

Manoj Kumar Nayak vs Directorate Of Revenue Intelligence on 11 November, 2022

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 3011/2022
MANOJ KUMAR NAYAK

.....
Through: Ms.Tanya Aggarwal, Mr.Durga
Vashist, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE

.....
Through: Mr.Satish Aggarwal and Mr.G
Vaswani, Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
ORDER

% 11.11.2022

1. Heard learned counsel appearing on behalf of the parties.

2. This is an application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) filed on behalf of the applicant for grant of regular bail in connection with SC NO. 7520/2016 under Sections 22, 25, 25A, 26, 20, 30 and 38 of NDPS Act, 1985.

3. Learned counsel appearing on behalf of the applicant submits that the applicant is innocent and he has been falsely implicated in the instant case. According to her, the applicant has already undergone more than half of the sentence which possible the trial court at the time of the final judgment may pronounce. She further states that the co-accused, namely, Rakesh Kumar Bhola has already been enlarged on bail by this court in BAIL APPLN.216/2020 dated 19.10.2022.

4. The role of the present applicant is much less than the role assigned to co-accused Rakesh Kumar Bhola. Learned counsel appearing on behalf of the applicant/petitioner specifically states that the present application has no role at all with respect to Lakshya Traders, whereas, co-accused Rakesh Kumar Bhola was second in command in the said company. She further states that the applicant is ready to abide all conditions as may be imposed by this court and would not indulge in any manner to commit similar or any other crime.

5. Learned counsel appearing on behalf of the prosecuting agency on the other hand opposed the application and he states that taking into consideration the large quantity of the contraband articles, the applicant should not be admitted to regular bail. According to him, the allegations are serious and there is sufficient material against the applicant. He has also pointed out that in view of the rigour of Section 37 of the NDPS Act, the applicant is not entitled for grant of bail. He further states that the role of the applicant is apparent on the basis of the complaint and the specific allegation made there in.

6. Having heard learned counsel appearing on behalf of the parties, this court finds that as per the nominal roll dated 07.11.2022, the present applicant has already undergone jail incarceration of 7 years and 1 month. The role assigned to the applicant in paragraph no.9 of the objection if it is compared with the role of co-accused Rakesh Kumar Bhola, it is apparent that the present applicant at best can be said to have assisted main accused D.P.Saxena. It is thus seen that D.P.Saxena is the main accused and the present applicant was co-conspirator.

7. There are allegations of conspiracy being hatched with assistance of the other accused persons and the applicant appears to have provided his shop for storage of the contraband articles.

8. This court in the matter of Rakesh Kumar Bhola v. DRI 1 has considered similar argument made by the respondent prosecuting agency and after considering the legal position with respect to Section 37 of the NDPS Act and other aspects of the matter has held in paragraph No.11 to 18 which is being reproduced as under:-

11. In the instant case, the Nominal Roll of the applicant states that as on 20.09.2022, he has undergone 6 years, 4 months and 10 days of jail incarceration. The record also indicates that he was granted interim bail w.e.f. 08.06.2018 to 24.08.2018 and 15.04.2019 to 20.12.2019. His overall conduct in jail has been reported to be good and there is no instance of any misuse of liberty during the period of interim bail. Nominal Roll also does not indicate any previous involvement of the applicant.

The punishment prescribed under section 22 of the NDPS Act can extend upto 20 years and shall not be less than 10 years. Section 22 of the NDPS Act, further, prescribes for fine which shall not be less than Rs. 1,00,000/-, but may extend to Rs. 2,00,000/-. Section 36 of the NDPS Act, requires for constitution of Special Courts. Section 36(A) requires that the offences should be triable by Special Courts.

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12. As per the complaint the prosecution has cited 53 prosecution witnesses. As of now only nine prosecution witnesses have been examined. Learned counsel for prosecuting agency, however, states that there is possibility of dropping as many as 10 witnesses. The fact remains that the applicant is in judicial custody for more than 6 years. There does not seem to be any possibility of early completion of the trial. It is also to be noted that in the instant case there is no averment in the Status Report to indicate that the trial is being delayed at the instance of the present applicant.

13. The paragraph No. 2(c) of the complaint indicates that the Officers of DRI conducted the search of the business premises of M/s Weishorn Biotech located at 102, Malhotra Complex, A-212, Street No, 1, Shakarpur Delhi-92. Shri D.P. Saxena, is the owner of the said premises. The presence of the present applicant was found only at the time of the search. The search of the premises of D.P. Saxena resulted in recovery of contraband articles and various documents etc. It is stated that the present applicant was the business associate along with the others of the main accused D.P. Saxena. It is also alleged in the subsequent paragraph of the complaint that the present applicant played a significant role in aiding and abetting the crime in question. It is also alleged that the present applicant always remained in the background and never occupied the centre stage notwithstanding the fact that he is the person involved in the disposal of controlled psychotropic substance. A meticulous examination of the role of the applicant and material collected against him at this stage may not be warranted. However, a prima-facie view can still be taken that the applicant is not guilty of such offence.

14. In the case of Narcotic Control Bureau v. Mohit Aggarwal, CRL.A. Nos. 1001/2022 & 1002/2022 dated 19.07.2022, the Hon'ble Supreme Court has held that the length of the period of the custody of accused or the facts that the charge sheet has been filed and the trial has commenced are by themselves not considerations for grant of bail. However, these factors can be treated as being persuasive ground for granting relief to the accused under Section 37 of the NDPS Act.

15. In the case of Jainam Rathod v. State of Haryana, CRL.A. 640/2022 dated 18.04.2022, the Hon'ble Supreme Court has held that in the absence of a fair likelihood of the trial being completed within a reasonable period, the court is required to protect the personal liberty of the accused in the face of delay in the conclusion of the trial. Accordingly, the accused in that case was granted bail for an offence under the provisions of Section 447 of the Companies Act, 2013 despite there being similar conditions similar to that of Section 37 of the NDPS Act in Section 212 (6) of the Companies Act, 2013. In that case the accused remained in judicial custody for more than 2 years and 8 months. A similar view has been taken by the Hon'ble Supreme Court in the case of Sujay U. Desai v. Serious Fraud Investigation, CRL.A. 1023/2022 and it has been held that the right to an expeditious trial is protected under Article 21 of the Constitution. The applicant in that case was also accused of violating the provisions of Section 447 of the Companies Act and was arrested on 19.03.2020 but was granted bail by the Hon'ble Supreme Court on 25.07.2022.

16. It may be noted here that the Supreme Court in Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra) while recording that the Special Court would be free to exercise its power to grant bail under Section 37 of the Act, also opined that it must exercise that power, keeping in view the complaint to inordinate delay in disposal of the pending cases. This aspect has been reiterated in the latest judgment of the Supreme Court in Satender Kumar Antil v. CBI & Anr.,² which is reproduced herein below:

64. Now we shall come to category (C). We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed.

The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code. (emphasis added)

17. The rigors of Section 37 of the NDPS Act would thus not come in the way while dealing with an application for bail moved by an undertrial prisoner who has remained in custody for more than half of the minimum sentence prescribed.

18. In view of the facts and circumstances of the present case as detailed above, this court finds that the constitutional right of the applicant for speedy trial stands violated. The delay in conducting the trial and the resulting long incarceration can also be taken into consideration for the grant of bail. This court is 2 (2022) SCC OnLine SC 825 conscious of the fact that the delay or long incarceration alone should not be the sole and dominant factor and, therefore, this court has considered the allegations against the applicant, his role in the commission of the alleged offence, and it has been found that the applicant is not the main accused.

9. In view of the aforesaid, this court finds that on the ground of parity, the present applicant is also entitled for grant of bail. Accordingly, the application is allowed and it is directed that the applicant be released on bail on his furnishing a personal bond of Rs.2 lakhs with two sureties of the like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M./trial court and subject to the following further conditions:-

(i) The applicant shall not leave the NCT of Delhi, without prior permission of the Trial Court.

(ii) The applicant shall deposit his passport with the trial court.

(iii) The applicant shall not change his address without prior permission of the Trial Court.

(iv) The applicant shall regularly appear before the trial court on each date, unless, his exemption application is accepted.

(v) The applicant shall furnish the mobile phone on which he would be available to the concerned Investigating Officer and the said Mobile Number would not be changed without prior permission of the Trial Court.

(vi) The applicant shall not directly or indirectly tamper with evidence or try to influence the witnesses, in any manner.

10. The concerned Investigating Officer of the case is at liberty to file application for cancellation of bail, in case he finds that there is any breach of the conditions of grant of bail or the applicant is found to have violated any of the conditions enumerated in sub-section 3 of section 437 of Cr.P.C.

11. With the aforesaid direction, the bail application stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J NOVEMBER 11, 2022/MJ