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

Date of Decision: 20.07.2022

\+ BAIL APPLN. 1621/2022

GURMITO ..... Petitioner

Through: Mr. Arjun Natarajan, Ms. Lakshmi Srivastava, Advs

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. Anil Grover, SPP, Mr. Neeraj Bhardwaj, Mr. Anurg, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. This is an application seeking release of applicant on regular bail till final disposal of CBI EO-II EOU-V New Delhi registered by Central Bureau of Investigation in connection with FIR No. RC 220/2016/E0022/CBI/EO-II u/s 20 read with Sec 8 and 29 of NDPS Act, 1985 (hereinafter "Act") registered by CBI dated 17.12.2016, giving rise to filing of charge sheet no. 2/2017 dated 31.03.2017.

2. It is submitted by Mr. Natrajan, learned counsel for the applicant that the applicant has been in judicial custody since 18.12.2016 except for a period of 20 days (16.06.2021 to 06.07.2021) and she is covered by judgement of Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee (Representing undertrial prisoners) vs. Union of India*****,** [(1994) 6 SCC 731]**.**

3. The Ld. Counsel for the Applicant submits that in terms of this judgment where an undertrial prisoner is charged with an offence under the Act with minimum imprisonment of 10 years and minimum fine of 1 lakh, such an undertrial prisoner may be released on bail if he has been in jail for not less than 5 years subject to conditions prescribed in the said judgment.

4. Mr. Bhardwaj, learned counsel for the respondent states that the observations of the Hon'ble Supreme Court were only a one time measure passed in peculiar circumstances of that case, where the NDPS Courts were not functioning within the State of Maharashtra at that point in time.

5. Per contra, Mr. Natrajan has drawn my attention to a judgement dated 21.03.2022 passed in Bail Appl. 1724/2021 in ***Anil Kumar v. State*** by a coordinate bench of this Court, wherein this Court has held:

> *"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."***

6. In the present case, as already observed, the applicant was arrested in 2016. She has been in custody for 5 and a half years.

7. It is stated that despite passage of 5 years 6 months, only the first witness is under examination out of the list of 33 witnesses.

8. A coordinate bench of this Court in another case titled ***Atul Aggarwal v. Directorate of Revenue Intelligence*** [(2021) SCC OnLine Del 5489] has observed:

> *"12. However, it is also pertinent to note that the Applicant herein was arrested on 20.07.2012. It has been nine years since he has been in custody. While remaining conscious of the fact that the gambit of drug trafficking must be deterred with stringent punishments, and that those who indulge in such nefarious activities do not deserve any sympathy, Courts must* ***also not ignore the plight of the undertrials who remain languishing in jails as their trials are delayed with no end in sight. Deprivation of personal liberty without the assurance of speedy trial contravenes the principles enshrined in our Constitution under Article 21, and is, therefore, unconstitutional to its very core. In such cases, in absence of the pronouncement of conviction, the process itself becomes the punishment. Nine years cannot be said to be a short period of time.***
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> *13. The Supreme Court, while deciding a petition pertaining to the delay in disposal of cases under the NDPS Act, had issued certain directions, subject to general conditions, in Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India (supra) which have been reproduced as follows:*
>
> *"(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 3 1 and 31 A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order."

(emphasis supplied)

14. As per Direction (iii) in the aforementioned judgment, 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****. In the instant case, the Applicant has been charged with offences punishable under Sections 9A,21,23,25A of the NDPS Act. With minimum imprisonment of 10 years as stipulated under these offences, an undertrial is to be released if he has been in jail for not less than five years. Therefore the applicant is squarely covered by the aforementioned judgment."*

9. According to me, and also the interpretation of a coordinate bench of this Court, the Hon'ble Supreme Court in para 16 of the ***Supreme Court***

Legal Aid Committee (*supra*) directed that in cases where accused persons are in jail and their trials are delayed inordinately they may be released on bail 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, and they have been in jail for not less than five years. It was not a one-time measure in the facts of that case, but was meant to apply as one-time measure in all cases where the undertrials are in jail and the conclusion of their trial is nowhere in sight.

10. In para 16 the Hon'ble Supreme Court further directed that the observations made hereinabove are not intended to interfere with Special Courts power to grant bail u/s 37 of the Act meaning thereby that the Special Courts u/s 37 can grant bail notwithstanding the above conditions i.e. the Special Courts are at liberty to grant bail even prior to having undergone half of the minimum sentence. The Hon'ble Supreme Court further in para 16 has also indicated that the Special Courts are always free to cancel the bail if the accused is found to be misusing the liberty of bail.

11. The most important principal that the Hon'ble Supreme Court enunciated in para 15 & 16 in ***Supreme Court Legal Aid Committee*** (supra) is that no prisoner should be denied their life and liberty guaranteed under Article 21 of the Constitution of India especially when speedy trial cannot be guaranteed and there is no end in sight for the trial. The relevant portion of the para 15 and 16 are:

> **"*15.*** *..... He, therefore, rightly sought permission to amend the cause-title and prayer clauses of the petition which was permitted. In substance the applicant now prays that all undertrials who are in jail for the commission of any offence or offences under the Act for a period exceeding two years on account of the delay in the disposal of*

cases lodged against them should be forthwith released from jail declaring their further detention to be illegal and void and pending decision of this Court on the said larger issue, they should in any case be released on bail. It is indeed true and that is obvious from the plain language of Section 36(1) of the Act, that the legislature contemplated the creation of Special Courts to speed up the trial of those prosecuted for the commission of any offence under the Act. It is equally true that similar is the objective of Section 309 of the Code. It is also true that this Court has emphasised in a series of decisions that Articles 14, 19 and 21 sustain and nourish each other and any law depriving a person of "personal liberty" must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial. See Hussainara Khatoon (IV) v. Home Secy., State of Bihar [(1980) 1 SCC 98 : 1980 SCC (Cri) 40] , Raghubir Singh v. State of Bihar [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and Kadra Pahadiya v. State of Bihar [(1983) 2 SCC 104 : 1983 SCC (Cri) 361] to quote only a few. This is also the avowed objective of Section 36(1) of the Act. However, this laudable objective got frustrated when the State Government delayed the constitution of sufficient number of Special Courts in Greater Bombay; the process of constituting the first two Special Courts started with the issuance of notifications under Section 36(1) on 4-1-1991 and under Section 36(2) on 6-4-1991 almost two years from 29-5-1989 when Amendment Act 2 of 1989 became effective. Since the number of courts constituted to try offences under the Act were not sufficient and the appointments of Judges to man these courts were delayed, cases piled up and the provision in regard to enlargement on bail being strict the offenders have had to languish in jails for want of trials. As stated earlier Section 37 of the Act makes every offence punishable under the Act cognizable and non-bailable and provides that no person accused of an offence punishable for a term of five years or more shall be released on bail unless (i) the Public Prosecutor has had an opportunity to oppose bail and (ii) if opposed, the court is satisfied that there are reasonable grounds for believing that he is not

guilty of the offence and is not likely to indulge in similar activity. ***On account of the strict language of the said provision very few persons accused of certain offences under the Act could secure bail. Now to refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to the spirit of Section 36(1) of the Act, Section 309 of the Code and Articles 14, 19 and 21 of the Constitution.*** *We are conscious of the statutory provision finding place in Section 37 of the Act prescribing the conditions which have to be satisfied before a person accused of an offence under the Act can be released. Indeed we have adverted to this section in the earlier part of the judgment. We have also kept in mind the interpretation placed on a similar provision in Section 20 of the TADA Act by the Constitution Bench in Kartar Singh v. State of Punjab [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] . Despite this provision, we have directed as above mainly at the call of Article 21 as the right to speedy trial may even require in some cases quashing of a criminal proceeding altogether, as held by a Constitution Bench of this Court in A.R. Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , release on bail, which can be taken to be embedded in the right of speedy trial, may, in some cases be the demand of Article 21. As we have not felt inclined to accept the extreme submission of quashing the proceedings and setting free the accused whose trials have been delayed beyond reasonable time for reasons already alluded to,* ***we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt.*** *It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised 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. What then is the remedy? The offences under the Act are grave and, therefore, we are not inclined to agree with the submission of the learned counsel for the applicant that we should quash the prosecutions and set free the accused persons whose trials are delayed beyond reasonable time. Alternatively he contended that such accused persons whose trials have been delayed beyond reasonable time and are likely to be further delayed should be released on bail on such terms as this Court considers appropriate to impose. This suggestion commends to us. We were told by the learned counsel for the State of Maharashtra that additional Special Courts have since been constituted but having regard to the large pendency of such cases in the State we are afraid this is not likely to make a significant dent in the huge pile of such cases. We, therefore, direct 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.

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.*"

12. I have also been taken through the judgment of the Hon'ble Supreme Court in ***Narcotics Control Bureau v. Mohit Aggarwal***, [CRIMINAL APPEAL NOS. 1001-1002 OF 2002 arising out of petitions for Special Leave to Appeal (CRL.) NO. 6128-29/2021] dated 19.07.2022 wherein the Hon'ble Supreme Court observed:

> "*…The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act*."

13. However, the Hon'ble Supreme Court in ***NCB v. Mohit Aggarwal*** *(supra)* has not overruled the observations laid down in ***Supreme Court Legal Aid Committee (Supra)*** wherein the Supreme Court has relied upon the touchstones of Article 21 of the Constitution of India, the right intrinsic to every being. ***NCB v. Mohit Aggarwal*** *(supra)* does not overrule the judgment in ***Supreme Court Legal Aid Committee (Supra)***, the only way is to read both the judgments harmoniously. In my opinion, it is the intention of the Supreme Court in ***Supreme Court Legal Aid Committee (Supra)*** to balance personal liberty of the undertrial prisoner which is sacrosanct with the stringent rigours of the section 37 of the Act. Additionally, in ***NCB v. Mohit Aggarwal*** *(supra)*, the accused respondent was taken into custody on 11.01.2020, the Respondent was granted bail by the High Court by order dated 16.03.2021. The accused had spent only one year and 2 months in jail. In the present case, the accused has already spent 5 years and 6 months in jail and only the first witness is under examination out of a list of 33 witnesses. ***NCB v. Mohit Aggarwal*** *(supra)* does not deal with a situation where the undertrial prisoner has undergone more than half of the term of

the minimum 10 years prescribed as per the Act.

14. Even in ***Saudan Singh v. The State of Uttar Pradesh***, SLP (CRL) No. 4633/2021 dated 05.10.2021 the Supreme Court observed that where convicts (whose appeal are pending) have undergone more than 50% of their sentence, may be entitled to bail. In the present matter the applicant is an undertrial prisoner who has already undergone 50% of the minimum 10 years prescribed as per the Act, without even being convicted/sentenced under the Act. Therefore, denial of bail without guarantee of speedy trial would be an infringement of the applicant's right guaranteed under Article 21 of the Constitution of India. This grant of liberty does not infringe upon the powers of the trial court to cancel bail u/s 37 of the Act on non-compliance of the bail conditions by the Applicant.

15. As regards to the right to speedy trial, the same is provided under the Act as Section 36 of the Act empowers the government to constitute Special Courts for the purpose of providing speedy trial:

"***36. Constitution of Special Courts***

(1) The government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may e necessary for such area or areas as may be specified in the notification.

(2) ...

(3) ..."

16. The Hon'ble Supreme Court in ***Abdul Rehman Antulay v. R.S. Nayak*** [(1992) 1 SCC 225] laid down guidelines to ensure that speedy trial is guaranteed to undertrial prisoners and their right under Article 21 of the Constitution is not infringed. The Court promulgated the guidelines as

follows:

> **"86.** *In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:*
>
> *(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.*
>
> *(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.*
>
> *(3) The concerns underlying the right to speedy trial from the point of view of the accused are:*
>
> *(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;*
>
> *(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and*
>
> *(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.*
>
> *(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings.*

Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker [33 L Ed 2d 101] "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell [15 L Ed 2d 627] in the following words:

'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker [33 L Ed 2d 101] and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not

stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."

17. It, therefore, is clear that speedy trial forms an intrinsic part of Article 21 of the Constitution and the denial of same may be a ground for bail in certain circumstances/conditions.

18. I have also heard the applicant on merits. The counsel for the applicant states that:

a) The chargesheet indicates that the applicant neither had a mobile phone nor any cash.
b) There is nothing against the Applicant except that she was accompanying her husband in a Scorpio Car.
c) The Scorpio is also not owned by her and she did not rent it.
d) Even the driver of the car was not hired by her.
e) The drugs recovered were not on her person but were found from the car.

19. *Prima Facie*, it appears that the accused is not guilty of the offence. If she is part of a criminal conspiracy as per section 29 of the Act, the same needs to be decided in the trial, where the intricacies of the alleged crime can be delved into deeper by the trial court and the guilt or liability, if any, can be decided, after the trial. However, at this stage, if bail is denied without any possibility of the trial concluding anytime soon, would be infringing upon her right guaranteed under Article 21 of the Constitution.

20. I am also of the view that for the reasons stated above there are reasonable grounds that the accused is not guilty of the offence as alleged. Further, I am also of the view that the applicant is not likely to commit an offence under the Act while on bail. Additionally, the APP has been given

an opportunity to oppose the application for bail. Hence, the rigours of Section 37 also stand satisfied.

21. In applying the aforesaid principles and the law laid down by the Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee (Supra)***, I am of the view, that the applicant having undergone half of the minimum 10 years prescribed in the Act, needs to be enlarged on bail subject to the following conditions:

a) The applicant 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 applicant, to the satisfaction of the Trial Court.

b) The applicant is directed to deposit her passport with the Ld. Judge of the Special Court concerned and if she does hold a passport than she shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. The Ld. Judge may verify the contents of the Affidavit incase there is a doubt of accuracy.

c) The applicant shall report to the concerned Police Station once in a week, that is, on every Friday at 10:30 AM, and the Police is directed to release her by 11:00 AM after recording her presence and completion of all the necessary formalities.

d) The applicant 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.

e) The Applicant shall not leave Delhi without prior permission of the Trial Court.

f) The applicant is directed to give all her mobile numbers to the

Investigation Officer and keep them operational at all times.

g) The applicant 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 applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith. The Special Judge is also at liberty to cancel the bail if there is any violation of the bail conditions.

22. In the aforesaid terms, the application is disposed of.

23. The Court has not gone into the merits of the matter and the observations herein above are only for the purpose of granting bail to the applicant.

JASMEET SINGH, J

JULY 20, 2022/dm

Click here to check corrigendum, if any