(3)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Date of Judgment : March 05, 2024*

\+ CRL.M.C. 326/2024
NAEEM
..... Petitioner
Through: Mr.Sanjay Singh and Mr.Hariom Goyal, Advocates

versus

STATE NCT OF DELHI
..... Respondent
Through: Mr.Sanjeev Bhandari, ASC (Crl.) with Mr.Kunal Mittal, Ms.Anvita Bhandari, and Mr.Arjit Sharma, Advocates along with Insp. Ravi Kumar, Narcotics Cell/OND.

**CORAM:**
**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**JUDGMENT**

**ANOOP KUMAR MENDIRATTA, J.**

1. Petition under Section 482 of Code of Criminal Procedure,. 1973 (Cr.P.C.) has been preferred on behalf of the petitioner for reducing the surety amount from two sureties of Rs.1 lakh each, to one surety of Rs.1 lakh, in FIR No.0753/2022 under Section 21/29 NDPS Act registered at PS: Narela Industrial Area.

2. In brief, the petitioner was admitted to bail vide order dated 27.07.2023 by the learned Special Judge, NDPS (North), Rohini, New Delhi on furnishing of personal bond in the sum of Rs.1 lakh with two sureties of like amount. An application moved on behalf of the petitioner for reduction

of two sureties of Rs.1 lakh each, to one surety of Rs.1 lakh, was dismissed by the learned Trial Court vide impugned order dated 16.09.2023.

**3.** Learned Trial Court rejected the application for reduction of surety amount, after referring to CRL.M.A.22603/2023 in BAIL APPLN.44/2023 ***Pargan Ram Alias Nikka v. State,*** decided on 23.08.2023 by a Single Judge of this Court. The reduction of number of sureties in aforesaid case was declined, relying upon ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India,*** **(1994) 6 SCC 731** as observed in para 3 as under:-

> *"3. Learned counsel for the petitioner submits that the petitioner is not able to arrange the two sureties in the sum of Rs.1,00,000/- and therefore the surety amount may be reduced. However, bail conditions imposed in accordance with the direction of the Apex Court in "Supreme Court Legal Aid Committee representing Undertrial Prisoners V. Union of India" (1994) 6 SCC 731 wherein it was inter alia held as under:*
>
> *"15...We, therefore, direct as under: ....*
>
> *(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."*

Learned Trial Court vide impugned order further held that since the bail conditions were imposed in the instant case in terms of the directions of the Hon'ble Supreme Court in ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India and Others*** (supra), there are no reasons to interfere in the bail order passed in favour of the petitioner.

4. Learned counsel for the petitioner submits that petitioner belongs to a humble background and brother and father of the petitioner expired on 10.04.2023 and 24.02.2023 whereby all the modes of earning of the family have stopped and there is no possibility of arranging two sureties of Rs.1 lakh each. It is further urged that petitioner has been unable to avail the benefit of bail for a period of more than seven months despite the order granting bail in his favour on merits of the case. Prayer is accordingly made that surety be reduced to one. Reliance is further placed upon ***Nastor Farirai Ziso v. NCB, BAIL APPLN.1960/2020*** decided by this Court on 11.04.2022 and directions issued by Hon'ble Apex Court in ***SMWP (Criminal) No.4/2021*** on 31.01.2023.

5. Shri Sanjeev Bhandari, learned Additional Standing Counsel (Crl) for the State fairly does not oppose the application for reduction of sureties. It is urged that surety amount generally needs to be fixed considering the social condition and financial resources of the accused and should not be onerous. Reference is further made to ***Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India & Others";*** **(1994) 6 SCC 731;** ***Ebera Nwanaforo v. Narcotics Control Bureau,*** **2022 SCC OnLine Del 1674;** ***Jeewan Mondal v. State of NCT of Delhi,*** **2023 SCC OnLine Del 3;** ***Ubah Casmir Amobi v. State of NCT of Delhi,*** **2023 SCC OnLine Del 4511;** ***Binod Kumar @ Binod Kumar Bhagat v. The State of Bihar,*** **(2018) 14 SCC 199;** ***Narotam Pradhan v. State (Govt. of NCT of Delhi),*** **(2019) SCC OnLine Del 6547;** ***Rahul Gupta v. State,*** **(2019) SCC OnLine Del 9042;** ***Rajesh Sharma v. Directorate of Revenue Intelligence,***

**(2018) SCC OnLine Del 12372 and *Ram Narayan v. State,* (2005) SCC OnLine Del 626.**

**6.** At the outset, it may be noticed that in ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India and Others*** (supra), directions were issued by the Hon'ble Apex Court for release of undertrials on bail who stood incarcerated for a long period of time pending trial, as the same is violative of fundamental rights under Article 21 of the Constitution of India. While considering the question of grant of bail to the accused facing trial under NDPS Act, it was observed that though 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 of the Constitution would receive a jolt. It was further held that after the accused person has 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 visualized by Article 21. Accordingly, directions were issued that where the undertrial accused is charged with an offence under NDPS Act punishable with minimum imprisonment of ten years and a minimum fine of Rs.1 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 Rs.1 lakh with two sureties for like amount.

**7.** It is pertinent to notice that the aforesaid directions were intended to operate as a one time measure and did not intend to interfere with the Special Court's power to grant bail under Section 37 of NDPS Act. Further, the Courts were left free to exercise the power keeping in view the complaint of

inordinate delay in the disposal of the pending cases. Observations in para 16 in ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*** (supra) may be beneficially quoted:

> *"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."*

8. It may further be observed that Section 440 of the Code of Criminal Procedure, 1973 provides that amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive. Further, sub-section 2 of Section 440 Cr.P.C. empowers the High Court or the Court of sessions for directing that the bail required by a Police Officer or Magistrate may be reduced. In view of above, the Court needs to keep into consideration that the conditions of bail do not become onerous or impossible of being complied with by accused and defeat the very object of grant of bail, if the accused is unable to furnish the surety bond for a long period of time and avail the benefit of bail. The surety amount is fixed, generally keeping in regard the nature and circumstances of offence, gravity of offence, financial resources and other relevant factors of accused, with objective of reasonably ensuring the presence of the accused during the course of trial. Reliance in this regard may be placed upon ***Hussainara Khatoon v. State of Bihar,*** **(1980) 1 SCC 81** and ***Moti Ram v. State of M.P.,*** **(1978) 4 SCC 47.**

**9.** Directions have also been issued by Hon'ble Apex Court in ***Satender Kumar Antil v. Central Bureau of Investigation and Another,*** **(2022) 10 SCC 51** to undertake the exercise of finding out undertrial prisoners who are unable to comply with the bail conditions and take appropriate action under Section 440 Cr.P.C. for facilitating the release. It was also noticed that while insisting upon the sureties, mandate of Section 440 Cr.P.C. is to be kept in mind.

**10.** Further, with a view to ameliorate the problem of non-release of accused/undertrials due to their inability to furnish surety bonds, directions issued by Hon'ble Apex Court in ***SMWP (Criminal) No.4/2021*** on 31.01.2023 may be beneficially reproduced:

> *"With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:*
>
> *1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison 10 Department].*
>
> *2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.*
>
> *3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.*
>
> ***4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on***

*the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.*

*5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.*

*6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/ relaxation.*

*7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety.*

*We order that the aforesaid directions shall be complied with."*

11. Reverting back to the instant case, the refusal to reduce the surety bond by learned Trial Court relying upon ***Pargan Ram Alias Nikka v. State*** (supra) is misplaced, since in the aforesaid case the benefit of bail was extended to the accused, in view of long incarceration since 10.03.2018 *de-hors* the merits of the case.

In the present case, petitioner was admitted to bail after consideration of the case on merits and not on account of prolonged incarceration. The petitioner has not been able to avail the benefit of bail despite order dated 27.07.2023 passed by learned Trial Court and is still in custody. The observations of Hon'ble Apex Court in para 16 in ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India and Others*** (supra), clarifies that the directions are intended to operate as a one time measure and did not interfere with the Special Court's power to grant bail under Section 37 of the NDPS Act. Thus, wherein the Court exercises

the power to release the accused on bail on merits and if the circumstances so warrant, the surety bond can be suitably reduced.

Considering the facts and circumstances, this Court is of the considered view that surety bond/personal bond be reduced and petitioner be accordingly admitted to bail subject to furnishing of personal bond in the sum of Rs.1 lakh with one surety in the like amount, as prayed on behalf of the petitioner. The remaining terms and conditions imposed vide order dated 27.07.2023 by learned Trial Court shall remain unchanged. Petition is accordingly disposed of., Pending application, if any, also stands disposed of.

A copy of this order be forwarded to the learned Trial Court as well as be circulated to Officers of District Judiciary for information.

[redacted]

**(ANOOP KUMAR MENDIRATTA)**
**JUDGE**

**MARCH 05, 2024**/*sd*

1542

D-3

D/o

HIGH COURT OF DELHI AT NEW DELHI

No. 18002 /Crl-II. Dated 12/3/24


From:

The Registrar General,
High Court of Delhi,
New Delhi.

To,

1) The Ld. District & Sessions Judge, Central Distt.,Tis Hazari Courts, Delhi.
2) The Ld. District & Sessions Judge, North Distt., Tis Hazari Courts, Delhi.
3) The Ld. District & Sessions Judge, West Distt., Tis Hazari Courts, Delhi.
4) The Ld. District & Sessions Judge, New Delhi Distt., Patiala House Courts, Delhi.
5) The Ld. District & Sessions Judge, East Distt., KKD Courts, Delhi.
6) The Ld. District & Sessions Judge, North East Distt., KKD Courts, Delhi.
7) The Ld. District & Sessions Judge, Shahdara Distt., KKD Courts, Delhi.
8) The Ld. District & Sessions Judge, North West Distt., Rohni Courts, Delhi.
9) The Ld. District & Sessions Judge, Outer Distt., Rohini Courts, Delhi.
10) The Ld. District & Sessions Judge, South West Distt., Dwarka Courts, Delhi.
11) The Ld. District & Sessions Judge, South Distt., Saket Courts, Delhi.
12) The Ld. District & Sessions Judge, South East Distt., Saket Courts, Delhi.
13) The Ld. District & Sessions Judge, CBI Distt., Rouse Avenue Courts, Delhi.
14) The Ld. Special Judge (NDPS), Outer North Distt., Rohini Courts, Delhi.
15) The SHO/IO Police Station Narela Industrial Area, Delhi.

CRL.M.C.No. 326/2024

NAEEM .....Petitioner

VERSUS

THE STATE OF NCT OF DELHI .....Respondent

PETITION FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE FOR REDUSING THE SURETY AMOUNT FROM TWO SURETIES OF 1 ONE LAKH PASSED BY THE LD. TRIAL COURT OF SH. SHIRENDERA RANA, SPECIAL JUDGE (NDPS) NORTH ROHINI COURTS, DELHI VIDE ORDER DATED 27/07/2023 IN FIR NO. 753/2022, U/S 21/29 NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, REGISTERED AT POLICE STATION NARELA INDUSTRIAL AREA, DELHI.

Sir/Madam,

I am directed to forward herewith immediate compliance/necessary action a copy of judgement/order dt. **05.03.2024** Passed in the above case **by Hon'ble Mr. Justice Anoop Kumar Mendiratta** of this Court.

Other necessary directions are contained in the enclosed copy of order.

Yours faithfully

7.3.24

Encl: Copy of order dated **05/03/2024**
memo of parties

**Admin. Officer Judl.(Crl.-II)**
for Registrar General

(2)

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

**(CRIMINAL ORIGINAL JURISDICTION)**

CRIMINAL MISC (MAIN) NO. OF 2023

IN THE MATTER OF

NAEEM PETITIONER

**VERSUS**

THE STATE OF NCT OF DELHI RESPONDENT

**MEMO OF PARTIES**

NAEEM
S/O NURUDDIN
R/O PETROL PUMP, YAMUNA CITY,
CHIRAURI, PO: CHIRORI, DIST. GHAZIABAD,
UTTAR PRADESH-201102 ... PETITIONER

**FIR NO.753/2022,**
**U/S 21/29 NDPS ACT**
**P.S. NIA**

**VERSUS**

THE NCT OF DELHI
THROUGH PS. NARELA INDUSTRIAL AREA,
NEW DELHI ... RESPONDENT

PETITIONER

DELHI
DATED: **20.12.2023** THROUGH **IN JC**

ADVOCATE

SANJAY SINGH
Enrl.No. D/3190/2022, Advocate
Off:- D-8/28, Sector-17, Rohini
Delhi-110033
Mob:- 9810823737
Email:- sanjay1108singh@gmail.com

Most Urgent/Out at once

**OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI**

No. 1815-274/Genl./HCS/2024 Dated, Delhi the 14 MAR 2024

**Sub : Circulation of copy of judgment/order dated 05.03.2024 passed by Hon'ble Mr. Justice Anoop Kumar Mendiratta in Crl.M.C. No. 326/2024, titled "Naeem Vs. The State of NCT of Delhi".**

A copy of the letter no. 18002/Crl.II dated 12.03.2024 bearing this office diary no. 578 dated 12.03.2024 alongwith copy of judgment/order dated 05.03.2024 passed by Hon'ble High Court of Delhi in the abovesaid matter is being circulated for immediate compliance/necessary action to : -

1. All the Ld. Judicial Officers posted in Central District, Tis Hazari Courts, Delhi.
2. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
3. PS to the Ld. Principal District & Sessions Judge (HQs), Tis Hazari Courts, Delhi for information.
4. The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the Website of Delhi District Courts.
5. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir.(Acd)/2019/4306 dated 06.08.2019.
6. Dealing Assistant, R&I Branch for uploading the same on LAYERS.
7. Dealing Assistant for uploading the same on Centralized Website through LAYERS.

**(Umed Singh)**
Link-Officer-in Charge, Genl. Branch, (C)
District Judge, (Comm. Court)
Tis Hazari Courts, Delhi.

Encls. As above