

**(2023) 09 DEL CK 0001**

**In the Delhi High Court**

**Case No : Bail Application No. 3188 Of 2022**

Mohd Vakil

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

**Date of Decision : 01-09-2023**

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 309, 439

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20, 21(c), 25

**Citation : (2023) 09 DEL CK 0001**

**Hon'ble Judges : Dinesh Kumar Sharma, J**

**Bench : Single Bench**

**Advocate : Nishank Tyagi, Gaurav Jain, Amit Sahni**

**Final Decision : Disposed Of**

## **Judgement**

Dinesh Kumar Sharma, J

1. The Present petition has been filed seeking regular bail under section 439 Cr.P.C in case FIR No. 475/2018 dated 15.07.2018 registered under Section 20/25 of Narcotic Drugs and Psychotropic Substances Act, 1985 at PS Ranhola. Further, the Chargesheet has also been filed.

2. Brief Facts of the present case are that on 14.07.2018 at 11:00 a.m., a raiding team was constituted upon receiving information that one person namely Md. Vakil who was indulging in Ganja, would be coming from Rajiv Rattan Awas Colony side via Najafgarh Nangloi Road with a huge quantity of contraband. Thereafter, on 15.07.2018 one Maruti Eco was stopped wherein the present accused was driving and on the search of the car, plastic bags containing 23 Kgs of Ganja was recovered from the said car.

3. Learned counsel for the petitioner submits that the petitioner has been in custody since 15.07.2018 and has undergone custody for more than a period of five years and therefore he is entitled to bail, in view of Supreme Court Legal Aid Committee vs. Union of India (1994) 6 SCC 731. Learned counsel further

submits that the said judgment is being followed by this court as well as the coordinate benches of this court vide order dated 07.09.2022 in Bail Appl. No. 1182/2022 titled Jagannath vs State (NCT of Delhi) and vide order dated 24.11.2022 in Bail Appl.2737/2022 titled Nabi Alam @Abbas vs State (NCT of Delhi)

4. Learned APP has submitted that in the present case, the petitioner on the basis of information was found in possession of 23 kgs of ganja and was thereafter arrested after applying all the mandatory provisions. Learned APP submits that in view of the seriousness of the offence, the petitioner may not be admitted to bail.

5. I have considered the submissions.

6. In Supreme Court Legal Aid Committee (supra), it was inter alia held as under:  
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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 31A 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), (i) 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 under-trials 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.

7. A bare reading of Section 21 (c) of the NDPS Act makes it clear that the minimum punishment provided is 10 years which may extend to Twenty years. As per sub-para (iii) of para 15 of Supreme Court Legal Aid Committee (supra) and if an accused is charged with an offence(s) under the Act punishable with a 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.

8. The case of the present petition is squarely covered under Supreme Court Legal Aid Committee (supra). Hence, the petitioner is admitted to bail on furnishing bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the trial court, subject to the following conditions:

a) he shall deposit his passport with the Special Court concerned within one week from date of release and if it is submitted on behalf of the petitioner that he does not have any passport, the petitioner shall file an affidavit to the effect before the Special Judge concerned and furthermore the said aspect shall also be verified by the Investigating Officer qua the aspect of the petitioner not having been issued any passport;

b) he shall present himself through video conferencing on Tuesday of each week from the date of his release at PS Special Cell

c) he shall not leave the area of his residence except with the permission of the learned Special Judge concerned;

d) he shall provide his/her mobile number(s) to the Investigating Officer

e) In case of change of residential address and/or mobile number, he shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

9. With the above directions, the bail application stands disposed of.

10. Copy of the order be sent to the concerned Superintendent of Prison, Central Jail for information and compliance.