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

Date of Decision: 17.01.2025

+ **BAIL APPLN. 3391/2024**

SEEMA

.....Petitioner

Through: Mr. U.A. Khan, Mr. Tushar
Upadhyaya, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under section 483 of BNSS seeking grant of regular bail to the petitioner in FIR No. 500/2022, dated 06.07.2022, registered at PS Narela Industrial Area under Section 21 of the NDPS Act. The chargesheet has been filed under sections 21/25/29 of the NDPS Act.
2. As per the prosecution the facts are that on 06.07.2022 at around 1 P.M., a secret information was received to the ASI that a lady namely, Shanno r/o E-1852, J.J. Colony, Bawana, Delhi is allegedly involved in the distribution of heroin, both in bulk as well as retail quantities. Further, Shanno would come in between 03-03:30 P.M. to deliver a consignment of heroin to her customers.
3. After verifying the secret information, the ASI produced the secret informer before the concerned police officials and the secret information



was given to them. Thereafter, on instructions of the ACP a raiding team was constituted, who took their position around 2:30 P.M. near the house of Shanno. Some public persons were also asked to join the raiding team, however they refused citing genuine reasons.

4. At the instance of the secret informer, at around 03 P.M., Shanno was seen coming from her house and subsequently was apprehended at 03:05 PM. She informed the ASI that she was in the business of sale and purchase of heroine both in bulk as well as retail quantities. Thereafter, she was duly informed about her legal rights and the notice under Section 50 of the NDPS Act was served upon her. At, 04:40 PM, the ACP arrived and Shanno was searched by a woman Head Constable, namely, Ms. Sheenu, in her own house where one black colour polythene was recovered which contained a brown coloured powder. Upon testing the same it was found to be heroin, weighing 150 gms.

5. During investigation, Shanno disclosed that she used to procure heroin from a lady residing in J.J. Colony, Wazirpur. Thereafter, at the instance of Shanno, a raid was conducted at House no. B-52, J.J. Colony, Wazirpur, from where (1) the petitioner i.e. Seema r/o House no. C-318 J.J. Colony, Wazirpur Delhi and (2) Meenu r/o House no. B-52, J.J. Colony, Wazirpur were apprehended. On seeing the raiding team, the petitioner threw a black colour polythene under the bed, which contained a brown colour powder. On testing the same, it was found to be heroin weighing 300 grams.

6. Hence, the present petitioner was arrested.

7. Mr. Khan, learned counsel for the petitioner states that in the present case, the notice under Section 42 NDPS is faulty as there is no approval of



the ACP concerned. Further, despite the police officials having prior information about the planned arrest of the petitioner, no videography or photography was conducted during the search and recovery of the alleged contraband.

8. He further submits that the petitioner is a lady and has been in custody for two and a half years. In addition, there is no other pending case against the petitioner pertaining to the NDPS Act.

9. He lastly submits that there is an inordinate delay in trial proceedings as the prosecution has cited 21 witness, out of which only 4 have been examined till date.

10. *Per Contra*, Ms. Dalal, learned APP states that in the present case, the recovery has taken place from residence of the petitioner and the recovery is of a commercial quantity. Hence, the petitioner will have to cross the rigors of section 37 of NDPS Act.

11. She further states that the question of non-compliance of Section 42 of NDPS Act, if any, can only be seen during the trial.

12. She places reliance on the judgment of this Court in ***Chidi Berr Nwayoga vs. State*** 2022 SCC OnLine Del 2558. The relevant para reads as under:

“13. Contention of learned counsel that since no videography was shot nor any CCTV footage collected, the case of the prosecution be disbelieved deserved to be rejected. In case the Police officers had parked their cars or made arrangements for videography in advance there was a likelihood of the appellant and the co-accused coming to know about the proposed raid and thus the likelihood that they would not have



gone ahead with the transaction at that place cannot be ruled out thereby making the entire action of the raiding team futile.”

13. Reliance is also placed by the learned APP on the judgment passed by the Hon’ble Supreme Court in “***Union of India through NCB vs. Mohd. Nawaz Khan*** (2021) 10 SCC 100.

14. Lastly, she states that the trial is proceeding and 4 witnesses have already been examined. In addition, delay in trial cannot be a sole ground for grant of bail.

15. I have heard learned counsel for the parties.

16. In the present case, the fact whether section 42 of NDPS Act was complied or not can only be determined after the evidence is over and the trial has concluded.

17. However, I find some merit in the submissions of the learned counsel for the petitioner that no videography/photography was conducted during the search and recovery of the alleged contraband and there is an inordinate delay in the proceedings pending before the learned trial court.

18. As regards, the issue pertaining to the need for videography/photography during the search and seizure has been dealt by a coordinate bench of this court in ***Bantu vs State (NCT of Delhi)***, 2024 SCC online Del 4671. The operative portion of the said judgment reads as under:

“81. Realizing the need of changing time, the legislature has now passed the Bharatiya Nagarik Suraksha Sanhita (‘BNSS’). The practice of photography and videography has now been made mandatory. Even though it is contended that, at the relevant time, the same was not mandatory, it cannot be denied that the Courts



have, time and again, discarded the prosecution's story and had emphasized on the importance of independent witnesses and additional evidence in the form of audiography and videography when the same can easily be obtained due to advancement of technology.

82. This legislative enhancement is designed to ensure a more transparent and accountable approach in investigation. BNSS, with its comprehensive emphasis on technological integration, heralds a transformative era in criminal justice, promoting a system that is not only transparent and accountable but also fundamentally aligned with the principles of fairness and justice.

83. Photography and videography are universally accepted as the best practices for better erudition and appreciation of the evidence. The same ensures that the prosecution is able to better document the recovery during the investigation. BNSS stipulates that the proceedings of search and seizure shall be recorded through any audio - video means preferably through a mobile phone. As noted above, these days mobile phones are handy with almost everyone especially, in a metropolitan city like Delhi.”

19. While reiterating the law laid down by this court in ***Bantu*** (supra), another coordinate bench of this court in BAIL. APPLN. 2219/2024 titled ***Sanjeev Kumar vs The state inter alia*** held as under:

“35. Counsel for applicant further contended that lack of photography or videography despite being aware that no public witness would be available would raises serious doubts about the search and seizure conducted by the respondent authorities. In this



regard, various views have been taken by Courts in India. A coordinate Bench of this Court in Bantu v. State Govt of NCT of Delhi 2024:DHC:5006 dealt with the issue of lack of photography or videography in the absence of public witness and took note of observations by the Apex Court in Shafhi Mohammad v. State of Himachal Pradesh (2018) 5 SCC 311 emphasising role of audio-visual technology in enhancing the efficacy and transparency in the Police investigations. Further, in Bantu (supra) Court noted the need of changing times as incorporated by the Bharatiya Nagarik Suraksha Sanhita, 2023 [“BNSS”], where the practice of photography and videography has now been made mandatory as part of the investigation.

36. While the legitimacy of the search and seizure conducted by respondent authorities will be tested during trial, absence of public witnesses and photography/videography raises concern at this stage.”

20. In the present case, the respondent was aware in advance that a raid was planned at the petitioner’s residence on 09.07.2022, based on information provided by Shanno to the concerned police officials on 06.07.2022. Acting on Shanno's disclosure, the police officials conducted the raid at the petitioner’s residence on 09.07.2022, however no photography/videography was done during the search and seizure of the contraband, despite the raid not being a surprise raid.

21. In addition, no cogent reasons have been provided by the investigating agency as to why no videography/photography was done during the search and recovery of the alleged contraband.



22. Further, the courts have time and again held that the twin conditions mentioned under section 37 of NDPS Act can be relaxed provided the accused person has undergone a substantial period of incarceration and the trial is unlikely to end in near future. In this regard, reliance is placed on the judgment of the Hon'ble Supreme court in ***Mohd. Muslim vs State (NCT of Delhi)*** 2023 SCC OnLine SC 352. The operative portion reads as under:

“13. When provisions of law curtail the right of an accused to secure bail, and correspondingly fetter judicial discretion (like Section 37 of the NDPS Act, in the present case), this court has upheld them for conflating two competing values, i.e., the right of the accused to enjoy freedom, based on the presumption of innocence, and societal interest - as observed in Vaman Narain Ghiya v. State of Rajasthan (“the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal....”). They are, at the same time, upheld on the condition that the trial is concluded expeditiously. The Constitution Bench in Kartar Singh v. State of Punjab made observations to this effect. In Shaheen Welfare Association v. Union of India again, this court expressed the same sentiment, namely that when stringent provisions are enacted, curtailing the provisions of bail, and restricting judicial discretion, it is on the basis that investigation and trials would be concluded swiftly....

....

21....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, 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 194023). 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.”

23. In the present case, the petitioner has been in custody since 09.07.2022 and till date only 4 witnesses have been examined, out of the arrayed 21 witnesses. It does not seem probable that the trial would be concluded in the near future.

24. The rights under Article 21 of the Constitution of India are paramount and every accused is entitled to a speedy trial. Further, there are 2 FIRs pending against the petitioner, however, they are not pertaining to the NDPS Act.

25. There is also the statement of PW-4 and a perusal of the statement reveals that PW-4, who was part of the raiding team, has totally feigned ignorance of the entire event in his cross examination.

26. For the said reasons, the petition is allowed and the petitioner is directed to be released on regular bail subject to the following terms and directions:



- (a) The petitioner shall furnish a personal bond in the sum of Rs. 10,000/- (Rupees Ten Thousand Only) with one surety of the like amount to the satisfaction of the concerned Trial Court;
 - (b) The petitioner shall provide her mobile number to the concerned Investigating Officer (IO), which shall be kept in working condition and switched on at all times. The petitioner shall also provide her permanent residential address and in case of change of residential address or contact details, the petitioner shall promptly inform the same to the concerned IO as well as to the concerned Court;
 - (c) The petitioner shall not leave the country without permission of the competent Court during the bail period and surrender her passport, if any, at the time of release before the concerned Court;
 - (d) The petitioner shall not directly/indirectly try to get in touch with any prosecution witnesses or tamper with the evidence;
 - (e) The petitioner shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in pending cases, if any.
27. The petition is disposed of accordingly.

JASMEET SINGH, J

JANUARY 17, 2025/DM

Click here to check corrigendum, if any