



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1247 OF 2024
(Arising out of SLP(Criminal) No. 230/2024)

NAEEM AHMED ALIAS NAIM AHMAD

Appellant(s)

VERSUS

GOVT OF NCT OF DELHI

Respondent(s)

O R D E R

1. Leave granted.
2. The appellant is aggrieved by the order dated 22nd December, 2023 passed by the High Court of Delhi whereby, his prayer for grant of default bail in connection with FIR.No.152/2022 registered at Police Station Daryaganj under Sections 21, 29, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein referred to as "the Act"), has been turned down.
3. The prosecution case is that the appellant along with the main accused (Arif Khan) and the other co-accused were apprehended on 25th March, 2022 near Mahavir Vatika and 340 gms of smack (morphine) was recovered from their possession. The FIR was

registered and consequently, the appellant was arrested at the spot. Thereafter, charge-sheet was filed on 17th September, 2022. The said charge-sheet was not accompanied by any FSL/ Chemical examiner report to certify that the substance recovered from the appellant or his co-accused was a contraband (smack).

4. The appellant accordingly applied for default bail on the ground that the charge-sheet was incomplete.

5. His prayer, as noticed at the outset, has been rejected by the High Court.

6. In the peculiar facts and circumstances of this case, we are not inclined to entertain the appellant's prayer for grant of default bail. Instead, we proceed to consider the appellant's prayer for regular bail.

7. The prosecution case appears to be that the appellant had gone to meet the main accused (Arif Khan) for the purpose of obtaining the contraband (smack) and then sell the same on commission basis. It seems that the contraband was in the conscious possession of the main accused (Arif Khan). The said main accused (Arif Khan) has been admittedly granted

interim bail by this court vide Order dated 28th July, 2023 passed in SLP(Crl.) No. 8610/2023.

8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing of the charges is yet to be done. The conclusion of trial will thus take time. There are no criminal antecedents.

9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband(smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.

10. Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Trial Court.

11. However, the appellant shall report to the local Police Station twice in a month. His passport shall also remain deposited with the Investigating Officer/ with the concerned Court. In the event, the appellant is found involved in any other case, the same shall be taken as a misuse of the concession of bail and the prosecution shall be at liberty to seek cancellation of the bail on that ground.

12. The appeal stands allowed in above terms

13. Pending application(S), if any, shall stand disposed of.

.....J.
(SURYA KANT)

.....J.
(K.V. VISWANATHAN)

New Delhi
28th February, 2024

ITEM NO.8

COURT NO.4

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 230/2024

(Arising out of impugned final judgment and order dated 22-12-2023 in CRLMC No. 7131/2023 passed by the High Court Of Delhi At New Delhi)

NAEEM AHMED ALIAS NAIM AHMAD

Petitioner(s)

VERSUS

GOVT OF NCT OF DELHI

Respondent(s)

(IA No. 3011/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 28-02-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Mr. Akshay Bhnadari, Adv.
Mr. Ashish Batra, AOR

For Respondent(s) Mr. K.M. Nataraj, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Shailesh Madiyal, Adv.
Mr. Vatsal Joshi, Adv.
Mr. Sharath Nambiar, Adv.
Mr. Navanjay Mahapatra, Adv.
Mr. Sachin Sharma, Adv.
Ms. Priyanka Das, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. The appeal is allowed in terms of the signed order. The operative part of the order reads as hereunder;

"Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of

the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Trial Court.

However, the appellant shall report to the local Police Station twice in a month. His passport shall also remain deposited with the Investigating Officer/ with the concerned Court. In the event, the appellant is found involved in any other case, the same shall be taken as a misuse of the concession of bail and the prosecution shall be at liberty to seek cancellation of the bail on that ground."

3. Pending application(s), if any, shall stand disposed of.

(NISHA KHULBEY)
SENIOR PERSONAL ASSISTANT

(signed order is placed on the file)

(PREETHI T.C.)
COURT MASTER (NSH)