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

Date of decision: 21st MARCH, 2022

IN THE MATTER OF:

\+ **BAIL APPLN. 1724/2021**

ANIL KUMAR @ NILLU ..... Petitioner

Through: Mr. Rajinder Singh and Mr. Piyush Gupta, Ms. Himanshi Batheja, Advocates.

versus

STATE ..... Respondent

Through: Mr. Amit Chadha, APP for the State with SI Thakur Singh, PS Special Cell

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition has been filed under Section 439 Cr.P.C. seeking interim bail in FIR No. 14/2014 dated 26.03.2014 registered at P.S. Special Cell under Sections 468/471/201 of the Indian Penal Code, 1860 (*hereinafter*, "IPC") and Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter*, "NDPS Act").

2. The facts, in brief, leading up to the filing of the instant petition are as follows:

a) It is stated that information was received in February 2014 that one Danveer @ Dannu was involved in an illegal interstate supply of drugs to foreigners in various states in India for the purpose of rave parties. Accordingly, a team to conduct a raid

into the same was deployed and secret information was received that Danveer @ Dannu would come to Karol Bagh in an Alto car to deliver at 11 A.M. a consignment of charas/hashish to a Russian associate at Gurudwara Road, behind Jassa Ram Hospital, Karol Bagh.

b) On the basis of the aforementioned information, a police team arrived at 8 A.M. at Karol Bagh Metro Station, Pusa Road, Delhi. Around 11:15 A.M., one white Alto car arrived, with two occupants in the front seats, and after five minutes, a foreigner emerged from the Intercity Hotel and walked towards the car. It is stated that during the exchange that took place between the foreigner and the two occupants of the car, a small yellow/black colour canvas bag was handed over to the foreigner.

c) Around 11:30 A.M., as per instructions, the police team surrounded the car and asked the persons about their identity. The foreigner revealed his identity as Georgii Dedov, the driver of the car was Anil Kumar @ Nillu (the Petitioner herein), and the other occupant of the car was Anil Kumar @ Lucky.

d) A cursory interrogation of the canvas bag which had been recovered revealed that the same contained ten small polythene pouches containing a black/brown coloured clay type material/substance in small pieces, wrapped with transparent cling foils and giving off a pungent smell resembling that of cannabis. The apprehended persons revealed the same to be charas/hashish, and the total weight of the substances was found to be 2.210 kgs.

e) The Petitioner was arrested on 27.03.2014. The first bail application moved by the Petitioner before the Ld. Trial Court was dismissed on 06.05.2016 and the second bail application was dismissed by the Ld. Trial Court on 02.02.2017. The first bail application was dismissed as withdrawn by this Court on 21.08.2017, with the third bail application being dismissed by the Ld. Trial Court on 06.07.2021.

f) The Petitioner has now approached this Court by way of the instant petition for interim bail.

g) It is pertinent to note at this juncture that *vide* Order dated 19.01.2022, this Court, considering the facts and circumstances of the instant case, exercised its powers under Section 482 Cr.P.C. to covert the instant interim bail application into one for regular bail.

3. Mr. Rajinder Singh, learned Counsel for the Petitioner, submits that the Petitioner has been falsely implicated and his job was only to drive the occupants of his vehicle from one place to another. He states that the Petitioner is the sole bread earner in his family and that his being in judicial custody for 7 years and 10 months has exacerbated the poor financial condition of his family, especially with the COVID-19 pandemic taking place.

4. The learned Counsel for the Petitioner places reliance upon Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, **(1994) 6 SCC 731**, to submit that the Supreme Court had rendered directions for the release of those undertrial prisoners who had been in jail for over five years for offences that entailed a punishment of minimum

imprisonment of ten years and a minimum fine of rupees one lakh. Citing this judgement, Mr. Singh submits that the Petitioner herein has been in custody for almost eight years now and is, therefore, entitled to release.

5. Mr. Singh further submits that the Calcutta High Court had dealt with a similar issue In Re; Sanawar Ali, **(MANU/WB/0750/2020)** decided on 27.11.2020 wherein it had considered as to whether the restrictions imposed by Section 37 of the NDPS Act were overridden by the operation of the Supreme Court Legal Aid Services Committee v. Union of India (supra) in the matter of grant of bail to undertrials in NDPS cases. It was held therein that inordinate delay in trial infracted the fundamental rights of the Petitioner therein and the directives under the aforementioned judgement would apply in full force.

6. Mr. Amit Chadha, the learned APP for the State, vehemently opposes the bail application filed by the Petitioner and states that co-accused Danveer Singh @ Dannu had been granted interim bail on the pretext of his wife's surgery and had ended up absconding. He states that there is strong apprehension that the Petitioner herein is also likely to abscond if granted bail and pressure prosecution witnesses, and that the instant case involves recovery of substances of a commercial quantity. He submits that the case is currently pending trial before the Special Court, NDPS Act, Patiala House Courts, New Delhi.

7. The learned APP further submits that the Supreme Court decision in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (supra) was only a one-time measure and that there is no mandate that in all cases, an undertial who has been in custody for more than five years for a punishment that entails minimum imprisonment of ten years

must be automatically granted bail. He refers to a judgement of this Bench dated 21.12.2021 in Atul Agarwal v. Directorate of Revenue Intelligence, **(BAIL APPLN. 2477/2021)** and states that the aforementioned Supreme Court judgement has been incorrectly interpreted and that the matter must be referred to a larger Bench for final adjudication of the issue that arises.

8. Heard Mr. Rajinder Singh, learned Counsel for the Petitioner, Mr. Amit Chadha, learned APP for the State, and perused the material on record.

9. At the outset, it would be pertinent to refer to Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (supra). The petition therein had been instituted with the aim to ensure that undertrial prisoners who had been languishing in jail for an extended period of time were granted bail despite the stringency of the provisions for bail under the NDPS Act. The underlying reason for the same was to uphold the right to personal liberty and the right to speedy trial of an undertrial under Article 21 of the Constitution of India.

10. Accordingly, in the aforementioned judgement, the Supreme Court passed certain directions, subject to general conditions, wherein it categorically noted that where an undertrial accused has been charged with offence(s) under the NDPS Act which is punishable with minimum imprisonment of ten years and a minimum fine of rupees one lakh, then such an undertrial is to be released if he has been in jail for not less than five years. The entirety of the directions have been reproduced 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 concerned Special Judge 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."***
>
> (emphasis supplied)

11. It is the contention of the learned Counsel for the Petitioner that as the Petitioner herein has been accused of offences punishable under Sections 20/29 of the NDPS Act and has been in custody for almost eight years till date, he is squarely covered by the aforementioned judgement and is entitled to be released. This has been opposed by the learned APP who relies upon paragraph 16 of the judgement to state that the directions were intended to operate as a one-time measure for the case therein and were not intended to

apply to all subsequent cases of a like nature. For ease of comprehension, the said paragraph is as under:

> *"16. We may state that the above are intended to operate as **one-time directions** for cases in which the accused persons are in jail and their trials are delayed. They are not intended to interfere with the Special Court's power to grant bail under Section 37 of the Act. The Special Court will be free to exercise that power keeping in view the complaint of inordinate delay in the disposal of the pending cases. The Special Court will, notwithstanding the directions, be free to cancel bail if the accused is found to be misusing it and grounds for cancellation of bail exist. Lastly, we grant liberty to apply in case of any difficulty in the implementation of this order."* (emphasis supplied)

12. A bare perusal of paragraph 16 indicates to this Court that the directions were not meant to be employed as one-time directions in the said case, but were meant to apply as a one-time measure in all cases in which the accused persons were in jail and their trials had been delayed. The intention of paragraph 16 was to convey that despite the absence or presence of delay in trial in a case, the Special Court was still free to exercise its power to grant bail under Section 37 of the NDPS Act. Furthermore, if the Special Court also retained the power to cancel bail if the accused was found to be misusing the same. The directions were certainly not, as the learned APP has submitted, meant to only apply in the case therein, but were directions that were to be followed by Courts in all cases pertaining to NDPS wherein the accused had been subjected to prolonged delay in their trials.

13. It is unconscionable to state that the rights guaranteed under Article 21

can be subjected to such arbitrary categorisation and would not apply across the board to all undertrials in NDPS cases who are at the receiving end of inordinate delay in trial. In Re: Sanawar Ali (supra), the Calcutta High Court had comprehensively considered the issue as to whether the directives in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) (supra) were only intended to operate as a "one-time measure" and had observed that the directives had been subsequently extended to other states *vide* Order dated 17.04.1995 in **(1995) 4 SCC 695**. The relevant portion of the Calcutta High Court judgement is as follows:

> *"**10.** It is argued that such directions were intended to operate as an 'one time measure' in the State of Maharashtra. We, however, note that the directives were subsequently extended to the State of West Bengal and other States vide order dated 17th April, 1995 reported in 1995 (4) SCC 695. We are of the view that the aforesaid directives of the Apex Court in the matter of grant of bail due to inordinate delay are required to be taken into consideration and similar relief is to be extended to all undertrials who stand on the same footing. Liberty is an inalienable right of every individual guaranteed by our Constitution and cannot be whittled down by arbitrary categorisation. 'Procedure established by law' under Article 21 cannot be viewed in isolation from the principles of 'equal justice' or 'equality before law' enshrined under Article 14. To achieve such universal equality it is imperative that the directives laid down by the Court in the said report be extended to all undertrials who are similarly circumstanced and are suffering protracted detention throughout the length and breadth of the country. Selective approach to personal liberty is an anathema to our constitutional scheme. Hence, it is the duty of*

> *every Court including the High Courts when faced with the question of "bail or jail" to bear in mind the beholden principles of parity and equal access to justice. Courts need to rise above petty technicalities to preserve and restore liberty to all similarly circumstanced persons. Failure to do so, would create privileged oases of liberty accessible to few and denial or freedom to most."*

14. In view of the above, this Court believes that achievement of universal equality before the law requires the tenets of personal liberty to be applicable to all similarly circumstanced individuals and must not be restricted unless according to procedure established by law. This Court does not find any weight in the submission of the learned APP that the aforementioned judgment of the Supreme Court does not apply to the instant case and that the judgement of this Court in Atul Agarwal v. Directorate of Revenue Intelligence (supra) must be referred to a larger Bench due to the incorrect application of the Supreme Court's judgement. Furthermore, in Atul Agarwal v. Directorate of Revenue Intelligence (supra), this Court had not solely granted bail on the footing of the inordinate delay in trial, but had also considered the twin requirements stipulated under Section 37 of the NDPS Act. Therefore, this Court is of the opinion that the Petitioner herein is squarely covered by judgement of the Supreme Court and is entitled to release on account of inordinate delay in trial and prolonged judicial custody.

15. This Court also finds it necessary to state that the right to speedy trial is an intrinsic part of Article 21 of the Constitution of India. The Supreme Court has time and again delineated its importance as a constitutional right in various judgements, starting from Hussainara Khatoon and Ors. v. Home

Secretary, State of Bihar, **(1980) 1 SCC 81**, to A.R. Antulay and Ors. v. R.S. Nayak and Anr., **(1992) 1 SCC 225**. In the latter judgement, the Supreme Court had laid down guidelines with regard to the right to speedy trial of an accused and had observed as follows:

> ***"81. Article 21 declares that no person shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The main procedural law in this country is the Code of Criminal Procedure, 1973. Several other enactments too contain many a procedural provision. After Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : AIR 1978 SC 597] , it can hardly be disputed that the 'law' [which has to be understood in the sense the expression has been defined in clause (3)(a) of Article 13 of the Constitution] in Article 21 has to answer the test of reasonableness and fairness inherent in Articles 19 and 14. In other words, such law should provide a procedure which is fair, reasonable and just. Then alone, would it be in consonance with the command of Article 21. Indeed, wherever necessary, such fairness must be read into such law. Now, can it be said that a law which does not provide for a reasonably prompt investigation, trial and conclusion of a criminal case is fair, just and reasonable? It is both in the interest of the accused as well as the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable despatch — reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily.***

> ***Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes."*** (emphasis supplied)

16. Therefore, fair, just and reasonable procedure is implicit in Article 21 and it creates a right in the accused to be tried speedily. This Court has consistently observed that while Courts must remain cognizant of the deleterious impact of drugs on society, it is also important to keep in mind that deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution. In the instant case, the Petitioner has been incarcerated for almost eight years now, i.e. since 27.03.2014, for an offence that is punishable with a minimum imprisonment of ten years. This is an egregious violation of an accused's right to personal liberty and right to speedy trial as, in the off-chance that the Petitioner is acquitted, it would entail an irretrievable loss of eight years of his life that cannot be compensated. Whether or not the Petitioner played an active role in the commission of the offence of drug trafficking and supply is a matter of trial and cannot justify the prolonged incarceration of the Petitioner.

17. In light of the above, applying the law that has been laid down by the Supreme Court in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (supra) and flowing from Section 37 of the NDPS Act which governs the powers pertaining to grant of bail, this Court is of the opinion that the instant case is fit for grant of bail. This Court

is, therefore, inclined to grant bail to the Petitioner herein, subject to the following conditions:

a) The Petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount, one of them should be the relative of the Petitioner, to the satisfaction of the Trial Court;

b) The Petitioner is directed to deposit his passport with the Trial Court.

c) The Petitioner is directed to reside in Delhi till further orders and the address shall be verified by the learned Trial Court at the time of acceptance of bail bonds.

d) The Petitioner shall report to the concerned Police Station twice in a week, that is, on every Wednesday and Friday at 10:30 AM, and the Police is directed to release him by 11:00 AM after recording his presence and completion of all the necessary formalities;

e) The Petitioner shall not leave NCT of Delhi without the prior permission of the trial Court;

f) The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times;

g) The petitioner shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner;

h) In case it is established that the petitioner has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the petitioner shall stand cancelled forthwith.

18. Be it noted that the observations made in this order are only for grant of bail and not on the merits of the case.

19. The application stands disposed of along with all the pending application(s), if any.

20. Let a copy of this order be communicated to the concerned Jail Superintendent.

SUBRAMONIUM PRASAD, J.

MARCH 21, 2022
Rahul