

Shanker Lal Dhakar @ Shankar Dhakad vs The State Nct Of Delhi on 7 August, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 1442/2024
SHANKER LAL DHAKAR @ SHANKAR DHAKAD

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THE STATE NCT OF DELHI

Through: APP Pradeep Gahal
Hanumanth Sakhuja
Sharma Adv. Anubh
Nayan Saini Adv.
Adv. Dhruv Goyal
Adv. Savi Abbot
Kataria with SI
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

OR

% 07.08.2024

1. This petition has been filed seeking regular bail in FIR No.117/2023 PS Crime Branch registered under Sections 15/25/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). Petitioner was arrested on 07th August, 2023 on the basis of a disclosure made by one Neeraj.

2. The case of the prosecution is that on 17th May, 2023 basis a secret information, one Naresh Kumar Gupta and Dilip Kumar Mishra were apprehended. The search of a Swift Desire Car led to finding of a white coloured bag which was later found to have total weight of 55 kgs of poppy straw. FIR was registered on the basis of their disclosure, which stated that This is a digitally signed order.

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 10/08/2024 at 02:28:58 they were supplying to one Neeraj after procuring it from Rajasthan from accused/petitioner. Proceedings under Section 52A of the NDPS Act were complied with.

3. Subsequently, a raid was conducted at Neeraj Kumar's house on 06 th June, 2023. On the basis of Neeraj's disclosure that he is to procure straw from one Shankar, the petitioner herein, notices were served under Section 67 of the NDPS Act on the family members of the petitioner. NBWs were issued, since petitioner was not available.

4. Later on, 07th August, 2023, petitioner came to office of the IO and joined the investigation. As per the case of prosecution, there is evidence against the petitioner being disclosure of Neeraj, CDR

analysis as per which there are banking transactions made between Neeraj and petitioner as also Naresh Kumar Gupta amounting to a total of Rs.1,46,000/-.

5. Counsel for the petitioner states that these are not sufficient to implicate the petitioner under the NDPS Act, considering that the alleged disclosure was in the custody of the police. Further, the transactions of Rs.1,46,000/- were made on various dates in small amounts and was on account of the business being run by the petitioner of a dairy. Further, the CDR analysis has located 6 calls in February 2023 which is much before the said seizure in May 2023.

6. Counsel for the petitioner relies upon the decisions of Coordinate Benches of this Court in Amarendra Pandey v. The State NCT of Delhi, Bail Application No.1799/2024 dated 25th July, 2024; Vikram v. State, Bail Application No.1089/2023 dated 20th September, 2023 and Phundreimayum Yas Khan v State (GNCT of Delhi), 2023 SCC OnLine Del 135. He further This is a digitally signed order.

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 10/08/2024 at 02:28:58 contends that the co-accused Pushpender Kumar has been granted bail by the Trial Court by order dated 01st December, 2023.

7. There is an averment made by the State that he was implicated in another NDPS matter in Rajasthan. This aspect has now been verified by the status report, according to which the petitioner is on bail in the said matter in Rajasthan (FIR No.184/2019 under Sections 8/15 of the NDPS Act, District Jhalawar, Rajasthan).

8. It is contended that neither of these pieces of evidence which the prosecution professes against petitioner can amount to his conviction in law, considering that statements in disclosure are not admissible, as per the decision inter alia of the Supreme Court of India in Tofan Singh v State of T.N, 2020 SCC Online SC 882. For this, he has also relied on decisions of Coordinate Benches of this Court in Deepak Nagiya v. State (2023) SCC OnLine Del 5641 and Phundreimayum Yas Khan(supra).

9. Taking into account these facts and circumstances and relying upon the decisions of Tofan Singh (supra), where the Supreme Court has stated confessional statement recorded under Section 67 of the NDPS Act as well as the decisions of the Coordinate Benches of this Court where the CDR connectivity simpliciter has not been considered enough to confirm implication and involvement, the petitioner is entitled to bail. Relevant paragraphs of the said judgment are extracted hereunder for ease of reference:

"158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be This is a digitally signed order.

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158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

(emphasis added)

10. The Coordinate Bench of this Court in Phundreimayum Yas Khan (supra), in para 22 also stated as under:

"22. In the present case there is no narcotic substance or psychotropic substance recovered from the applicant or from his premises. There is no recovery. The disclosure statement made by the applicant, according to me cannot be read against the applicant. The fact that the anticipatory bail moved by Amarjit Singh Sandhu has been rejected by this Court or that Amarjit Singh Sandhu is absconding, cannot be a ground to deny bail to the present applicant."

(emphasis added)

11. It has been repeatedly held by various Benches of this Court that mere reliance on CDR analysis and that calls were exchanged between some parties, cannot form a basis for conviction.

12. The object of jail is to secure the appearance of persons during trial and is neither punitive nor preventive and deprivation of liberty has been considered as punishment without being proved. It would be instructive to extract the observations of Supreme Court in Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352, which are as under:

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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 10/08/2024 at 02:29:00 "20. 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.

21. 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 court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

(emphasis added)

13. This aspect has been even more recently reiterated by the Supreme Court in CRL.A 2787/2024 titled *Javed Gulam Nabi Shaikh v State of Maharashtra & Anr.* in decision dated 3rd July 2024 where the Supreme Court has usefully traversed the principles of law relating to bail, extracted as under:

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18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be."

(emphasis added)

14. In view of the above prima facie assessment, this court is of the considered opinion that there are reasonable grounds to believe that the petitioner's guilt may not be proved and further there is no material on record to show that she is likely to commit any offence while on bail.

15. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

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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 10/08/2024 at 02:29:03 i. Petitioner will not leave the country without prior permission of the Court.

ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address. iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.

iv. Petitioner shall join investigation as and when called by the IO concerned.

v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.

vi. Petitioner will mark presence physically before the concerned I.O.

every Friday at 4 p.m., and will be not kept waiting for more than an hour.

vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

16. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

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17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

19. Order be uploaded on the website of this Court.

ANISH DAYAL, J AUGUST 7, 2024/MK/na This is a digitally signed order.

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