

Kartik Dangi vs State Of Nct Of Delhi on 16 December, 2021

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 2872/2021
KARTIK DANGI

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Through: Mr. Gautam Khazanchi, Advoc

Versus

STATE OF NCT OF DELHI

..... Respond

Through: Mr. Hirein Sharma, APP for State w
Bramha Prakash, P.S. Special Cell.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 16.12.2021

1. The present application has been filed under Section 439 Cr.P.C. on behalf of the applicant seeking regular bail in FIR No. 65/2015 registered under Section 18 NDPS Act at Police Station Special Cell (SB), Delhi. After completion of investigation, the charge sheet in the instant case has been filed under Sections 18/29 NDPS Act.

2. Learned counsel for the applicant submits that the applicant has been in judicial custody since 02.12.2015; the charges have been framed and till date only 11 out of 24 witnesses have been examined. He further submits that as per the prosecution case, 12.6 kgs of opium was seized from the applicant. However, at the relevant time, Section 50 NDPS Act was not complied with, inasmuch as the attesting witnesses to the notice issued have not appended their signatures after the reply of the applicant.

3. It is contended that the applicant is falsely implicated in the present case, which is apparent from the fact that though he is stated to have been arrested from Burari Chowk on 01.12.2015, he was actually arrested on 29.11.2015 in Jalandhar, Punjab. In this regard, learned counsel has placed reliance on the CDR placed on record, from which it is apparent that no calls were made/received after 29.11.2015 on either mobile phone of the applicant. Reliance has also been placed on a train ticket dated 29.11.2015 with respect to journey undertaken by the applicant from Mughalsarai to Jalandhar by the train Akal Takhat Express. It is submitted that the Trial Court has directed that the train ticket be preserved during trial.

4. Learned counsel for the applicant also contended that the present case came to be registered on the basis of interception done by the Investigating Agency. While referring to the information recorded on 24.09.2015 with respect to interception being done, it is contended that the same was done illegally without any authorization and thus no reliance can be placed on the transcript of the conversation filed alongwith the charge sheet, and even otherwise, a reading of the same would show that it does not incriminate the applicant in any manner. Lastly, it is submitted that the trial of the case is likely to take some time and on account of the period undergone by the applicant and his not having misused the concession of interim bail granted earlier, he may be released on regular bail.

5. In support of his submissions, learned counsel for the applicant has placed reliance on the cases of Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Others reported as (1994) 6 SCC 731, Sagar Tatyaram Gorkhe and Another v. State of Maharashtra reported as (2021) 3 SCC 725, Union of India v. K.A Najeeb reported as 2021 SCC Online SC 50 and In Re: Sanawar Ali reported as MANU/WB/0750/2020.

6. Learned APP for the State, on the other hand, has vehemently opposed the bail application. He submits that initially, information was received with respect to involvement of some suspected persons in illegal activities of drug- trafficking, subsequent to which authorization from concerned authority was taken on 11.09.2015, which was renewed from time to time. During this period, the mobile phones of suspects, including the present applicant, were kept on surveillance and conversations were recorded, transcripts of which were later filed alongwith the charge sheet. While relying on the transcript of the conversations, it is contended that the same reflect that the applicant used a code word for the contraband. Learned APP also submitted that from the transcripts, it is apparent that the stated amounts could not have been the rate of Dhan (grain) and the word Dhan (grain) has been used for the contraband seized, i.e. opium. It is further submitted that during investigation, voice sample of the applicant was obtained and as per the FSL report, his voice has matched with the recordings. In support of his submissions, learned APP for the State has relied on the decision in State of Kerala and Others v. Rajesh and Others reported as (2020) 12 SCC 122.

7. I have heard learned counsels for the parties and have also gone through the Status Report.

8. The bar operating on grant of bail to an accused by virtue of Section 37 NDPS Act has been extensively discussed by the Supreme Court in Rajesh (Supra), where the Court has referred to the limitations prevailing on the exercise of power to grant bail in cases registered under the NDPS Act and further held that the twin conditions under Section 37 of the Act need to be satisfied before granting bail to a person accused of offence thereunder-

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must

be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

9. At the same time, in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (Supra), the Supreme Court has taken note of delays recurring in trials of cases registered under the NDPS Act and observed that in light of the strict adherence required of Section 37 thereof, curtailment of personal liberty of an accused on account of unreasonable delay in trial is contrary to the spirit of Articles 14, 19 and 21 of the Constitution of India. Relevant excerpt from the decision is as under -

"15. ...As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non-bailable and provides that no person accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and is not likely to indulge in similar activity. On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution."

10. While underlining the need to strike a balance between curtailment of the right to personal liberty of persons accused of offences under the Act and the society's interest in having the menace of drug trafficking controlled, the Court directed as follows -

"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."

11. The decision in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (Supra) has been extended to ten states vide order dated 17.04.1995 in Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Another reported as (1995) 4 SCC 695.

12. In Sagar Tatyaram Gorkhe (Supra), the Supreme Court while granting bail in a case where the appellant-accused had been languishing in custody for close to four years, with examination having been initiated of only 1 out of the 147 witnesses sought to be examined by the prosecution, observed as follows -

"3. The charges against the accused are, undoubtedly, serious. However, as observed in the earlier order of this Court dated 4-5-2016 such charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed."

13. In K.A. Najeeb (Supra), the Supreme Court further propounded that when trial is not likely to be completed within a reasonable time period and the accused has spent a considerable amount of time in custody, a Court will ordinarily be under obligation to grant bail, regardless of statutory limitations curtailing the right of the accused to secure bail. Relevant section of the decision is extracted hereunder -

"15. ...In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, 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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18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

(emphasis added)

14. Recently, vide order dated 06.10.2021 in Manoj Kumar Singh v. The State of West Bengal & Anr., SLP(Crl.) Nos. 4711-4712/2020, the Supreme Court has granted bail in a case registered under the NDPS Act, while taking note of the period of incarceration and the stage that proceedings were at, despite seizure of huge quantity of contraband product from the accused -

"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.

xxx 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."

(emphasis added)

15. Similarly, vide order dated 07.10.2021 in Tapan Das v. Union of India, SLP (Crl) No. 5617/2021, the Supreme Court has granted bail to an accused, taking into consideration the period of incarceration and the unlikelihood of completion of trial in the near future. Relevant excerpt from the order is reproduced hereunder -

"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."

16. Note is also taken of the decision in Sanawar Ali (Supra) by a Division Bench of the Calcutta High Court, where an undertrial prisoner was released on bail while observing that inordinate delay in trial had infringed his fundamental rights under Articles 14 and 21 of the Constitution of India. The essence of the Supreme Court's decision in Supreme Court Legal Aid Committee Representing Undertrial Prisoners (Supra) may be found aptly recaptured in the following excerpt therefrom-

"11. ...If we do not extend the wholesome directives in Supreme Court Legal Aid Committee (Supra) to all under trials (in NDPS case) incarcerating in jail for more than five years, we would fail to discharge our constitutional duty to preserve personal liberty of citizens and apply the balm of humanness to those unfortunate undertrials who have failed to knock the door of the Apex Court.

12. We are conscious that delay may also be caused by an accused and it is nobody's case that such a litigant can derive benefit out of his own wrong. However, the principle of apportionment of responsibility in the matter of delay in trial must be counteracted in the backdrop of the constitutional duty of the State to ensure effective and speedy prosecution. The Constitution assures every individual the precious right of personal liberty and when it is forfeited by the State to ensure administration of criminal justice a heavy corresponding duty is cast on it to ensure speedy conclusion of trial minimizing under trial detention. Directives in Supreme Court Legal Aid Committee (Supra) are to be viewed from such perspective. These directions cannot be whittled down or restricted by the operation of Section 436A Cr.P.C. The said provision is an expression of similar anxiety of the legislature to minimize under trial detention. The directives of the Apex Court relating to bail and section 436A operate in the same field and are supplementary to one another. To read one in derogative of the other would amount to restricting the right of under-trials to bail in the face of inordinate delay in trials and would frustrate the very spirit of the aforesaid law.

13. ...Adverting to such issues, the Apex Court in Thana Singh Vs. Central Bureau of Narcotics, (2013) 2 SCC 590 issued various directions to ensure speedy trial. Thana Singh (Supra) quoted with approval the directives Supreme Court Legal Aid Committee (Supra). In spite of such directions, there is little progress in the ground and the bleak picture of delay persist to haunt under trials."

(emphasis added)

17. In the present case, a reading of the transcripts placed on record would show that the applicant's mobile phone was kept on surveillance by the investigating authorities. Although learned APP for the State has submitted that a code word has been used in the conversations for the contraband, i.e. opium, in absence of any concrete material to support the same, the issue, combined with whether or not the interception was lawfully done, shall be determined in trial.

18. It has been claimed on behalf of the applicant that he was arrested in Jalandhar and not from Burari, Delhi. In this regard, reliance has been placed on the CDRs as well as a train ticket showing the applicant's travel from Mughalsarai on 29.11.2015 to Jalandhar, where the arrival is stated to have taken place on 30.11.2015.

Prima facie, there are neither any records of outgoing/incoming calls from the applicant's phones from 29.11.2015 onwards, nor there is any recording related to either of the mobile numbers belonging to him post 29.11.2015. The train ticket was booked in the name of the applicant himself for his travel on 29.11.2015 from Mughalsarai to Jalandhar.

19. Further, it is noted that in compliance of Section 42 NDPS Act, the information about the applicant's coming to Delhi was recorded to the effect that the applicant would come with a big consignment near Burari ground where a board of Dhirpur project exists. However, learned counsel

for the applicant has cast aspersion on the genuineness of such specific information in absence of any corresponding transcripts/CDRs.

20. The applicant's arrest is shown to have taken place on 01.12.2015 from Burari, Delhi. The charge sheet was forwarded on 25.05.2016 and since then, only 11 prosecution witnesses have been examined. In the Status Report, it has been mentioned that on checking with the SCRB records and in terms of the report obtained from P.S. Gidhour, Distt. Chatra, Jharkhand, the applicant has not been found involved in any other case. The applicant has also not misused the concession of interim bail granted to him.

21. Keeping in view the submissions of learned counsel for the applicant which raise suspicion on the applicant's arrest and suggest implication in a false case; the fact that the applicant was arrested on 01.12.2015; the further fact that so far only 11 out of 24 witnesses have been examined in the trial, and the consequent delay arising therefrom, this Court is of the prima facie view that there exist reasonable grounds to admit the applicant on bail. Accordingly, it is directed that the applicant be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M./concerned Court, subject further to providing and verification of the mobile number of the applicant as well as his residential details and the following further conditions:-

(i) The applicant shall keep operational the mobile number furnished at all times during the pendency of the trial.

(ii) The applicant shall telephonically report to the concerned Investigating Officer/SI Bramha Prakash, P.S. Special Cell on first Monday of every month during the pendency of the trial.

(iii) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

(iv) The applicant shall not directly/indirectly try to get in touch with any prosecution witness or tamper with the evidence.

(v) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.

22. The bail application stands disposed of in the above terms.

23. A copy of this order be communicated electronically to the concerned Jail Superintendent for information and necessary compliance.

24. A copy of this order be uploaded on the website forthwith.

25. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

MANOJ KUMAR OHRI, J DECEMBER 16, 2021 p'ma [Click here to check corrigendum](#), if any