



2025:DHC:1943



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

Judgment Delivered on 25.03.2025

+ BAIL APPLN. 3810/2024

NAJIR HUSSAIN

.....Petitioner

Through: Mr. Sumit Sharma and Mr. Narender,
Advocates

versus

STATE THROUGH SHO SPECIAL CELL

.....Respondent

Through: Mr. Aman Usman, APP for State with
SI Nishant

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J

1. The present petition has been filed under Section 483 read with Section 528 of BNSS for grant of regular bail in connection with FIR No. 65/2022 under Section 21/25/29 of the NDPS Act registered at PS Special Cell.
2. The case of the prosecution is that on 24.03.2022, a secret information was received regarding two inter-state drug traffickers namely, Dinesh Singh and Najir Hussain (petitioner), both resident of Gazipur, UP who were arriving in Delhi for delivery of consignment of drugs near Bus Stand Sarai Kale Khan, in vehicle no. BR01 BB 6026. A raiding team was constituted to conduct raid under the supervision of senior officers and at about, 04:45 AM, one Maruti SX4 car no. BR 01 BB 6026 was intercepted coming from Meerut-Delhi Expressway towards Ashram. Accused Najir Hussain



(petitioner) and Dinesh were apprehended with the help of staff near Bus Stand Sarai Kale Khan.

3. The search of accused persons was made in the presence of ACP/ Special Cell/SR and 03 kg Heroin was recovered from the possession of the petitioner and 03 Kg Heroin was recovered from the possession of accused Dinesh Singh. Another 4 Kg brown powder was also recovered from the secret cavity of car no. BR 01 BB 6026, specially designed to conceal and transport the illegal narcotic drugs. Both the accused persons were thereafter arrested on 24.03.2022.

4. The learned counsel for the petitioner submits that the petitioner is in custody since 24.03.2022 and the trial is still at the initial stage, inasmuch as only 04 witnesses have been examined out of total 20 witnesses cited by the prosecution, therefore, the trial is going to be a protracted one.

5. He submits that it is not the case of the prosecution that the petitioner has criminal record. Further, the petitioner has also been granted interim bail on one occasion and the liberty so granted to him was not misused. Further, the petitioner's jail conduct is satisfactory. He, therefore, contends that petitioner may be enlarged on bail.

6. *Per contra*, the learned APP has argued on the lines of status report. He submits that since the quantity recovered from the present petitioner is commercial, the rigors of Section 37 of NDPS Act, 1985 will be attracted. He, therefore, urges the Court that the petitioner is not entitled to bail.

7. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the records.

8. A perusal of the nominal roll shows that the petitioner is in custody



since 24.03.2022 and has completed almost 03 years of custody. The status report also reveals that the prosecution has cited as many as 20 witnesses, of which only 04 prosecution witnesses have been examined till date. The conclusion of trial will thus, take time. Further, the petitioner does not have criminal antecedents.

9. The nominal roll also shows that the jail conduct of the petitioner is satisfactory. He was also granted interim bail once from 03.02.2024 to 09.02.2024 and the liberty so granted to him was never misused.

10. At this stage, apt would it be to refer to the decision of Hon'ble Supreme Court in ***Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109***, wherein it was observed as under:

*“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. **The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.**”*

(emphasis supplied)

11. Likewise, in ***Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi, 2024 SCC OnLine SC 220***, the Hon'ble Supreme Court granted bail to the accused from whom commercial quantity of contraband was recovered, having regard to his custody of 01 year and 11 months, the fact that the



accused had no criminal antecedents and that the conclusion of trial would take time. The relevant paras of the decision reads as under:

“8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing of the charges is yet to be done. The conclusion of trial will thus take time. There are no criminal antecedents.

9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband (smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.

10. Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Trial Court.”

(emphasis supplied)

12. In view the above decisions and taking into consideration the totality of circumstances, especially the period of custody undergone by the petitioner, his clean antecedents and the fact that the trial is still at the initial stage, the conclusion of which would take time, this Court is of the view that the petitioner is entitled to grant of regular bail.

13. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/JMFC/Duty JM, further subject to the following conditions:



2025:DHC:1943



- (i) The applicant shall not leave NCR without prior permission of the concerned Court.
- (ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- (iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- (iv) The applicant shall not directly/indirectly try to get in touch with any prosecution witnesses or tamper with the evidence.
- (v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

14. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.

15. The application is disposed of.

16. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

17. Order *dasti* under signatures of the Court Master

VIKAS MAHAJAN, J

MARCH 25, 2025

N.S.ASWAL