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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2986/2023

RAJESH KUMAR ALIAS RAJE Applicant

Through: Mr. Akshay Bhandari,
Mr. Anmol Sachdeva, Mr.
Kushal Kumar, Ms.
Meghna Saroa & Mr.
Janak Raj Ambawat,
Advs.

versus

STATE GOVT OF NCT OF DELHIRespondent

Through: Mr. Akhand Pratap Singh,
SC with Ms. Samridhi
Dobhal, Mr. Krishna
Mohan Chandel & Mr.
Hrithik Maurya, Advs.
Inspector Rakesh Kumar,
PS- Special Cell

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

08.05.2025

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1. The present application is filed seeking regular bail in FIR No. 16/2018 dated 12.02.2018, registered by Special Cell, for the offences under Sections 3/4 of the Maharashtra Control of Organised Crime Act, 1999 ('MCOCA').
2. The brief facts of the case are that on the basis of secret information, on 23.07.2017, a raid was conducted and the applicant was apprehended with 3 Kg of Heroin, which led to registration of FIR No. 51/2017 by Police Station Special Cell. At the time of apprehension, the applicant was travelling in a car



that was registered in the name of co-accused Deepak (kingpin), who is allegedly a notorious criminal with 20 involvements under the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**'). During investigation, the applicant allegedly disclosed that he used to supply Heroin to co-accused Deepak and Neeraj in Delhi. The applicant also allegedly disclosed about the involvement of co-accused Babu. On 24.07.2017, co-accused Deepak and Neeraj were apprehended and a recovery of 2 Kg and 100g of Heroin was recovered from them respectively. Co-accused Babu was apprehended from his rented accommodation on 24.10.2017 and 200g of Heroin was recovered at his instance. The association of co-accused Sajan, who is the brother of co-accused Deepak, was allegedly disclosed by the arrested accused persons.

3. It is the case of the prosecution that the criminal profile of co-accused Deepak indicates that he has indulged in committing various offences, particularly drug trafficking, in association with the other accused persons, including the applicant. It is further alleged that the accused persons have multiple antecedents and the applicant was also earlier arrested in FIR No. 1103/2015, registered at Police Station Vivek Vihar, for the offences under Sections 307/34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act, 1959. It is alleged that the accused persons are running an organised crime syndicate and carrying out unlawful activities for pecuniary gain, due to which, the present case was registered.

4. During investigation, it was found that the co-accused Deepak had purchased several properties, vehicles and other things by paying huge amounts in cash, however, he had no



legitimate source of income. It was found that co-accused Babu also had huge transactions of money in his accounts.

5. The learned counsel for the applicant submits that the applicant is innocent and MCOCA has been erroneously invoked against the applicant.

6. He submits that the applicant was merely employed as a driver of co-accused Deepak and he had no knowledge of the contraband recovered from the vehicle, which led to the registration of FIR No. 51/2017. He further submits that the applicant has already been granted bail in that case.

7. He further submits that the applicant has already been acquitted in FIR No. 1103/2015, registered at Police Station Vivek Vihar. He submits that no other person of the alleged syndicate was facing trial in that case and it was in no manner linked to the same.

8. He submits that the applicant has spent about six and a half years in custody and only 11 out of 100 witnesses have been examined till now. He submits that the trial is likely going to take long to conclude and no purpose will be served by subjecting the applicant to undergo further incarceration.

9. *Per contra*, the learned Special Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant and submits that the allegations are serious in nature.

10. He submits that the acquittal in any case has no bearing towards invocation of MCOCA. He further submits that the trial may be expedited instead of granting any relief to the applicant.

11. I have heard the counsel and perused the record.

12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind,



such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that cannot be overlooked.

13. It is unequivocally established that to be granted bail for offences under MCOCA, the conditions stipulated in Section 21 of MCOCA are to be satisfied. The relevant portion of the aforesaid Section reads as under:

“(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

14. It is the case of the prosecution that the accused persons (including the applicant), who are members of a syndicate, acted in an organised manner and committed illegal activities, particularly drug trafficking, for the basic purpose of pecuniary gain and accumulated huge wealth.

15. In the present case, the applicant has sought bail essentially on the ground of delay in trial and his period of incarceration. It is also argued that the provisions of MCOCA have been erroneously invoked against the applicant.

16. It is pointed out that the applicant has spent more than six



years in custody, despite which the matter is still at the stage of examination of prosecution witnesses and only 11 out of 100 witnesses have been examined till now. Speedy trial in such a case does not seem to be a possibility and the trial is likely going to take a long time to conclude.

17. The Hon'ble Apex Court in the case of ***Union of India v. K.A. Najeeb* : AIR 2021 SC 712**, while dealing with an application for bail under Unlawful Activities (Prevention) Act, 1967, has held that once it is obvious that a timely trial would not be possible, and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

18. Recently, in the case of ***Arun v. State of NCT of Delhi* : BAIL APPLN. 3348/2023**, a Coordinate Bench of this Court granted bail to an accused charged for offences under MCOCA, who had spent more than 8 years in custody. It was observed that right to a speedy trial is entrenched under Article 21 of the Constitution of India and the same cannot be whittled down merely because the case arises under a special statute such as MCOCA. Reliance was placed on precedents in a number of cases, including, ***Mohd. Muslim v. State (NCT of Delhi): (2023) 18 SCC 166***, where while dealing with the analogous provision of Section 37 of the NDPS Act which envisages a similar bar, the Hon'ble Apex Court had held that if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 of the NDPS Act will receive a jolt.

19. The Hon'ble Apex Court in ***Rabi Prakash v. State of Odisha* : 2023 SCC OnLine SC 1109**, while granting bail to the petitioner therein who was accused of offences under the NDPS



Act, had held as under :

*"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. **The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.**"*

(emphasis supplied)

20. From the foregoing, it is evident that despite the stringent requirements imposed on the accused under Section 21 of MCOCA for the grant of bail, it has been established that these requirements do not preclude the grant of bail on the grounds of undue delay in the completion of the trial. Various courts have recognized that prolonged incarceration undermines the right to life and liberty, as has been guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedence over the statutory restrictions under Section 21 of MCOCA and override the bar therein.

21. Moreover, it is relevant to note that undisputably, the activities of the alleged syndicate did not lead to death and therefore, the minimum sentence for the alleged offences will be only 5 years. Certain orders are placed on record by the applicant to show that lesser sentence has been awarded for the alleged offences to accused in other cases post-conviction. While any comment on the potential sentence that may be awarded in the present case will be premature, at this stage, it cannot be ignored



that the applicant has spent much more time in custody than 05 years and that the trial is unlikely to be concluded in near future.

22. It is not the case of the prosecution that the applicant is the kingpin of the alleged syndicate. It is pertinent to note that the applicant has already been enlarged on bail in the case under NDPS Act and acquitted in the other case that was registered against him.

23. It is also relevant to note that the nominal roll reflects that the conduct of the applicant has been satisfactory and he had not misused the liberty when he was enlarged on interim bail on a previous occasion.

24. In such circumstances, without expressing any view on the merits of the case, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail on the ground of prolonged delay in the trial.

25. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant 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;
- b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court on every date of hearing;
- d. The applicant shall provide the address where he



would be residing after his release and shall not change the address without informing the concerned IO;

- e. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep his mobile phone switched on at all times;
- f. The applicant shall report to the concerned IO on every Monday at 4PM and he shall not be kept waiting for more than an hour.

26. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

27. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

28. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 8, 2025