



2023:DHC:7870



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

% Judgment reserved on: 13.10.2023  
Judgment pronounced on: 31.10.2023

+ BAIL APPLN. 1257/2022

GAURAV MEHTA ..... Petitioner

versus

NARCOTICS CONTROL BUREAU ..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr. Satya Bhushan, Advocate

For the Respondent : Mr. Subhash Bansal, Senior Standing Counsel with Mr. Shashwat Bansal, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**TUSHAR RAO GEDELA, J.**

**[ The proceeding has been conducted through Hybrid mode ]**

1. This is a bail application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 on behalf of the applicant seeking grant of regular bail in SC No. 81/2019 under Sections 8(c)/21(c)/23/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, titled “*Narcotics*

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 1 of 21**



2023:DHC:7870



*Control Bureau Vs. Gaurav Mehta & Ors.*” pending before the Court of learned Special Judge, NDPS Act, Patiala House Courts, New Delhi.

2. As per the case of the prosecution, secret information was received on 17.08.2018 in respect of two parcels destined to USA and Canada respectively lying at DHL Express, Rama Road, Kirti Nagar, New Delhi, booked by the applicant Gaurav Mehta of Desi Global E Mart. The parcels were suspected to contain narcotics/psychotropic tablets. Further, it was also learnt that the applicant was continuously sending narcotics/ psychotropic medicines from his office cum warehouse at K-121, Backside, West Patel Nagar, New Delhi.

3. As per the Panchnamas dated 17.08.2018, a search was first conducted at the DHL office and then at K-121, West Patel Nagar, New Delhi wherfrom a huge quantity of transparent plastic polythenes containing white colour tablets were recovered.

4. The first seizure was affected by a team consisting of Anand Kumar, IO, Sh.Virender Kumar IO, Havaldar Sanjiv Kumar and Driver Babulal at 09:55 hours from the office of DHL Express 71/3, Rama Road, Kirti Nagar, New Delhi. The seizure memo was prepared by IO Anand Kumar wherein it is alleged that from the two parcels, Ativan 2mg tablets, Tramadol and other tablets were recovered.

5. The second seizure was conducted by Rajesh Kumar Yadav IO, Sh. Bhojraj IO, Sh. Anand Kumar IO, Sh. Virender Kumar IO, Sh. Sanjeev Kumar Havaldar, Sh. Babu Lal Meena Sepoy, Sandeep Kumar Sepoy, Sh.

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 2 of 21



2023:DHC:7870



N.P. Singh Driver and Sh. Malkeet Singh Driver around 10:00 hours at the office/warehouse of the applicant at K-121, West Patel Nagar, New Delhi, wherein tablets of Vellium, Xanax, Alprazolem, Lorezapam 2 mg, Phentermine, 375 Mg. V.C. Don, Clonazepam etc. were recovered.

6. On search of the room, one transparent plastic polythene containing white tablets were recovered on which Xanax was written and on further checking the racks of the said room, packets containing different tablets i.e. Alprazolam, Lorazepam, Phentamine, V.C. Don, Clonazepam along with 4 parcels ready to be sent to different foreign destinations were recovered. The total weight of Tramadol recovered was more than 250 gms and the same is a commercial quantity.

7. The applicant, in his statement under section 67, NDPS Act recorded on 18.08.2018, disclosed that the medicines recovered from his house were provided by the co-accused Bhaskar Khatnani who used to supply 20-25 packets per week to him and on the instructions of the co-accused Bhaskar Khatnani, he used to pick up tablets in strip and lose form of Phentermine, Butalbital, Viagra, Cialias, Tramadol, Zolpidem, Adderall, Hydrocodone etc. from Laxmi Nagar which were provided by co-accused Manish Mohan through co-accused Amit Ranjan.

8. The applicant Gaurav Mehta further disclosed that he used to lift the medicines from the house of co-accused Bhaskar Khatnani, and that the parcels that have been recovered from DHL office were destined to USA and Canada and were sent by him.

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 3 of 21



2023:DHC:7870



9. The applicant was arrested on 18.08.2018 and has been in incarceration since then, except the period spent on interim bail granted at various occasions. The applicant moved an application for grant of regular bail before the learned Trial Court, however the same was dismissed *vide* the order dated 01.02.2022.

### **ARGUMENTS ON BEHALF OF THE APPLICANT**

10. Mr. Satya Bhushan, learned counsel for the applicant, at the very outset submits that he is adopting the arguments addressed by Mr. Yogesh Kumar Saxena, learned counsel for the co-accused Bhaskar Khatnani in BAIL APPLN. 597/2020. In addition to that, he makes further submissions in support of the bail application.

11. Learned counsel submits that as per the case of prosecution, upon receiving a secret information, a raiding team was formed and the first recovery was made at the office of DHL Express Pvt. Ltd., 71/3 Rama Road, Kirti Nagar, New Delhi from where 2 parcels i.e. Airway Bill Number 2061262291 and Airway Bill Number 2061387436 destined to USA and Canada, allegedly sent by the applicant were recovered.

12. Learned counsel refers to the seizure report under section 57, NDPS Act dated 20.08.2018 sent by Sh. Rajesh Kumar, IO to the Superintendent, annexed at Page 250 to the petition, which records that "*Based on the NCB/DZU case no. VIII/24/DZU/2018 and information gathered through seized parcels that Gaurav Mehta had got booked the parcels of Narcotics Drug and Psychotropic substances through DHL Express. Accordingly,*

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 4 of 21**



2023:DHC:7870



*team of Narcotics Control Bureau, Delhi Zonal Unit was constituted. The NCB team located the office of Gaurav Mehta K-121 West Patel Nagar New Delhi from where he carries out his drug business and search was conducted...".* On this, learned counsel submits that the said noting in the report clearly reflects and establishes that prior to seizure at DHL Courier Office and at the time of receiving the secret information, the NCB did not have the address of alleged office/warehouse of the applicant i.e. K-121, West Patel Nagar, New Delhi. Thus, as per his submission, the secret information received on 16.08.2018 at 21:00 hours but reduced into writing after reaching the DZU NCB Office on 17.08.2018 at 08:00 hours is absolutely a false and fabricated one.

13. Learned counsel for the applicant further submits that the respondent *vide* a letter dated 31.10.2018 had requested the DHL Express to provide the details of all the imports/exports sent in the last 3 years by the applicant or his firm i.e. Desi Global E Mart. The information so provided by the DHL Express is placed at Page 67-68 which clearly reflects that the last package booked by the applicant was on 06.04.2017. On this, learned counsel submits that the covering letter and statement of couriers for three years so obtained by the NCB from the DHL itself, proves that the courier parcels seized at the DHL Express were not booked by the applicant and as such, the recovery of contraband so made from such parcels cannot be attributed to the applicant.

14. Learned counsel further refers to the invoices of the 2 parcels

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 5 of 21**



2023:DHC:7870



allegedly seized at the DHL Express to dispute the signatures of the applicant on the same. He submits that the signatures allegedly appended by the applicant on the said 2 invoices clearly do not match with each other which establish that the parcels so seized from the DHL Express were in fact not sent by the applicant.

15. Mr. Bhushan next refers to the Panchnama of the seizure made at the office of DHL Express, to point out that the weight of the psychotropic substance allegedly recovered from the said parcels do not match with the weight as mentioned in the invoices of the parcels. He submits that as per the case of the prosecution, the total recovery made from the seized parcels is approximately 330 gms, whereas the invoices of both the parcels show the Unit Net Weight as 0.50 each, which makes the alleged quantity recovered from the seized parcels not only improbable, but impossible.

16. Learned counsel further submits that the place of recovery i.e. K-121, West Patel Nagar, New Delhi is neither the warehouse/office of the applicant nor does it belong to the applicant in any manner. He submits that there is no proof on record to show that the warehouse/office at K-121, West Patel Nagar, New Delhi was in occupation of the applicant or he was the owner/tenant of the said premises at any point of time.

17. Learned counsel also submits that the applicant was not present at the said office/warehouse when the raid was conducted by the NCB officials. He refers to the complaint wherein it is mentioned that the applicant was not present at the premises when the NCB officials reached the office/warehouse

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 6 of 21**



2023:DHC:7870



at 9:50 a.m. It is further mentioned therein that the two boys namely Sh. Sonu and Sh. Vipin Kumar who are alleged to be the employees of the applicant, called the applicant on his mobile phone, and the applicant reached the said office/warehouse in 10 minutes, whereafter the alleged recovery of contraband was made in the presence of the applicant. However, the CDR of the applicant annexed at page 293, shows that no phone call was made to him between 9:50 a.m. to 10:00 a.m. on 17.08.2018 and thus the same reflects that the applicant was never called and he was not present at the office/warehouse at the time of alleged raid.

18. It is also submitted that presence of the alleged witnesses, Sh. Sonu and Sh. Vipin Kumar at the spot is *prima facie* doubtful because their statements are alleged to have been recorded on 22.11.2018, i.e. after three months from the alleged seizure. Further, there is no proof on record to show that Sh. Sonu and Sh. Vipin Kumar were employees of the applicant.

19. Learned counsel also submits that there is no money trail between the applicant and any of the co-accused persons and there is nothing on record to connect the bank account details of the applicant with the alleged transactions.

20. Mr. Bhushan next refers to the disclosure statement of the applicant wherein it is stated that the narco/psychotropic substances recovered from the office/warehouse of the applicant i.e. K-121, West Patel Nagar, New Delhi were provided to him by one Bhaskar Khatnani who used to give the tablets, in strip or lose forms, of Phentermine, Butalbital, Viagra, Cialias,

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 7 of 21



2023:DHC:7870



Tramadol, Zolpidem, Adderall, Hydrocodone etc. It is submitted by the learned counsel that the role of the applicant, as per the prosecution case, was limited to sending the same in parcels to other countries. On this basis, learned counsel submits that assuming the case of the prosecution to be true, even then, at best or worst, the only role that can be attributed to the applicant herein is of a 'carrier'.

21. He relies upon an order of the Supreme Court in ***Mahmood Kurdeya vs. Narcotics Control Bureau*** in Criminal Appeal No. 1570/2021, wherein on similar facts and circumstances, the bail was granted to the applicant therein. In the said case also, the applicant was alleged to be a carrier, the chargesheet was filed in 2018 and no charges had been framed till date nor had the trial commenced. On this basis, he submits that the aforesaid order is squarely applicable to the present case and prays that the applicant may also be enlarged on regular bail.

22. Learned counsel submits that in any case, the co-accused Bhaskar Khatnani who is alleged to have provided the contraband to the applicant herein, have been granted regular bail by this court on 17.08.2023 in BAIL APPLN. 597/2020. The other co-accused persons namely Amit Ranjan and Manish Mohan have also been granted bail by this court on 23.05.2022 and 10.04.2023 respectively. In fact, the co-accused Pulkit Kumar has been discharged by the learned Trial Court.

23. Learned counsel for the applicant relies upon the judgment of the Supreme Court in ***Rabi Prakash vs. The State of Odisha***, SLP (Crl.) No(s).

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 8 of 21**



2023:DHC:7870



4169/2023 rendered on 13.07.2023 to submit that the fundamental right guaranteed under Article 21 of the Constitution of India must override the statutory embargo created under Section 37 of the NDPS Act.

24. Learned counsel also submits that five years have passed since the applicant was arrested on 18.08.2018 and yet, the case has only reached the stage of framing of charges. He further submits that the examination of witnesses is yet to commence and it is apparent that the trial will take a long time to conclude.

25. He further submits, by referring to the Nominal Roll that the applicant has been in incarceration for more than a period of 4 years 2 months. The jail conduct of the applicant is satisfactory and there is no previous involvement of the applicant, and prays for release of the applicant on regular bail.

### **ARGUMENTS ON BEHALF OF THE RESPONDENT**

26. *Per contra*, Mr. Subhash Bansal, Senior Standing Counsel for respondent NCB submits that upon receiving of a secret information, a search was conducted on 17.08.2018, firstly at the DHL Express Office, 71/3, Rama Road, Kirti Nagar, New Delhi wherein two parcels i.e. AWB No. 2061262291 and AWB No. 2061387436 with details of Consignor as: Desi Global E-Mart, Gaurav Mehta, K-40, West Patel Nagar, New Delhi-110008, and destined to USA and Canada, were seized.

27. On opening of the first parcel, psychotropic tablets were found i.e. 4

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 9 of 21**



2023:DHC:7870



strips of Ativan 2mg (Lorazepam) Batch No. W43085 (Each strip contained 30 tablets and weighed 02 grams). Total weight of 120 tablets was 8 grams. As per the CRCL Report dated 28.09.2018, the sample tested positive for Lorazepam. In the second parcel, 435 tablets (143 grams) of white-colour were recovered. Further, yellow-colour loose tablets were found i.e. 164 tablets (75 grams). Further white-pink packet of loose tablets were found weighing 115 grams (192 tablets), which as per CRCL Report tested positive for Tramadol.

28. Further investigations led to search of warehouse/office premises of the applicant at K-121, West Patel Nagar, New Delhi. Upon reaching, NCB Team joined two independent witnesses and in presence of the applicant, proceeded to search the said premises. During search, a huge quantity of narcotic/psychotropic tablets were recovered:

- a) Vellum Tablets- 1.136 Kg (Tramadol Tablets)
- b) Clonazepam Tablets- 120 grams (120 Tables)

Further many tablets and parcels were found during said search.

29. During investigations on 17.08.2018, the applicant revealed that since January, 2018, he started online pharmaceutical business and few months back, he came in contact with one Bhaskar Khatnani who was doing the business of sending various Narcotic/psychotropic tablets in open form as well as in strips to various countries and that he has sent more than 100 parcels to various countries containing narcotic/psychotropic tablets

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 10 of 21



2023:DHC:7870



provided by Bhaskar Khatnani.

30. The disclosure given by the applicant led investigations to the house of co-accused Bhaskar Khatnani at Tower No. 6, House No. 401, M3M, Marlin, Sector-67, Gurgaon. Upon search of the said premises on 17.08.2018, huge quantities of stickers of psychotropic tablets were recovered. At the instance of co-accused Bhaskar Khatnani, a further recovery of contraband was made at Laxmi Nagar Metro Station.

31. Mr. Bansal submits that consequently, the applicant Gaurav Mehta was arrested on 18.08.2018. Thereafter, the co-accused persons namely Bhaskar Khatnani, Manish Mohan, Amit Ranjan, Pulkit Kumar etc. were also apprehended.

32. Learned counsel submits that it is an admitted fact that the seizures were conducted and contraband was recovered and the same has not been challenged by the applicant.

33. Learned counsel argues that as per the CDR details of mobile number 7838998758 used by the co-accused Bhaskar Khatnani, it was found that the applicant was in constant touch with the co-accused. He further submits that during investigations and as per the Complaint, mirror image of mobile make Samsung Galaxy S9 Plus of the applicant Gaurav Mehta was received from SIFS with certificate under section 65B of Indian Evidence Act. On scrutiny of data, the applicant was found in regular touch with the co-accused Bhaskar Khatnani through Whatsapp and the chats recovered are incriminating in nature, in that, there is a clear discussion of the stock,

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 11 of 21



2023:DHC:7870



quantity, rates and orders for the medicines such as Valium Lypin, Xanax, Oxy, Phentramine, Adderall, Ritalin etc. It is further submitted that there are tracking numbers, addresses for delivery, money transfers etc. exchanged in the chats between the applicant and co-accused Bhaskar Khatnani.

34. On this basis, learned counsel submits that not only there is a direct recovery of the contraband in commercial quantity from the applicant, but even the chats between the applicant and the co-accused clearly prove the complicity and culpability of the applicant.

35. Mr. Bansal further submits that the invoices of the parcels so recovered from the DHL Express clearly reflect the name of the applicant alongwith his company's name i.e. Desi Global E Mart, as the sender. He further submits that the Unit Net Weight on the said invoices is shown as '0.50', which means 0.5 kilograms and not 0.50 grams, as the standard unit used by the courier companies is kilogram. He further explains that the panchnama clearly mentions how the parcels were packaged and as such, the weight of the parcels cannot be assumed to be 0.50 grams, because even the weight of the packaging containing the plastic packet, bubble wrap, ziplock pouches etc. would weigh more than 0.50 grams.

36. Learned counsel also submits that the contradistinctions raised by the learned counsel for the applicant cannot be appreciated as one cannot go into these technicalities at this stage and the same is a subject matter of trial.

37. Learned counsel submits that sequence of facts categorically suggests that *prima facie* case of conspiracy is established and the applicant has been

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 12 of 21



2023:DHC:7870



indulging in illegal business of drug-trafficking.

38. He further submits that the recovery of contraband in commercial quantity clearly points towards the involvement of the applicant in the offences as alleged to be committed by him and at this stage, there are no reasonable grounds for the Court to believe that applicant is not guilty of the offence and is not likely to commit any offence while on bail.

39. It is also submitted that there is an embargo under section 37, NDPS Act as there is a recovery of commercial quantity of contraband from the applicant and as such, the applicant may not be considered for grant of bail.

40. Learned counsel relies on the judgment of the Supreme Court in *Narcotics Control Bureau Vs. Mohit Aggarwal* reported as **2022 SCC OnLine SC 891** wherein it was held that the length of incarceration is by itself not a consideration that can be treated as a persuasive ground for granting relief under Section 37 of the NDPS Act and submits that the said judgment is squarely applicable to the present case due to similarity in facts, and prays that the present applicant may not be enlarged on bail.

#### **REBUTTAL OF THE APPLICANT:**

41. Learned counsel for the applicant refers to the order of charge dated 05.06.2023 to submit that the learned Trial Court had observed the shortcomings in the chats and on this basis, he submits that the data of the mobile phone is fabricated.

42. Learned counsel also brings attention of this Court to the order dated

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 13 of 21**



2023:DHC:7870



20.07.2019 wherein upon the request of the applicant, the learned Trial Court directed the preservation of the location chart of the mobile number 9873426256 belonging to the applicant. He submits that however, no such location chart has been placed on record by the respondent NCB till date despite the directions of the learned Trial Court. Learned counsel explains that the said location chart would establish the fact that indeed the applicant was not present at the alleged office/warehouse of the applicant at K-121, West Patel Nagar, New Delhi at the time of conducting of raid.

43. Learned counsel further submits that the statement of the applicant recorded under Section 161 of the Cr.P.C. was retracted at the first opportunity and as such, cannot be considered against the applicant.

44. With the aforesaid submissions, learned counsel for the applicant concludes that as there is any amount of doubt as to the recovery of the contraband alleged to be effected from the applicant and as the applicant has already spent more than 4 years 2 months in incarceration and has never misused bail granted before, he is entitled for and may be enlarged on regular bail in the present case.

### **ANALYSIS AND CONCLUSION:**

45. This Court has heard the arguments addressed by the learned counsel for the applicant as well as the learned senior standing counsel for the respondent NCB. This Court has also perused the records as filed by the

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 14 of 21**



2023:DHC:7870



parties and the judgments relied.

46. As per the Nominal Roll dated 15.03.2023, the applicant by now has undergone incarceration for a little over 4 years 2 months barring the period when the applicant was released intermittently on interim bail. As per the Nominal Roll, the applicant does not appear to have been involved in any offences involving either the NDPS Act or the IPC. Even the overall jail conduct has been recorded as '*Satisfactory*'.

47. Mr. Satya Bhushan, learned counsel for the applicant has minutely taken this Court through the seizure memo, the invoices issued by the courier company and other relevant documents to submit that the allegations leveled against the applicant do not withstand the scrutiny of law or facts. According to Mr. Bhushan, the seizure itself is questionable and doubtful for the reason that nothing has been placed on record by the prosecution to show that the alleged place from where such seizure took place belongs to the applicant. In short, he submits that no document worth the name has been placed on record by the prosecution to show connectivity between the applicant and the premises where such alleged raid took place.

48. Learned counsel further submits that there is nothing to show that the courier parcels, wherefrom allegedly the contraband was recovered, has been sent or received by the applicant, inasmuch as, there is nothing to connect the applicant with the parcels itself. This, he asserts from the record obtained by the NCB from the DHL Express Private Limited.

49. Mr. Bhushan also attacked the *panchnama* dated 17.08.2018 on the

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 15 of 21



2023:DHC:7870



ground that the weight of the recovered psychotropic substance alleged to have been found in the parcels does not match with the weight as mentioned in the invoices of the said parcels. On that basis, learned counsel submits that there is any amount of doubt as to whether the contraband weighing approximately 330 gms. was recovered at all. According to learned counsel, the difference in the weight mentioned in the invoice in comparison to the parcels creates a doubt on the authenticity of the seizure itself.

50. He also submitted that he was not present at the office/warehouse during the time of raid and he was alleged to have been called to the office/warehouse by his two alleged employees. It was only subsequent thereto that the alleged recovery was effected. According to learned counsel, the phone records do not match with the timing of the raid or the alleged call made to him by the alleged employees which also creates a doubt both as to the authenticity and veracity of the raid as also the seizure.

51. Learned counsel strenuously read through the applicant's disclosure statement and submitted that soon thereafter, the applicant had retracted the same. He submits that this reiterates his innocence.

52. Contrary to the aforesaid argument, learned Senior Standing Counsel for NCB had controverted each and every submission in detail by reading through the status report/ reply filed on record.

53. The aforesaid submissions addressed on behalf of the applicant as also the NCB revolves around minute aspects based upon foundational facts which are subject matter of the trial and shall have to be necessarily proved

Signature Not Verified

Digital Signature  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 16 of 21



2023:DHC:7870



or disproved by the parties at the relevant time. Suffice it to say that it would not be appropriate for this Court, while considering the arguments on bail, to render any observation or comment lest it prejudices the case of either of the parties.

54. As of now, it appears that contraband was seized during the raid at the alleged office/warehouse of the applicant. It was on his alleged disclosure statement that other co-accused persons, namely, Mr. Bhaskar Khatnani, Mr. Manish Mohan and Mr. Amit Ranjan were arrested and implicated in the present FIR. It is not disputed that the three co-accused persons have already been released on regular bail after varying lengths of incarceration for 3.5 to 4 years. The applicant is the only accused, who is still in judicial custody.

55. The above instance brings the case of the applicant within the ambit of Section 37 of the NDPS Act, 1985 and as such, the rigours would ordinarily apply. It is also relevant to note that in the case of the co-accused, there was no recovery of any contraband. It is on this basis that Mr. Bansal relies upon the judgment of Supreme Court in *Mohit Aggarwal (supra)* to submit that it is not the length of incarceration which should be the only determinative factor as to whether an accused, particularly, in cases of offences under provisions of NDPS Act, is to be released on bail, but only one of such factors, primacy being given to the factum of recovery itself.

56. Though, it is correct that the Supreme Court in *Mohit Aggarwal (supra)* has laid down the aforesaid ratio, however, the same requires to be also considered in view of the judgments of the Supreme Court in *Rabi*

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 17 of 21



2023:DHC:7870



**Prakash vs. The State of Odisha**, SLP (Crl.) No(s). 4169/2023, **Mohd. Muslim @ Hussain vs. State (NCT of Delhi)**, Crl.A. No. 943/2023 and **Biswajit Mondal @ Biswajit Mandal vs. The State of West Bengal**, Crl. A. No. 450/2023. This is for the reason that the aforesaid judgments give primacy to liberty of an individual under Article 21 of the Constitution of India, 1950 and have, even in cases where recoveries have been effected, enlarged the accused on regular bail on the touchstone that liberty of an individual would, at times, override the embargo under Section 37 of the NDPS Act, 1985.

57. The relevant paras of the aforesaid judgements are extracted hereunder:-

**"Mohd Muslim @ Hussain vs. State (NCT of Delhi), Crl.A. No. 943/2023 rendered on 28.03.2023 :-**

*"19. A plain and literal interpretation of the conditions under 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a *prima facie* look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.*

*20. 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*

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 18 of 21



2023:DHC:7870



*reasonable reading, which does not call for meticulous examination of the materials collected during investigation as held in Union of India v. Rattan Malik. 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.*

*21. 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 under trials."*

***Biswajit Mondal @ Biswajit Mandal vs. The State of West Bengal, Crl. A. No. 450/2023 rendered on 14.02.2023 :-***

*"The appellant seeks enlargement on bail in FIR No.303/2021 under Sections 21(c)/29 of the NDPS Act. The appellant has undergone a sentence of about 1 1/2 years. The trial has just begun and no other criminal antecedents qua the aforesaid act of drug use. The material detected is the medicine Codenine but of 10 litres. Taking in to consideration the period of sentence undergone by the appellant and all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the trial court."*

58. It is not disputed that in the present case, the applicant has already been incarcerated for over 4 years and 2 months. It is also not disputed that even after a passage of 5 years from the time the FIR was registered, only order on charge had been passed and the charges are yet to be framed. The

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 19 of 21**



2023:DHC:7870



pace at which the trial is proceeding indicates that the same will take substantial time to conclude. It is trite that detention in jail during trial should not amount to pre-conviction incarceration.

59. Keeping in view the aforesaid facts and the aforesaid three judgments of the Supreme Court, propel this Court to allow this application of the applicant.

60. Resultantly, the applicant is released on bail on his furnishing a personal bond of Rs.1,50,000/-, with two sureties of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions :-

- (a) He shall surrender his passport, if any, to the Court concerned and shall under no circumstances leave Delhi-NCR without prior permission of the Court concerned;
- (b) He shall cooperate in the trial and shall appear before the Court as and when required;
- (c) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- (d) He shall not indulge in similar or other criminal activity of any nature whatsoever;
- (e) He shall provide his mobile number(s) to the Investigating Officer and keep it at his person and operational at all times;
- (f) In case of change of residential address and/or mobile number,

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

BAIL APPLN. 1257/2022

Page 20 of 21



2023:DHC:7870



the same shall be intimated to the Investigating Officer/ Court concerned by way of an affidavit; and

(g) He shall inform the IO about the movement or visitation to any city or State out of Delhi-NCR at least 48 hours before such travel and shall also inform the IO about the return. He shall contact the IO everyday evening at 7 PM so long as he is out of Delhi-NCR.

61. Any infraction of the aforesaid conditions shall make the applicant liable for the revocation of this bail.

62. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.

63. The application is disposed of in the above directions.

**TUSHAR RAO GEDELA, J.**

**OCTOBER 31, 2023/rl**

Signature Not Verified

Digitally Signed  
By: VINOD KUMAR  
Signing Date: 31.10.2023  
16:04:28

**BAIL APPLN. 1257/2022**

**Page 21 of 21**