

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.01.2023

+ **BAIL APPLN. 672/2022**

PARAMJIT SINGH GULATI Applicant
versus

**DIRECTORATE OF
REVENUE INTELLIGENCE** Respondent

Advocates who appeared in this case:

For the Applicant :Mr. Tanveer Ahmed Mir, Mr. Saud Khan,
Mr. Shikhar Sharma & Mr. Yash Datt,
Advocates.

For the Respondents :Mr. Satish Aggarwala, Sr. Standing
Counsel with Mr. Gagan Vaswany, Adv.

**CORAM
HON'BLE MR. JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present application under Section 439 of Code of Criminal Procedure, 1973 ("Cr.P.C.") is filed seeking regular bail in S.C. No. 7396/2016 titled as "Directorate of Revenue Intelligence v. Paramjit Singh Gulati & Anr.".

BRIEF FACTS

2. On an intelligence in relation to drug trafficking by concealment in export consignments, an examination was conducted which found eight corrugated boxes in three pallets. A white crystal powder weighing 151.80 kgs., was seized under the NDPS act.

3. Consequent to the recovery, search was conducted at the premises of the alleged syndicate on 19.07.2012 and a statement of the petitioner was recorded under Section 67 of the NDPS act. Various other statements were recorded and the petitioner was arrested on 20.07.2012. Chargesheet has already been filed and the charges were, thereafter, framed on 05.11.2014.

4. The first regular bail application filed before the learned trial court was dismissed by an order dated 08.05.2019. The bail application, subsequently, filed before this Court was also dismissed by an order dated 02.03.2020. The petitioner was, thereafter, stated to have been granted interim bails on number of occasions, and it is submitted that the liberty was never misused.

5. Learned counsel for the petitioner submits that the co-accused who has been shown to be having the similar role has been granted bail by this Court by an order dated 21.12.2021. He submits that the present application has been filed because of the changed circumstances and the petitioner is entitled for the grant of bail on the ground of parity.

6. Learned counsel relies upon the judgement passed by the Apex Court in *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India; (1994) 6 SCC 731*, in support of his contention, that in case an under-trial accused is charged with an offence under the Act punishable with minimum imprisonment of 10 years, such an under trial shall be released on bail if he has been in jail for not less than five years. He submits that in the present case, the applicant is in custody for almost 10 years and is

entitled for bail, applying the principle laid down by the Hon'ble Apex Court. He further submits that the coordinate benches of this Court in *Atul Aggarwal v. Directorate of Revenue Intelligence (2021) SCC Online DEL 5489*, *Anil Kumar @ Nillu v. State* in *BAIL APPLN. 1724/2021* and *Ebera Nwanaforo and Frank Vitus v. Narcotics Control Bureau* in *BAIL APPLN. 3705/2020* and *BAIL APPLN. 4187/2020*, have granted bails to the under trial accused, who have spent more than five years in incarceration.

7. Learned counsel for the respondent opposes the grant of bail to the applicant. He submits that the allegations are grave and serious and the application filed on earlier occasion has already been dismissed by this court.

8. He further submits that the applicant cannot be granted bail on the ground of parity. The role of the co-accused, Atul Aggarwal, who was granted bail by this Court, is not similar. He submits that the applicant is also involved in two more cases under the NDPS act.

REASONING

9. It is significant to note that the application filed by the applicant on an earlier occasion was dismissed by this Court without taking note of the verdict of the Hon'ble Supreme Court in *Supreme Court Legal Aid Committee (supra)*. Pursuant to the dismissal of the application by the High Court, this Court by the order dated 21.12.2021, has already granted bail to the co-accused.

10. In the order passed by this Court granting bail to the co-accused, this Court had specifically noted that even though the grant

of bail in cases where the commercial quantity is found from the accused, are governed by the provisions of Section 37 of the Act, still the period of custody undergone cannot be overlooked. This Court relied upon the observations made by the Supreme Court in *Supreme Court Legal Aid Committee (supra)* granted bail to the co-accused.

11. This Court is conscious of the fact that in terms of Section 37 of the NDPS Act, the bail can be granted only when there are reasonable grounds for believing that the accused is not guilty of the offence and he is not likely to commit any offence if he is released on bail. The principal has been the reiterated time and again by the Hon'ble Apex Court. It is also not in doubt that the quantity of contraband recovered, that is, 151.80 kgs. of ketamine is a commercial quantity which has a deleterious impact on society.

12. It can, however, not be lost sight of the fact that the petitioner was arrested on 20.07.2012 and is in custody for more than 10 years. The Hon'ble Apex Court had passed the directions in *Supreme Court Legal Aid Committee (supra)*, noting that even though the activities of such nature do not deserve any sympathy, but the Courts also cannot ignore the plight of the under trials, who remain languishing in jails as the trials are delayed with no end in sight.

13. The court noted that the deprivation of personal liberty, without an assurance of speedy trial is ante-thesis to the principle enshrined in our Constitution under Article 21. It is pointed out that in the present case, 40 witnesses are yet to be examined, therefore, it cannot be said with any certainty, the amount of time that would be taken before the trial reaches its logical conclusion.

14. The Supreme Court, while giving directions under *Supreme Court Legal Aid Committee* (*supra*), held 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."

15. In so far as the argument that the petitioner is involved in two more cases of the NDPS Act, it is pointed out that the petitioner has been discharged in those cases on an application filed by the prosecution. Moreover, the allegation is not that the petitioner was allegedly involved in those cases while in custody, any involvement, if

at all, would be during the period prior to the petitioner being arrested in the present case and cannot be made the sole basis for the denial of the bail. The Hon'ble Apex Court in *Prabhakar Tewari v. State of U.P.; (2020) 11 SCC 648* had held that the involvement of the accused in other cases cannot be the sole ground for dismissal of the bail application.

16. Learned Counsel for the respondent has tried to point out that role of the applicant is not similar to the co-accused Atul Aggarwal. This Court, however, feels that the same is not relevant, at this stage, considering the observations made by the Hon'ble Apex Court.

17. The learned counsel for the respondent has relied upon the recent judgement passed by the Hon'ble Apex Court in the case of *NCB v. Mohit Agarwal : 2022 CRI.L.J. 3422*, the same, in my opinion, is not applicable to the facts of the present case. The accused in the said case was arrested on 09.01.2020, and was, therefore, not entitled for any benefit of the judgement passed by the apex court in *Supreme Court Legal Aid Committee (supra)*.

18. In view of the above, the applicant in the instant case is directed to be released on bail on furnishing a bail bond of sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court/ Duty Metropolitan Magistrate, subject to the following conditions: -

- i. The applicant shall under no circumstance the applicant shall leave the country and deposit his passport with the Court of the learned Special Judge concerned and in the event of the applicant not being in possession of any passport

to file an affidavit to that effect before the learned Special Judge concerned the aspect of which shall also be verified by the Investigating Officer qua the aspect of possession of a passport by the applicant and the said verification report be submitted by the Investigating Officer to the Court of the learned Special Judge concerned;

ii. The applicant shall appear before the Investigating Officer at the concerned police station on the 10th day of each calendar month commencing from the date of his release by 4.00 PM on that particular day;

iii. Further, the applicant is not permitted to leave the city (NCT of Delhi) in terms of directives in paragraph 15(iii) of the verdict of the Hon'ble Apex Court in *Supreme Court Legal Aid Committee (supra)* except with the permission of the learned Special Judge concerned.

19. Furthermore, the applicant during the period that he is on bail shall not commit any offence whatsoever and in the event of there being any FIR/ DD Entry/Complaint lodged against the applicant, it would be open to the State to seek cancellation of bail of the applicant, which application, if any, would be dealt with on its own merits.

20. The application is accordingly allowed with aforementioned terms.

21. It is, however, made clear that any observation made in the present order are only for the purpose of deciding the present application and no should not influence the outcome of the trial and

also not be taken as an expression of opinion on the merits of the case.

22. *Dasti under signature(s) of the Court Master.*

AMIT MAHAJAN, J

JANUARY 13, 2023

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