

Tarun Kumar Maurya vs State Of Nct, Delhi on 27 September, 2022

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 1249/2022

TARUN KUMAR MAURYA Petitioner
Through: Mr.Abanikamta Sahu, Advocate

versus

STATE OF NCT, DELHI Respondent
Through: Mr.Tarang Srivastava, APP fo
with SI Sandeep Yadav, Speci

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 27.09.2022 Pursuant to the order dated 30.8.2022 the status report has been submitted by the State.

The applicant vide the present application has sought the grant of regular bail in relation to FIR No. 28/16 Police Station Special Cell qua the alleged offences under Section 18/29 of the NDPS Act, 1985.

The applicant in the instant case as per the status report dated 18.5.2022 submitted under the signatures of the Inspector Special Cell/NR Sector-6, Rohini, is indicated to have been arrested from Bareilly with 3 kg of opium on 22.8.2016. Admittedly, more than a period of five(5) years has elapsed therefrom.

The applicant places reliance on the proceedings in Bail Appl. No. 1182/2022 titled Jagannath V. State (NCT of Delhi) decided on 7.9.2022 qua the co-accused Jagannath arrested in this very same FIR No. 28/16 Police Station Special Cell registered under Sections 18/29 of the NDPS Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2022 17:35:09 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Act, 1985 and the verdict of the 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 State submits that as indicated vide the additional status report dated 20.9.2022 the applicant has 12 other cases against him in relation to which the counsel for the petitioner submits that the applicant has since been acquitted in relation to FIR No. 357/99 Police Station Baradari under Section 307 of the Indian Penal Code, 1860 and FIR No.832/03 Police Station Baradari registered under Section 307 of the Indian Penal Code, 1860 with it having been submitted that the applicant is on bail in all other cases.

The factum that there is no other alleged involvement qua the offence punishable under the NDPS Act is not refuted on behalf of either side. Taking into account the verdict of the Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors. (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 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, in view of the directions in paragraph 15 of the verdict of the Hon'ble Supreme Court in Supreme Court Legal Aid Committee Representing Undertrial Prisoners V. Union of India & Ors. (supra) which lays down as under:

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(i) Where the undertrial is accused of an Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2022 17:35:09 This file is digitally signed by PS to HMJ ANU MALHOTRA.

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 31-A of the Act, such an undertrial shall not be entitled to be released on bail by

virtue of this order.

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.....", and the directives (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of the Hon'ble Supreme Court therein which specify the general conditions, read to the effect:

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 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, Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2022 17:35:09 This file is digitally signed by PS to HMJ ANU MALHOTRA.

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 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.", the applicant herein, who is incarcerated for more than a period of five(5) years and is alleged to have committed the 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, which would be not Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2022 17:35:09 This file is digitally signed by PS to HMJ ANU MALHOTRA.

less than for a period of 10 years with a minimum fine of Rs.1,00,000/- which may extend to Rs.2,00,000, is allowed to be released on bail on his furnishing a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the Trial Court with directions that:

the applicant shall deposit his passport with the Special Court concerned and in as much as it is submitted on behalf of the applicant that he does not have any passport the applicant shall file an affidavit to that effect before the Special Judge concerned and furthermore the said aspect shall also be verified by the Investigating Officer qua the aspect of the applicant not having been issued any passport; furthermore, the applicant shall under no circumstances leave the country and shall on being released on bail present himself on each Monday of the week following the date of his release before the Investigating Officer at the Police Station Special Cell Delhi in terms of the general conditions clause (ii) of the verdict of the Hon'ble Supreme Court unless leave of absence is obtained in advance from the Special Judge concerned and; furthermore, apart from the condition imposed that the applicant shall under no circumstances leave the country, the applicant shall also not leave the city of Delhi except with the permission of the Special judge concerned. The application is disposed of accordingly.

ANU MALHOTRA, J SEPTEMBER 27, 2022/SV Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:27.09.2022 17:35:09 This file is digitally signed by PS to HMJ ANU MALHOTRA.