

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

% **Pronounced on: 18th July, 2022**

+ BAIL APPLN. 956/2022

SARVAN KUMAR ALIAS KISHAN Petitioner

Through: Mr. Rakesh Kumar Giri, Adv.

versus

THE STATE (NCT OF DELHI) Respondent

Through: Mr.G.M.Farooqui, APP for State
with SI Satwant Singh, Anti
Narcotics Task Force

+ BAIL APPLN. 957/2022

RANJEET KUMAR Petitioner

Through: Mr. Rakesh Kumar Giri, Adv.

versus

THE STATE (NCT OF DELHI) Respondent

Through: Mr.G.M.Farooqui, APP for State
with SI Satwant Singh, Anti
Narcotics Task Force

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

1. Both these bail applications are taken up together for disposal by this common order, as the same have been moved by the two accused, in FIR No.79/2015, registered under Sections 20/29 of Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, at Police Station Crime Branch, Delhi.

2. The allegations against the present applicants/accused are that on

26th May, 2015, secret information was received by ASI Narinder Khatri posted at Narcotic Cell, Crime Branch, at around 5:15 AM that the accused Ranjeet Kumar was a supplier of *Ganja*, procuring the same from one Rekha and would be coming near Ranjit Singh Flyover, Mir Dard Road, Red Light to supply it to co-accused Sarvan Kumar. A raiding team was constituted and, at 6:40 AM. Sarvan Kumar was found walking from Turkman Gate, Zakir Hussain Red Light side and he stood by the Red Light. After some time, Ranjeet Kumar came in a three wheeler and handed over a weighty white plastic bag to Sarvan Kumar. Before the two of them could leave the spot, they were apprehended. Thereafter, all requisite proceedings were initiated and they were found to be in possession of 21 Kgs. of *Ganja*. The case was registered and, presently, the trial is pending.

3. Mr. Rakesh Kumar Giri, learned counsel for the applicants, submits that the applicants/accused have been facing trial for the offences under Section 20 read with Section 29 of the NDPS Act for the last more than 7 years, throughout which time, they have remained in judicial custody. Reliance has been placed on the decision of the Supreme Court in *Supreme Court Legal Aid Committee representing Undertrial Prisoners Vs. Union of India & ors.*, 1994 (6) SCC 731 and the decisions of the Co-ordinate Benches of this Court, relying on the said decision of the Supreme Court, being *Atul Aggarwal Vs. Directorate of Revenue Intelligence* (BAIL APPLN. 2477/2021, order dated 21st December, 2021), *Anil Kumar @ Nillu Vs. State* (BAIL APPLN. 1724/2021, order dated 21st March, 2022) and *Kartik Dangi Vs. State of NCT of Delhi* (BAIL APPLN.

2872/2021, order dated 16th December, 2021), to submit that the delay in the trial entitles the applicants to bail. The learned counsel submitted that the minimum sentence prescribed under Section 20 of NDPS Act for allegedly being in possession of commercial quantity of *Ganja* was 10 years and the applicants had already remained in judicial custody for more than half of the said minimum sentence.

4. Mr. G.M. Farooqui, learned APP for the State, however, opposed the bail applications, contending that the judgments relied upon by the learned counsel for the applicants were not relevant in the present case, as out of 15 witnesses, 12 witnesses have already been examined. Thus, the trial was likely to be completed without further delay. It is submitted that the recovery from the possession of the accused was commercial quantity of 21 Kgs. of *Ganja* and, therefore, the rigors of Section 37 of the NDPS Act would have to be considered before bail was granted. It is also submitted that the State was considering challenging the decision rendered in *Anil Kumar @ Nillu (supra)*.

5. I have heard the submissions of both sides and have perused the record.

6. It is noticed that on 13th September, 2021, the bail application of Sarvan Kumar was dismissed by a Co-ordinate Bench of this Court (placed on the record as Annexure-C). It is clear from the order that at that point of time, out of 15 prosecution witnesses, only 4 witnesses were examined and whose cross-examination was yet to take place. The latest Status Report filed before this Court is to the effect that out of 15 witnesses, 12 witnesses have already been examined. This seems to have been a result of the

directions issued by the learned Single Judge on 13th September, 2021 to the effect that the Trial Court expedite the trial and complete it within a period of 15 months from the date of the order.

7. In ***Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra)***, the Supreme Court took note of the fact that accused remained as under trial in custody, languishing in prisons, while their trial meandered at a slow pace. Thus, depriving them of personal liberties which was not inconsonance with the right guaranteed by Article 21 of the Constitution of India. It was felt that some relief should be given to them, as further deprivation of personal liberty would be violative of the fundamental right visualized by Article 21, “*which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters*”.

8. It may be noted that the cases under various provisions of the NDPS Act were also considered by the Supreme Court in ***Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra)*** when several directions were issued. Directions encapsulated under clause (iii) would be relevant for us and is reproduced as below :

“(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.”

This directive was to be read with further general conditions which

were to be incorporated while granting bail.

9. While the learned APP for the State urged that these directions were to operate only as a one time direction for cases in which the accused persons were in jail and their trial was delayed, the learned counsel for the applicant has placed reliance on the decision of a Coordinate Bench of this Court in *Anil Kumar @ Nillu (supra)* and the recent judgment of the Supreme Court in *Satender Kumar Antil Vs. CBI & Anr.*, 2022 SCC OnLine SC 825, to submit that such an interpretation was incorrect.

10. It may be noted here that the Supreme Court in *Supreme Court Legal Aid Committee representing Undertrial Prisoners (supra)* while recording that the Special Court would be free to exercise its power to grant bail under Section 37 of the Act, also opined that it must exercise that power, keeping in view the complaint to inordinate delay in disposal of the pending cases. This aspect has been reiterated in the latest judgment of the Supreme Court in *Satender Kumar Antil (supra)*, which is reproduced herein below :

64. Now we shall come to category (C). We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigor imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigor, the quicker the adjudication ought to be.

After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.

(emphasis added)

11. The rigors of Section 37 of the NDPS Act would thus not come in the way while dealing with a bail application moved by an undertrial who has remained in custody for more than half of the minimum sentence prescribed.

12. No doubt, in the present case, 21 Kgs. of *Ganja* were allegedly recovered from the possession of the accused persons, the commercial quantity being 20 Kgs. It is also no doubt pointed out that out of 15 witnesses, 12 witnesses have been examined. The time granted vide order dated 13th September, 2021 would conclude by the end of this year. These are, no doubt, relevant facts. But, it cannot be overlooked, that the minimum sentence prescribed for such an offence is 10 years rigorous imprisonment. A half term would be 5 years, whereas, both the applicants have been incarcerated since 26th May, 2015 i.e. for 7 years and 2 months. A certain latitude is possible in the present case.

13. In the totality of the facts of the case, the applications are allowed and the applicants are admitted to bail on the following conditions :

(i) the applicants shall furnish a personal bond in the sum of Rs.25,000/- each with one surety each of the like amount, to the satisfaction of the Trial Court/Duty Magistrate.

(ii) the applicants shall not leave NCT of Delhi without the prior permission of the Trial Court.

(iii) the applicants shall furnish their mobile numbers to the Investigating Officer (I.O.) and shall keep the mobile phone operational at all times and shall report telephonically every alternate day to the I.O.

(iv) there shall be no change in contact details or addresses unless first informed to the I.O. and concerned court.

(v) the applicants shall physically present themselves before the SHO of the Police Station where they shall reside, once in a week, as fixed by the local SHO.

(vi) the applicants shall attend each date of hearing without fail and shall not cause delay in the recording of evidence and the pace of the trial, which is to be concluded in terms of the order dated 13th September, 2021.

14. The bail applications stand disposed of accordingly.

15. The copy of this order be sent electronically to the Jail Superintendent for information to the applicants as well as to the learned Trial Court.

16. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 18, 2022

ck