

## Shakil vs State (Govt. Of Nct Of Delhi) on 9 May, 2023

**Author: Jasmeet Singh**

**Bench: Jasmeet Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
BAIL APPLN. 732/2023  
SHAKIL

Through: Mr. Aditya Aggarwal, Mr. Panwar, Advs. ....

versus

STATE (GOVT. OF NCT OF DELHI) .....

Through: Mr. Aashneet Singh, APP with Insp. Rakesh Kumar, Crime Branch

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH  
ORDER

% 09.05.2023

1. This is an application seeking bail in FIR No. 117/2018 registered at PS Crime Branch u/s 18/19/25 of the NDPS Act on 05.05.2018.

2. As per the FIR, the applicant was driving a truck bearing No. UP 15BT 9511. On searching the truck, 15 Kg opium was recovered from the truck. Hence, the applicant was arrested on 05.05.2018 and has been in custody since then.

3. Mr. Aggarwal, learned counsel for the applicant assisted by Mr. Naveen Pawar has addressed arguments primarily on two fronts:-

a. The applicant has been in custody for more than 5 years and is entitled to bail in view of the dicta of Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) vs. Union of India & Ors., [(1994) 6 SCC 731].

b. There is non-compliance of Section 52-A of the NDPS Act.

4. It is stated by Mr. Aggarwal that even though he has addressed arguments on Section 52A in view of the dicta of Supreme Court Legal Aid Committee (supra), the question regarding the non-compliance of Section 52A and Standing Order 1/88 may be left open to be adjudicated in appropriate case.

5. I have heard learned counsel for the parties.

6. In Supreme Court Legal Aid Committee (supra), the Supreme Court has stated as under:

"15. .... He, therefore, rightly sought permission to amend the cause-title and prayer clauses of the petition which was permitted. In substance the applicant now prays that all undertrials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of "personal liberty" must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial. See *Hussainara Khatoon (IV) v. Home Secy., State of Bihar* [(1980) 1 SCC 98 : 1980 SCC (Cri) 40] , *Raghubir Singh v. State of Bihar* [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and *Kadra Pahadiya v. State of Bihar* [(1983) 2 SCC 104 : 1983 SCC (Cri) 361] to quote only a few. This is also the avowed objective of Section 36(1) of the Act. However, this laudable objective got frustrated when the State Government delayed the constitution of sufficient number of Special Courts in Greater Bombay; the process of constituting the first two Special Courts started with the issuance of notifications under Section 36(1) on 4-1-1991 and under Section 36(2) on 6-4-1991 almost two years from 29-5-1989 when Amendment Act 2 of 1989 became effective. Since the number of courts constituted to try offences under the Act were not sufficient and the appointments of Judges to man these courts were delayed, cases piled up and the provision in regard to enlargement on bail being strict the offenders have had to languish in jails for want of trials. As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non-bailable and provides that no person accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and is not likely to indulge in similar activity. On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution. We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have

also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] . Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in *A.R. Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article

21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to, we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.

What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the applicant that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct as under:

(i) Where the undertrial is accused of an 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.

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, 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.

16. We may state that the above are intended to operate as one- time directions for cases in which the accused persons are in jail and their trials are delayed. They are not intended to interfere with the Special Court's power to grant bail under Section 37 of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order."

7. Admittedly, the applicant has been in custody for more than 5 years.

8. This court in "Gurmito vs. CBI" in BAIL APPL. 1621/2022 while noting the observations made by courts in Supreme Court Legal Aid Committee (supra) and Saudan Singh v. The State of Uttar Pradesh, SLP (CRL) No. 4633/2021 dated 05.10.2021 granted bail to the accused. The relevant para reads as under:

"14. Even in Saudan Singh v. The State of Uttar Pradesh, SLP (CRL) No. 4633/2021 dated 05.10.2021 the Supreme Court observed that where convicts (whose appeal are pending) have undergone more than 50% of their sentence, may be entitled to bail. In the present matter the applicant is an undertrial prisoner who has already undergone 50% of the minimum 10 years prescribed as per the Act, without even being convicted/sentenced under the Act. Therefore, denial of bail without guarantee of speedy trial would be an infringement of the applicant's right guaranteed under Article 21 of the Constitution of India. This grant of liberty does not infringe upon the powers of the trial court to cancel bail u/s 37 of the Act on non- compliance of the bail conditions by the Applicant."

9. For the said reasons and relying on the dicta of Supreme Court Legal Aid Committee (supra), it is directed that the applicant shall be released on bail subject to following terms and conditions:

a) The applicant shall furnish 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;

- b) The applicant is directed to deposit his passport with the Ld. Judge of the Special Court concerned and if he does hold a passport than he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. The Ld. Judge may verify the contents of the Affidavit incase there is a doubt of accuracy;
  - c) The applicant shall appear before the Court as and when the matter is taken up for hearing;
  - d) The applicant shall join investigation as and when called by the I.O concerned;
  - e) The applicant shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
  - f) The applicant shall report to the concerned Police Station once in a week, that is, on every Monday at 10:30 AM, and he should not be kept waiting for more than half an hour;
  - g) The applicant shall share his live location through Google Pin location to the I.O. concerned;
  - h) In case the applicant changes his address, he will inform the IO concerned and Trial Court also;
  - i) The applicant shall not indulge in any criminal activity during the bail period;
  - j) The applicant/agent/relative/family member of the applicant shall not communicate with, or come into contact with any of the prosecution witnesses or tamper with the evidence of the case.
10. The application is disposed of in the aforesaid terms.

JASMEET SINGH, J MAY 9, 2023/dm [Click here to check corrigendum, if any](#)