on bail.

The learned APP for the State does not refute the period of incarceration of the applicant of being more than five years in the instant case and does not refute the applicability of the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra), with the facts of the instant case, but it is submitted on behalf of the State whilst vehemently opposing the prayer made by the applicant that the applicant in the instant case was found with a huge quantity of 8 kgs of opium, a commercial quantity of the contraband, and is the source behind the commission of offence. In reply to a specific Court query, however, the learned APP for the State under instructions of the Investigating Officer states that there are no previous adverse antecedents against the applicant.

It is also submitted on behalf of the State that in the facts of the instant case in fact a total of 117 kgs opium was recovered from arrested persons, with 80 kgs of opium from joint possession of Nand Ram and Mangli Ram, 10 kgs of opium from Chanderpal @ Tesu, 13 kgs from Umesh Sahni, 2 kgs from Rakesh Gupta, 08 kgs from the present applicant, 03 kgs of opium from Tarun Kumar Maurya and 01 kg of opium from Ram Kumar Gupta, and that the matter relates to an interstate narcotics syndicate connected through mobile phones and CDR's and intercepted voice calls Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:12.09.2022 14:39:15 This file is digitally signed by PS to HMJ ANU MALHOTRA.

which all bring the applicant in the purview of the definite bar under Section 37 of the NDPS Act, 1985 in the instant case, with it having been submitted to the effect that there is nothing to indicate that the applicant has not committed the offence in question, and that charges in the matter have been framed, and thus the embargo of the Section 37 of the NDPS Act, 1985 will apply.

It is essential to observe that vide the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors. (1994) 6 SCC 731 vide directions in para 15 of the said verdict, the aspect of undertrial prisoners who are alleged to have committed offences in terms of the NDPS Act, 1985 punishable with minimum imprisonment of ten years and a

minimum fine of Rs.1 Lakh in the event of they having been incarcerated for not less than a period of five years have been held entitled to be released on bail on their furnishing the bail bond in the sum of Rs.1 Lakh with two sureties of the like amount with further conditions as imposed vide directives as detailed in the said verdict.

The directions in para 15 and the general conditions subject to which the directives (i), (ii), (iii) and (iv) of the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors. (1994) 6 SCC 731 are detailed as under:-

"15....

(i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:12.09.2022 14:39:15 This file is digitally signed by PS to HMJ ANU MALHOTRA.

he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(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.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.", The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

"(i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter Signature Not Verified Digitally Signed

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case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:12.09.2022 14:39:15 This file is digitally signed by PS to HMJ ANU MALHOTRA.

of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code."

As has been observed hereinabove, the State does not refute the applicability of the verdict of the Hon'ble Supreme Court in the facts and circumstances of the instant case in view of the period of incarceration of the applicant. The verdicts of the Coordinate Bench of this Court in Atul Aggarwal vs. Directorate of Revenue Intelligence (2021) SCC OnLine Del 5489, Anil Kumar @ Nillu vs. State in Bail Appln. 1724/2021 and the verdicts of this Court in Bail Appln. 3705/2020 and Bail Appln. 4187/2020 in cases of Ebera Nwanaforo and Frank Vitus vs. Narcotics Control Bureau decided on

31.05.2022 are not indicated nor averred to have been challenged by the State.

In view thereof, in view of the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors. (1994) 6 SCC 731, the applicant, who is incarcerated for more than period of five years and is alleged to have committed offences punishable under Section 18(b) read with Section 29 of the NDPS Act, 1985, with the offence punishable under Section 29 of the NDPS Act, 1985 being in relation to the abetment and criminal conspiracy qua the alleged commission of the offence punishable under Section 18(b) of Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:12.09.2022 14:39:15 This file is digitally signed by PS to HMJ ANU MALHOTRA.

the NDPS Act, 1985, qua which the application of the said Section would be in terms of Section 18(b) of the NDPS Act, 1985, which reads to the effect:-

"18. Punishment for contravention in relation to opium poppy and opium--

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,--

(a)

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c)", to which the directions of the Hon'ble Supreme Court in para 15 of the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors. (1994) 6 SCC 731 in subclause (iii) thereof wholly apply, the applicant in the instant case is allowed to be released on bail on filing a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court with further directions to the applicant to the effect that:-

- he shall surrender his passport to the learned Trial Court at the time of submission of the bail bond and surety bond;

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- he shall on being released on bail present himself on the Tuesday of each week from the date of his release at PS Special Cell, Rohini in terms of the general conditions clause (ii) of the verdict of the Hon'ble Supreme Court referred to hereinabove unless leave of absence is obtained in advance from the learned Special Judge concerned; • he shall not leave the area of Delhi where the learned Special Court is constituted except with the permission of the learned Special Judge concerned;
- and he shall not commit any offence whatsoever during the period that he is on bail.

The application is disposed of accordingly.

ANU MALHOTRA, J SEPTEMBER 7, 2022 ha Signature Not Verified Digitally
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