

Rasid vs State (Nct Of Delhi) on 8 December, 2023

Author: Jyoti Singh

Bench: Jyoti Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1361/2022 & CRL.M.A. 5711/20

RASID

STATE (NCT OF DELHI)

Through: Mr. Amit Sahni, A

Mr. Ankur, Mr. Parth Sharm

Mishra, Ms. Kanupriya and

Advocates along with SI Dh

Rohini/NR and STF.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 08.12.2023

1. This is an application filed by the Petitioner Rasid S/o Sh. Wali Hasan under Section 439 Cr.P.C. for grant of bail in respect of FIR No.16/2019 dated 21.01.2019 registered under Sections 18/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at PS: Special Cell. Charge sheet has been filed whereby Sections 61/85 of NDPS Act have been added.

2. As per the prosecution case, in a nutshell, a secret information was received that Sajid and Shakir, both residents of Bareilly, U.P. were indulging in supply of heroin and would be coming to the helipad towards Sector-32, Rohini between 06:45PM to 07:45PM in Truck No. UP-25DT-

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/12/2023 at 23:40:58 0952 to deliver a big consignment of heroin to one Rajender, a contact of Rashid after procuring the heroin from Malda, West Bengal. Under directions of ACP/Special Cell/NR, a raiding party was constituted along with the informer. At about 07:00PM an Eicher truck bearing the aforesaid number came from Rithala side and stopped 50 meters before the turning of Sector-32, Rohini

under a signboard placed on road. A person holding a black colour pitthu bag came out from the conductor side of the truck and at the same time, another person came out from the driver side and both started talking to each other. On seeing them, informer pointed out towards the person holding the bag and identified him as Sajid and the other person as Shakir and thereafter left the spot. The person holding the bag, took out his mobile and started talking and after five minutes, the raiding team overpowered both persons and interrogated them. During interrogation, their names and addresses were noted. Both persons were informed that their search was to be conducted along with the search of their truck as the team had secret information that they were carrying heroin. They were informed of all their legal rights including the option to be searched before a Gazetted Officer or a Magistrate, which offer they declined. After carrying out the necessary proceedings, their thumb impressions were taken on their respective replies to the notices under Section 50 of NDPS Act. During checking, one transparent polythene bag kept in between clothes was found having Matiyala colour powder. Upon testing with field testing kit, the same was found to be heroin and on weighing on the electronic machine, the quantity was found to be 5Kg. Thereafter, procedure was followed to seal the samples and the exhibits were sent to FSL. Heroin was also recovered from a black colour bag lying behind the driver's seat and on testing was This is a digitally signed order.

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3. During investigation, disclosure statements of both the accused were recorded. On disclosure statement of Sajid Ali, co-accused Rashid, present Petitioner was apprehended from Ballabhgarh, Haryana. Nothing incriminating was recovered from him. Three mobile phones were recovered, which were switched on for investigation purposes. On a disclosure statement of Rashid, Ansar Khan, another co-accused was apprehended but nothing was recovered from his possession.

4. Learned counsel for the Petitioner submits that co-accused Sajid Ali has already been released on bail by the learned Trial Court vide order dated 21.11.2023 on ground of non-compliance of the mandatory provisions of Section 52A of NDPS Act as also noting the fact that the co-accused was in custody for nearly 04 years and 10 months. It is further submitted that admittedly there was no recovery of the contraband from the present Petitioner and the entire case of the prosecution hinges on transcripts regarding voice calls. False implication of the Petitioner is evident from the fact that the transcripts filed by the prosecution do not match with the Call Detail Report and the mobile numbers alleged to be the numbers of the phones used by the Petitioner have no connection with him and are registered in names of other persons. In the entire charge sheet, prosecution has been unable to link the mobile numbers to the Petitioner. Bail of the Petitioner was dismissed by the Trial Court on the ground that the truck used for the alleged offences was registered in his name overlooking the fact that Petitioner was not charged for the offence under Section 25 of NDPS Act and there is no allegation that he 'knowingly permitted' the use of the truck This is a digitally signed order.

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5. Learned APP opposes the bail application on the ground that rigours of Section 37 of NDPS Act cannot be relaxed and insofar as alleged non-compliance of Section 52A of NDPS Act is concerned, this argument has to be tested at the stage of trial and not at the time of grant of bail. For this reliance is placed on the judgment of the Co-ordinate Bench in Kenekwukwu Joseph v. State, 2023 SCC OnLine Del 5886, wherein the Court has taken note of earlier judgments of this Court to come to this conclusion. It is also submitted that duration of custody period should not be a consideration for grant of bail in a heinous offence such as in the present case relating to narcotics. Reliance is also placed on following judgments Amani Fidel Chris v. Narcotics Control Bureau, 2020 SCC OnLine Del 2080, Shailender v. State of NCT of Delhi 2022 SCC OnLine Del 4896 and Quentin Decon v. Customs, 2023 SCC OnLine Del 3329.

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6. I have heard the learned counsel for the Petitioner and the learned APP.

7. It is evident from reading of the status report that no recovery was made from the Petitioner herein. It is equally undisputed that co-accused Sajid has been granted bail by the learned Trial Court on the ground of non-compliance of Section 52A of NDPS Act also noting the fact that he has been in custody for nearly 04 years and 10 months. There is merit in the contention of the learned counsel for the Petitioner that the Supreme Court in Rabi Prakash (supra), has held that prolonged incarceration generally militates against the fundamental right guaranteed under Article 21 of the Constitution and this right cannot be overridden by statutory embargoes. Relevant paragraphs are as follows:-

"2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur- Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No. EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the

driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

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."

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8. Learned counsel has also relied on several judgments/orders of this Court, where looking at the prolonged period of incarceration, large number of witnesses remaining to be examined and chances of the trial not concluding expeditiously and most importantly, relying on the judgment in Rabi Prakash (supra), the accused have been released on bail. For ready reference, I may refer to some of the orders relied on in Praveen Saini v. State of NCT of Delhi decided on 26.07.2023 in BAIL APPLN. 2321/2022, Axat Gulia v. The State (NCT of Delhi) decided on 07.08.2023 in BAIL APPLN. 1443/2023, Trandipp Singh v. NCB decided on 09.08.2023 in BAIL APPLN. 1061/2022, Hayatullah Rahimi v. Narcotics Control Bureau decided on 28.08.2023 in BAIL APPLN. 1523/2022 and Vineet Garg @ Banti v. The State NCT of Delhi decided on 04.12.2023 in BAIL APPLN. 3319/2023.

9. It would be useful to allude to the following judgments of the Supreme Court, in this context:-

(i) Mohd Muslim @ Hussain vs. State (NCT of Delhi) (Crl. A. No. 943/2023 rendered on 28.03.2023:-

"19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima

facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this This is a digitally signed order.

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21. 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 country. Of these 122,852 were convicts; the rest 4,27,165 were under trials."

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(ii) Biswajit Mondal @ Biswajit Mandal vs. The State of West Bengal (Crl. A. No. 450/2023) rendered on 14.02.2023:-

"The appellant seeks enlargement on bail in FIR No.303/2021 under Sections 21(c)/29 of the NDPS Act. The appellant has undergone a sentence of about 1½ years. The trial has just begun and no other criminal antecedents qua the aforesaid act of drug use. The material detected is the medicine Codenine but of 10 litres. Taking in to consideration the period of sentence undergone by the appellant and all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court."

10. Nominal roll indicates that Petitioner has been in judicial custody from 30.01.2019 and his overall jail conduct is satisfactory. There is no other case pending against him. Thus, the period of incarceration of the Petitioner is 04 years and 10 months. Co-accused charged for offences under This is a digitally signed order.

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11. Without going into the merits of the case and expressing any opinion, Petitioner is accordingly enlarged on regular bail on a personal bond in the sum of Rs.50,000/- with one surety of like amount to the satisfaction of the learned Trial Court and further subject to the following conditions:

(a) He shall surrender his passport, if any, before the Trial Court at the time of furnishing the bonds. Since the Petitioner is a resident of Mohalla Kila Bajariya, Nai Basti, Tehsil Aonla, Distt. Bareilly, U.P., he may leave Delhi/NCR to travel to his home town but would not leave the country without permission of the Trial Court;

(b) He shall cooperate in the trial and shall appear before the Court as and when required;

(c) He 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;

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(d) He shall not indulge in similar or other criminal activity of any nature whatsoever;

(e) He shall provide his mobile number(s) to the Investigating Officer and keep it operational at all times;

(f) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/Court concerned by way of an affidavit; and

(g) Petitioner shall contact the IO once a week on the mobile phone.

12. Needless to state that the observations made in the order passed today will not affect the merits of the matter at the time of trial and/or at final adjudication.

13. Copy of this order be sent to Jail Superintendent concerned and Trial Court for information and necessary compliance.

14. Bail Application along with pending application stands disposed of.

JYOTI SINGH, J DECEMBER 08, 2023/kks/shivam This is a digitally signed order.

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