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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20.02.2025

+ BAIL APPLN. 2507/2024

LALI

.....Petitioner

Through: Mr. J. P. Singh, Mr. Hemant Sharma
and Ms. Tanishka, Advocates

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State
with SI Rajendra Meena, P.S. Anti-
Narcotics Squad, West District

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
ORDER

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present application has been filed seeking grant of regular bail in FIR bearing no. 0467/2023 dated 07.08.2023 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') registered at Police Station (P.S.) Khyala, Delhi.

Brief facts

2. The case of the prosecution as borne out from the status report is that on 07.08.2023, on basis of a secret information, a raiding team had reached near Shiv Hardware Road No.28, Raghbir Nagar, New Delhi. It is alleged that at about 12:10 PM, at the instance of a secret informer, the Applicant was apprehended, who was carrying a white color polythene in her hand. Thereafter a notice was served under Section 50 of NDPS Act wherein she

waived of her right to be searched in presence of any Gazetted officer or Magistrate and from the said bag there was a recovery of 100 grams of *Heroin*.

2.1. It is stated that after due compliance of mandatory provisions of the NDPS Act, subject FIR was registered and further investigation was initiated. It is stated that thereafter pursuant to her arrest on 07.08.2023 and being in police custody, much later upon the disclosure of the Applicant, an additional 170 grams of *Heroin* was recovered from her house i.e. A-632, 4th Floor, JJ Colony, Raghurir Nagar. Therefore, a total of 270 grams contraband (*Heroin*) has been recovered from the possession of the Applicant.

2.2. It is stated that on 09.08.2023 proceedings under Section 52A of the NDPS Act were conducted before the learned MM; samples were duly drawn and sent to FSL.

2.3. It is stated that charge-sheet under Section 21 of NDPS Act was filed qua the Applicant on 16.11.2023 and charges against the Applicant as well stands framed. It is stated that the case before the Trial Court is currently at the stage of recording of evidence and 3 out of 19 witnesses stand examined.

Arguments on behalf of the Applicant

3. Learned counsel for the Applicant states that the Applicant has been falsely implicated in the subject FIR at the behest of an undertrial-accused who was out on interim bail in a murder case of her brother, wherein the Applicant herein is an eyewitness.

4. He states that, firstly, there are differences in the weight of the contraband seized, recorded before the learned MM in the proceedings under Section 52A of the NDPS Act vis-a-vis weight of the contraband which was

sent to the FSL. He points out that the samples that were sent to FSL were taken in the tune of 10 grams before the learned MM, however, as per the FSL report the same were found to be of 25.2 grams (Exhibit OS) and 25.44 grams (Exhibit XS).

He further states that the photographs, which were taken before the learned MM at the time of proceedings under Section 52A of the NDPS proceedings clearly shows that even including the weight of the transparent box in which the samples were kept, the samples weighed around 13.3 grams (Exhibit OS) and 12.9 grams (Exhibit XS). He, therefore, states that there has been a significant increase in weight and this raises serious doubt with regards to alleged recoveries of contraband made.

4.1. He states that, secondly, despite prior information, search of the Applicant was not conducted in the presence of the Gazetted Officer or Magistrate, as per the procedure under Section 50 of the NDPS Act. He states that Section 50 of the NDPS Act is a mandatory provision and non-compliance thereof renders the recovery suspicious and effectively vitiates the trial and therefore, the Applicant is entitled to be released on bail.

4.2. He further states that despite the raid and seizure being done in broad daylight, there is no independent witness which has been joined in the recovery to corroborate the case of the prosecution. He states that neither any efforts were made to photograph and/or video-graph the alleged recovery. Therefore, the said facts as well raises doubts with regard to the credibility of the seizure made.

4.3. He states that there is no criminal antecedent against the Applicant and as such there are no chances of the Applicant for fleeing or tampering with any evidence if she is admitted to bail.

4.4. He states that the Applicant was arrested on 07.08.2023 and she has already undergone a substantial period of incarceration of 1 Year 6 months. He states that there are 19 prosecution witnesses and out of which only 3 witnesses have been examined till date, therefore there is no certain period in which the Trial will be completed and the Applicant cannot be detained for an indefinite period which would as a result violate right of the Applicant under Article 21 of the Constitution of India. He states that the charge-sheet has already been filed and the investigation qua the Applicant is complete and therefore, no useful purpose would be served by keeping the Applicant in jail. He states that the Applicant is the mother of two minor children.

4.5. He further states that the Applicant undertakes to make herself available as and when directed by this Court or as required by the police officials /IO.

Arguments of the State

5. In reply, Mr. Khanna, learned APP opposes the bail application of the Applicant. He states that the Applicant herein has been accused of having indulged in the offence of contraband (*Heroin*) supply.

5.1. He states recovery of contraband in the present case from the Applicant is of commercial quantity, therefore, rigors of Section 37 of the NDPS Act are applicable and the Applicant should not be enlarged on bail.

5.2. As regards to issues pointed out regarding discrepancies in the weight of the samples drawn, he states, firstly these are factual aspects and have to be seen by the Trial Court at the stage of trial and cannot be a ground to seek bail. However, in relation to this, learned APP has also handed over a brief note to the Court dated 10.02.2025, wherein he has set out a table to contend

that there is no discrepancy in the weight of the contraband recorded before the learned MM in proceedings under Section 52A of the NDPS Act vis-à-vis the sample sent to the FSL. The said table is reproduced as under for ease of reference: -

S.No.	Mark No.	Place of recovery	Weight of Contraband
I. Weight at the time of Recovery:			
1.	Mark A1-	Recovered from the spot	100 Grams
2.	Mark A2-	Recovered from the house of the Applicant	170 Grams
II. Weight at the time of 52A proceedings:			
1.	Mark A1-	Recovered from the spot	100.1 grams with Polythene
	OS & DS-	Original Sample+ Duplicate Sample	10 grams+ 10 grams
	Remaining Contraband-	Recovered from the spot	79.7 grams with polythene
2.	Mark A2-	Recovered from the house of the Applicant	170 grams with polythene
	XS & YS-	Original Sample+ Duplicate Sample	10 grams+ 10 grams
	Remaining Contraband-	Recovered from the house of the Applicant	149.6 grams
III. FSL Result:			
1.	Exhibit OS-	Recovered from the spot	25.2 grams with container & Seal [10 grams- Weight of contraband, [13.3 grams- Weight of container] @pg.3 of the SR
2.	Exhibit XS-	Recovered from the house of the Applicant	25.44 grams with container & Seal [10 grams- Weight of contraband, [13.4 grams- Weight of container] @pg.6 of the SR

5.3. He states that the contention of the Petitioner qua alleged weight discrepancy is deliberate misreading of the facts.

5.4. He states that, similarly, with regards to procedural compliance under Section 50 of the NDPS Act, it is to be tested at the stage of trial and non-compliance of the said provision cannot be a ground to seek bail, especially

in cases involving recovery of a commercial quantity, where rigors of Section 37 of the NDPS Act would be attracted.

5.5. As regards to the third issue, for non-examination of independent witness, he states, it has been well settled by the Supreme Court, in catena of judgments that non-examination of independent witness is not fatal to the case of prosecution. In this regard, he places reliance on the judgments passed by the Supreme Court in **Jagwinder Singh vs. State of Punjab**¹ and **Sathyan vs. State of Kerala**².

5.6. He states that previously as well the regular bail application of the Applicant filed before the ASJ-05, Special Judge, NDPS, New Delhi (Trial Court) has already been dismissed vide order dated 06.07.2024.

5.7. He, however, confirms that there are no other involvements of the Applicant and the investigation stands complete.

6. Learned APP is directed to have the brief note dated 10.02.2025 placed on record.

Findings and Analysis

7. This Court has considered the submission of the parties and perused the material on record.

8. In the facts of the present case the recovery made from the Applicant was in total of 270 grams of *Heroin* which is a commercial quantity as per the NDPS Act. The said recovery of commercial quantity of *Heroin* would attract Section 37 of the NPDS Act and therefore, ordinarily the Applicant will have to satisfy the Court that the twin conditions of Section 37 of the NDPS Act for grant of bail are made out.

¹ CRL.A.2027 of 2012

² CRL.A.2363 of 2023

9. The issue of discrepancy in the weight of the contraband recorded before the learned MM vis-à-vis the weight of the sample received at FSL was argued at length by the learned counsel for the Applicant. However, in the considered opinion of this Court the learned APP has sufficiently explained the weight of the contraband in the table set out hereinabove and thus prima facie this Court does not find any merit in the submission of the Applicant.

10. The Applicant has also raised the plea of non-compliance of Section 50 of the NDPS Act as well as non-joining of public witnesses as well as absence of photography and videography at the time of the search and seizure of the contraband. However, this Court is not considering the aforesaid pleas raised by the Applicant, since this Court has taken into consideration the submission of the Applicant with regard to her period of incarceration and the considerable delay in conclusion of the trial.

Delay in Trial

11. As per the Nominal Roll dated 12.08.2024, the Applicant has been in jail for 1 Year 6 Days since the date of her arrest i.e., 07.08.2023. Thus, presently the period of incarceration in jail is about 1 Year 6 months. The said Nominal Roll also reflects that the Applicant is 34 years old and has no criminal antecedents and her conduct in the jail has been satisfactory.

12. The investigation qua Applicant is complete; charge-sheet against the Applicant was filed on 16.11.2023; however, since the FSL report was awaited charges could not be framed. The supplementary charge-sheet was filed subsequently along with FSL report before the Trial Court on 26.04.2024. The charge against the Applicant was thereafter framed by the Trial Court on 25.07.2024. It has been pointed out that there are 19

witnesses which have to be examined by the prosecution; and out of said 19 witnesses as on date only three (3) witnesses have been examined as on date.

The aforementioned show that prosecution has delayed the trial. The Applicant is not at fault for the delay in this trial. The matter before the Trial Court is next listed on 13.05.2025 for recording of prosecution evidence. In light of the facts noted above, it is evident that a considerable time will be taken to conclude the trial.

13. The Supreme Court has consistently held that delay in trial/prolonged trial is antithetical to the fundamental right enshrined in Article 21 of the Constitution of India. The Supreme Court has held that even in cases relating to NDPS if the prosecution is unable to conclude the trial within a reasonable period the accused would be entitled for bail if the accused is not liable for the delay. The following decisions are relevant in this regard: -

13.1. The Supreme Court in **Dheeraj Kumar Shukla v State of U.P.**³ where there was a seizure of about 65 kgs of *Ganja* and the petitioner therein was in custody for about two and a half years, the Supreme Court while granting bail, stated as under: -

“3. It appears that some of the occupants of the ‘Honda City’ Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

(Emphasis supplied)

³2023 SCC OnLine SC 918

13.2. In **Man Mandal v State of West Bengal**⁴, where the seizure was of commercial quantity and the accused had been incarcerated for almost two years and there was no hope for the trial to be concluded soon, the Supreme Court while granting bail stated as under: -

“5. Learned counsel appearing for the state submitted that in view of the statutory restrictions under Section 37 of the NDPS Act and the **quantity being commercial in nature**, the present special leave needs to be dismissed.

6. Taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future, we are inclined to grant bail to the petitioners.”

(Emphasis supplied)

13.3. Similarly, in **Nitesh Adhikari v. State of West Bengal** vide order dated 01.08.2022 passed in SLP Criminal No. 5769/2022, the Supreme Court granted bail to an accused facing charge under Section 21 (c) of the NDPS Act on ground of incarceration of 1 year 7 months. The order reads as under: -

“The petitioner seeks enlargement on bail in F.I.R. No. 612 of 2020 dated 17.10.2020 filed under Section 21(c) and 37 of the NDPS Act, registered at Police Station Bongaon, West Bengal.

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.”

(Emphasis supplied)

⁴ 2023 SCC OnLine SC 1868.

13.4. In **Mohd. Muslim alias Hussain v State (NCT of Delhi)**⁵ the Supreme Court stated that, grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act. The Supreme Court noted as under: -

“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 Malik¹⁹). **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.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State as “a radical transformation” whereby the prisoner: “loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status,

⁵ 2023 SCC OnLine SC 352.

possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer's ‘The Prison Community’ published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

(Emphasis supplied)

14. The Applicant was arrested on 07.08.2023 and she has not contributed to any delay in trial. It is correct that the quantity of contraband allegedly recovered from the Applicant is commercial in nature and the provisions of Section 37 of the NDPS Act are attracted. However, in these facts the conclusion of trial cannot be foreseen in near future, therefore, this Court is satisfied that the conditions of Section 37 of the NDPS Act can be dispensed with at this stage.

15. Further the Applicant in this case has no criminal priors under the NDPS Act and her conduct during her incarceration of more than 1 year has been recorded as satisfactory in the Nominal Roll. Moreover, the Applicant herein is a woman and the consequences of such pre-trial detention are grave which not only causes severe effects on the person in custody but upon its other innocent members of the family as well. The Applicant is stated to have two minor children.

16. In the opinion of this Court, after a holistic assessment of all the facts and circumstances in the said matter, and that the trial in the matter is likely to take some time, it would not be prudent to keep the Applicant behind bars for an indefinite period, therefore, this Court deems fit that that Applicant be entitled to bail. As a result, the Applicant is directed to be released on bail upon providing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, and further subject to the following conditions: -

- i. Applicant will not leave the country without prior permission of the Trial Court.
- ii. Applicant shall provide her permanent address to the Trial Court. The Applicant shall intimate the said Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.
- iv. Applicant shall join investigation as and when called by the IO concerned.
- v. Applicant 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. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.
- vii. The Applicant shall not threaten the witnesses or tamper with the evidence of the case.

17. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

18. 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.

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

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

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 20, 2025/mt/ms/MG