

Abdul Sattar; Noushad Abdul Rahiman vs State Of Nct Of Delhi on 8 August, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

\$~10 & 11 (common order)

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 1014/2022, CRL.M.A. 5943/2022
+ BAIL APPLN. 1129/2022

ABDUL SATTAR; NOUSHAD ABDUL RAHIMAN

Through: Mr.Vikas G
APPLN. 101
Ms.Tanya A
Vashisht,
APPLN. 112

versus

STATE OF NCT OF DELHI

Through: Mr.Amit Sa
with Insp.
Cell, Lodh

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 08.08.2022

1. This order be read in continuation of order dated 08.07.2022, as under:

"1. Admittedly, the petitioner is in judicial custody since last 08 years and 01 month and the trial is not complete. It is stated by learned counsel for the petitioner out of 26 cited witnesses, 15 witnesses have been only examined and out of which also four witnesses are still partly examined. 11 witnesses are still unexamined. It is submitted the delay in the trial violates his right under Article 21 of the Constitution. He has referred to various judgments viz. Supreme Court Legal Aid Committee Representing Undertrial Prisoners Vs. Union of India & Ors. (1994) 6 SCC 731; Mahmood Kurdeya Vs. Narcotics Control Bureau in SLP (Crl.) No.7085/2021 decided on 07.12.2021; Baba Fakruddin Sheikh @ Fakru Vs. The State (NCT of Delhi) SLP (Crl.) 13/2022 decided on 16.02.2022; Atul Aggarwal Vs. Directorate of Revenue Intelligence in Bail Appln.2477/2021 decided on 21.12.2021 wherein considering the delay in trial, bail have been granted to the accused despite being in possession of commercial quantities. If one peruse Supreme Court Legal Aid Committee Representing

Undertrial Prisoners (supra), it has noted:

(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 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 31A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

2. It is submitted these guidelines were followed even by the Coordinate Bench of this Court in Atul Aggarwal (supra) and in Mahesh Vs. State (Govt. of NCT of Delhi) in Bail Appln.51/2022 decided on 08.02.2022.

3. Learned APP for the State on the other hand submit in all those matters referred to above only 2 or 3 witnesses were examined but in the present case 7 witnesses are left to be examined. Let the State file an affidavit as to how many witnesses are still to be examined, including partly examined witnesses within a week from today."

2. During the course of further arguments, the learned counsel for the petitioner has also referred to Ebra Nwanaforo vs. Narcotics Control Bureau in BAIL APPL.3705/2020 decided on 31.05.2022, wherein the Court held as follows:

"60. Without thus any observations on the merits or demerits of the trial that is in progress, in view of the factum that the applicants have been incarcerated since 21.05.2014 and the dictum of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra) and in view of the verdict of

the Hon'ble Supreme Court in Tofan Singh (supra), a verdict dated 29.10.2020 whereby, the statements under Section 67 of the NDPS Act, 1985 made by the accused persons as voluntary/ confessional statements under the NDPS Act, 1985 are no more admissible in evidence, coupled with the factum that the recovery in the instant case was specifically from the co-accused Eric Jayden of the alleged contraband of 1.900 Kgs of Methamphetamine from a black coloured Dell bag in his possession, the applicants who fall within the ambit of directions

(iii) in paragraph 15 of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra) and taking into account the verdict of the Coordinate Bench of this Court in Atul Aggarwal (supra), Anil Kumar @ Nillu (supra) and the Hon'ble High Court of Calcutta in In Re;

Sanawar Ali (supra) all in totality bring forth that in view of the verdict of the Hon'ble Supreme Court applies in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra) with the principles laid down therein having been reiterated in Thana Singh (supra) by the Hon'ble Supreme Court, and taking into the directions in paragraph 15(iii) thereof in relation to the aspect of directions for release of undertrial prisoners falling in the category of undertrial prisoners who are charged with the offences punishable under the NDPS Act, 1985 with a minimum imprisonment of 10 years and a minimum fine of Rupees one lakh,- are entitled to be released on bail where they have been in jail for atleast 5 years, subject to terms and conditions as laid down by the Hon'ble Supreme Court, and thus it is directed that the applicants herein i.e. Frank Vitus, the applicant of Bail Appl. No.4187/2020 and Ebera Nwanaforo, the applicant of Bail Appln. No.3705/2020 are allowed to be released on bail on their filing a bail bond in the sum of Rs.1,00,000/- (Rupees One Lakh) each with two sureties of the like amount each to the satisfaction of the learned Special Judge, NDPS, Delhi concerned, where the trial is in progress with directions to the effect that:-

their passports be impounded and they submit their respective undertakings to the effect that they shall not leave the country; the learned Special Judge, NDPS seized of the trial in SC No.27/14 shall ensure that the certificate of assurance from the High Commission of Nigeria is placed on record that the applicants/accused shall not leave the country and shall appear before the learned Special Judge as and when required, in as much as, the complaint filed by the Narcotics Control Bureau under Sections 8/22/23/29 of the NDPS Act, 1985 indicates that the applicants are residents of Nigeria;

they shall appear before the Narcotics Control Bureau Office, New Delhi during the period that they have been released on bail once a week on each Monday at 4:00 PM in terms of directive (ii) in paragraph 15 of the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra), which reads to the effect:-

(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;

in terms of the directive in paragraph 15(iv) of the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (supra) they shall not leave the country;

they shall not leave the city of Delhi/New Delhi; they shall appear before the Court of the learned Special Judge, NDPS as and when required and shall not leave the city of Delhi; they shall keep their mobile phones on at all times; they shall drop a PIN on the google map to ensure that their location is available to the Investigation Officer of the case; coupled with the directive that the applicants during the period that they are on bail, shall commit no offence whatsoever; in the event of there being any FIR/ DD Entry/ Complaint lodged against them, the Narcotics Control Bureau would be entitled to seek the cancellation of bail of the applicants. The applications, i.e., Bail Appl. No.4187/2020 and Bail Appl. No.3705/2020 are disposed of accordingly. Nothing stated herein shall however amount to an expression on the merits or demerits of the trial that is in progress."

3. Further reference is made to Anil Kumar @ Nillu vs. State in BAIL APPL.1724/2021 decided on 21.03.2022 it was held as under:

"16. Therefore, fair, just and reasonable procedure is implicit in Article 21 and it creates a right in the accused to be tried speedily. This Court has consistently observed that while Courts must remain cognizant of the deleterious impact of drugs on society, it is also important to keep in mind that deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution. In the instant case, the Petitioner has been incarcerated for almost eight years now, i.e. since 27.03.2014, for an offence that is punishable with a minimum imprisonment of ten years. This is an egregious violation of an accused's right to personal liberty and right to speedy trial as, in the off-chance that the Petitioner is acquitted, it would entail an irretrievable loss of eight years of his life that cannot be compensated. Whether or not the Petitioner played an active role in the commission of the offence of drug trafficking and supply is a matter of trial and cannot justify the prolonged incarceration of the Petitioner."

4. If one peruse the judgment of Mahmood Kurdeya (supra) thousands of tablets of Tramadol X-22 were recovered and despite the offence under Section 67 of the NDPS Act, the bail was granted to the accused looking at the period of custody. Further in Baba Fakruddin Sheikh (supra) there was a total recovery of 36.240 kg. of heroine; In Atul Aggarwal (supra) recovery was 151.980 kg. of Ketamine whereas the commercial quantity is 1 kg. Similarly in other matters recovery was more than commercial quantity but yet looking at the period of custody and slow progress of trial, the bail was granted. Admittedly, 10 kgs. of Heroin and 3 kgs. of Methamphetamine (ice) was recovered from Noushad Abdul Rahiman and 500 gms. of Heroin was recovered from Abdul Sattar.

5. Both the petitioners are suffering trial under Section 21/29 of NDPS Act and Section 21 of NDPS Act. It entails minimum punishment of ten years with fine.

6. Admittedly, out of 26 witnesses, the prosecution has examined only 14 witnesses till date in a span of eight years during trial. Admittedly, the Abdul Sattar and Noushad Abdul Rahiman are in custody since 24.05.2014 and ten witnesses are yet to be examined, hence considering the law laid down, as above, I admit both the petitioners on bail on their executing a personal bond of Rs.1.00 lac each with one surety each of like amount to the satisfaction of the learned Trial Court. However the petitioners are directed not leave the country without the permission of learned Trial Court; they shall keep their mobile location app open at all time; shall submit their passports to the Investigating Officer within two days from their release; the petitioners are further directed to appear before the In-charge/Investigating Officer of PS Special Cell once in a month; shall appear before the learned Trial Court on every date of hearing; shall not commit any offence of whatsoever nature.

7. With these observations, the petitions stand disposed of along with pending application(s).

8. Order dasti.

YOGESH KHANNA, J.

AUGUST 08, 2022 DU