

A.Vennugopal Reddy vs State Of Nct Of Delhi on 26 August, 2022

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 1444/2022

A.VENNUGOPAL REDDY

Through: Mr. Vikas Gautam, Advocate.
versus

STATE OF NCT OF DELHI

Through: Mr. Tarang Srivastava, APP
with Insp. Rahul Kumar, PS
Cell, Lodhi Colony.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 26.08.2022 The applicant, vide the present application seeks the grant of regular bail in relation to FIR No. 58/2013, PS Special Cell, Lodhi Colony under Sections 21 & 29 of the NDPS Act, 1985 submitting to the effect that the applicant is incarcerated since 18.12.2013, that the applicant is alleged to have been found in possession of 3 Kgs of Heroin but taking into account the period of incarceration of eight (8) years, eight (8) months and eight (8) days as contended on behalf of the applicant in view of the verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Prisoners Vs. Union of India" (1994) 6 Supreme Court Cases 731 as also adhered to and followed by the Co-ordinate 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.

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1724/2021 and the verdicts of this Court in Bail Appln. 3705/2020 and Bail Appln. 4187/2020 in Ebera Nwanaforo and Frank Vitus vs. Narcotics Control Bureau decided on 31/05/2022, he is entitled to be released on bail subject to terms and conditions as incorporated in the verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Vs. Union of India" (1994) 6 Supreme Court Cases 731.

The learned APP for the State whilst opposing the prayer made by the applicant submits that the applicant is a part of a syndicate and 47 Kgs of Heroin was recovered from the four accused in the instant case apart from 3 Kgs of Heroin having been recovered from the applicant herein. Inter alia,

it is submitted by the State as also reflected through the status report submitted under the signatures of the ACP, Special Cell, Lodhi Colony, New Delhi that one of the co-accused named Ragmeet Singh in the instant case granted interim bail on the ground of treatment of his mother, is absconding and has since been declared a proclaimed offender on 18.09.2019, and that two drug suppliers named P. Gopinath @ Gopi and Samiullah have so far not been arrested they being in Afghanistan.

Undoubtedly, the allegations levelled against the applicant are grave and serious, however, the period of incarceration that the applicant has undergone,- cannot be overlooked in view of the verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Vs. Union of India" (1994) 6 Supreme Court Cases 731.

The offences alleged to have been committed by the applicant punishable under Section 21(c) of the NDPS Act, 1985 in relation to Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

possession of a commercial quantity of Heroin is punishable with Rigorous Imprisonment for a term which is not to be less than 10 years but which may extend to 20 years as also to a fine which is not to be less than Rs.1,00,000/- which may extend to Rs.2,00,000/- and the offence punishable under Section 29 of the NDPS Act, 1985, is punishable in terms of the main offence allegedly committed, in as much as, Section 29 of the NDPS Act, 1985 relates to abetment and criminal conspiracy of the commission of the offences punishable under the NDPS Act, 1985.

In view of the directions in paragraph 15(iii) of the verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Vs. Union of India" (1994) 6 Supreme Court Cases 731 directing to the effect:-

"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.

.....", whereby, an under trial as in the category of the applicant incarcerated for a period of a minimum of five years (and in relation to which which in the instant case the applicant is incarcerated for more than eight years now), is entitled to be released on bail on filing a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount with further directives in paragraph 15(iii) of the said verdict being subject to the general conditions which read to the effect:-

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"(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, 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 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

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."

In view thereof, the applicant in the instant case is allowed to be released on bail on filing a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the

learned Trial Court with further conditions imposed on the applicant to deposit his passport with the Court of the learned Special Judge concerned and in the event of the applicant not being in possession of any passport to file an affidavit to that effect before the Special Judge concerned which aspect would also be verified by the Investigating Officer qua the aspect of possession of a passport by the applicant and the said verification report be submitted by the Investigating Officer to the Court of the Special Judge concerned.

The applicant is further directed to appear before the Investigating Officer of the case at PS Special Cell, Lodhi Colony on the 10th day of each calendar month commencing from the date of his release by 4.00 PM on that particular day. Further, the applicant is not permitted to leave the city of Delhi in terms of directives in paragraph 15(iii) of the verdict of the Hon'ble Supreme Court in "Supreme Court Legal Aid Committee representing Undertrial Vs. Union of India" (1994) 6 Supreme Court Cases 731 referred to hereinabove except with the permission of the Special Judge Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.

concerned and furthermore, under no circumstance the applicant shall leave the country.

Furthermore, the applicant during the period that he is on bail shall not commit any offence whatsoever and in the event of there being any FIR/ DD Entry/ Complaint lodged against the applicant, it would be open to the State to seek cancellation of bail of the applicant, which application, if any, filed would be dealt with on its own merits.

The application is disposed of accordingly.

ANU MALHOTRA, J AUGUST 26, 2022 nc Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:30.08.2022 11:45:24 This file is digitally signed by PS to HMJ ANU MALHOTRA.