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

+ **BAIL APPLN. 4761/2024, CRL.M.A. 38807/2024**

LAL CHAND

.....Petitioner

Through: Mr. Suraj Prakash Sharma, Advocate.

versus

THE STATE (N.C.T. OF DELHI)

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
with Mr. Jasvinder Singh, SI, PS-Spl.
Cell.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

07.03.2025

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1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 273/2022 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985³, registered at P.S. Special Cell, Delhi. Subsequently, after investigation, a chargesheet has also been filed in the case against the Applicant under the aforementioned provisions of the NDPS Act.

2. Briefly, the case of the prosecution are as follows:

2.1. On 27th August, 2022, at approximately 11:25 PM, a secret informer approached the Special Cell office and provided information to Inspector

¹ "BNSS"

² "CrPC"

³ "NDPS Act"



Sanjeev Kumar, stating that one Lal Chand (the Applicant herein), a resident of Rajasthan and an alleged drug trafficker, was engaged in the supply of narcotics in Delhi. The informer claimed that Lal Chand would be arriving at Dhaula Kuan, New Delhi, in the early hours of 28th August, 2022, to deliver a consignment of illegal drugs to his Delhi-based associate. It was further disclosed that after this delivery, the Applicant was likely to travel to Haryana to distribute additional consignments to other clients. The informer emphasized that a raid at the relevant time and location could lead to the apprehension of Lal Chand and his associates, along with a significant quantity of narcotic drugs, suspected to be Heroin.

2.2. Inspector Sanjeev Kumar documented the information and immediately conveyed it to Inspector Ranjeet Singh, who, in turn, relayed it telephonically to the Assistant Commissioner of Police⁴, Special Cell. The ACP, after being apprised of the situation, directed the officers to take necessary legal action. In compliance with Section 42 of the NDPS Act, a Daily Diary⁵ entry was made recording the secret information, which was subsequently forwarded to the ACP. Upon approval, a raiding team was constituted and dispatched to the designated location at Dhaula Kuan for surveillance and further action.

2.3 At approximately 4:00 AM on 28th August, 2022, the secret informer provided updated information to the concerned Inspector, stating that Lal Chand (the Applicant) had altered his travel plans and would now arrive at the Sarai Kale Khan Bus Stop around noon on the same day. This fresh intelligence was duly recorded and promptly communicated to the ACP

⁴ “ACP”

⁵ “DD”



telephonically.

2.4 At about 7:30 AM, the raiding team, accompanied by the secret informer, arrived near the Sarai Kale Khan Bus Stop. Attempts were made to enlist independent public witnesses, with 4-5 passersby being requested to join the operation. However, none agreed to participate, citing personal reasons and leaving without disclosing their identities. At approximately 6:35 PM, a man carrying a blue and parrot-green backpack was observed walking towards Ashram Chowk from the IP Estate side. The secret informer identified him as the Applicant—Lal Chand. Upon positive identification, the informer was relieved from the scene.

2.5 The Applicant was then seen stopping on the footpath opposite the Sarai Kale Khan Terminal, where he met another individual who was already waiting there. The Applicant removed his backpack and handed it over to this individual. At that moment, the raiding team intervened and apprehended both men. Upon questioning, they identified themselves— the Applicant disclosed his name and stated that he was a resident of Kota, Rajasthan, while the second individual identified himself as Trilok Chand, a resident of Mandsaur District, Madhya Pradesh.

2.6 Following the completion of preliminary legal formalities, Inspector Sanjeev Kumar retrieved the blue and parrot-green backpack from Trilok Chand's right shoulder for inspection. Inside, a black polythene bag was discovered, containing two transparent, zip-locked polybags filled with an off-white powder. Upon testing with a field detection kit, the substance tested positive for 'Heroin'. Additionally, a personal search of the Applicant was conducted, leading to the recovery of another transparent zip-locked polybag containing an off-white powder from the right pocket of his pants.



This substance was also tested and confirmed as 'Heroin'.

2.7 The total quantity of contraband recovered amounted to 4 kilograms from the backpack and an additional 200 grams from the Applicant's pocket. Accordingly, the present FIR under Sections 21 and 29 of the NDPS Act was registered at P.S. Special Cell, and further investigation was initiated. Samples of the recovered substance were collected and sent for forensic examination. The Forensic Science Laboratory⁶ report confirmed the presence of 'Diacetylmorphine', along with 'Acetaminophen', 'Caffeine', 'Dextromethorphan', 'Codeine', 'Morphine', 'Acetylcodeine', and 'Monoacetylmorphine'.

2.8 Pertinently, the entire sequence of events, including the apprehension of the accused persons, their search, and the recovery of contraband, was videographed by Inspector Sanjeev Kumar. The footage was preserved in a Compact Disc (CD), which was subsequently sealed and taken into police custody through a duly executed seizure memo.

2.9 During the investigation, co-accused Trilok Chand disclosed that he and his associate, Ikbali, had engaged the Applicant to transport and deliver the contraband Heroin. Trilok Chand further admitted that he had procured the narcotic substance and handed it over to Ikbali in Rajasthan, instructing him to arrange its transport to Delhi through the Applicant. Additionally, Trilok Chand expressed willingness to cooperate with the investigation and assist law enforcement in apprehending other members of the drug syndicate, as well as facilitating the recovery of substantial quantities of Heroin from various locations, including Madhya Pradesh, Haryana, and Punjab.



2.10 Despite extensive efforts by the police to trace and apprehend the other co-accused individuals, they remain untraceable. Upon conclusion of the investigation, a chargesheet was filed before the Trial Court, followed by a supplementary chargesheet detailing further findings.

3. Mr. Suraj Prakash Sharma, counsel for the Applicant, advances the following grounds in support of the bail application:

3.1 The entire case of the prosecution is fabricated, and the contraband was planted on the Applicant to falsely implicate him. The Applicant has no connection with the alleged offence, and his mere presence at the location does not establish his culpability.

3.2 The recovery attributed to the Applicant is only 200 grams of Heroin, which falls within the intermediate quantity category. In contrast, the co-accused, Trilok Chand, was found in possession of a bag containing 4 kilograms of Heroin. It is a settled legal position that contraband recovered from different accused persons must be considered separately, and aggregation of quantities is impermissible unless the prosecution establishes a common intention or conspiracy.

3.3 The Applicant's disclosure statement does not indicate that he had any knowledge of the contents of the bag allegedly recovered from him. There is also no material on record, such as bus or railway tickets, to establish that he travelled from Rajasthan to Delhi to deliver narcotics, which casts doubt on the prosecution's case.

3.4 Despite the alleged recovery being made at Sarai Kale Khan Bus Terminal, a busy public place, no independent public witnesses were joined in the investigation. The raiding team could have served written notices to

⁶ "FSL"



passersby to secure their participation, but no such effort was made. Furthermore, the prosecution has not placed on record any Call Detail Records⁷ or other electronic evidence to establish the Applicant's location at the relevant time. The absence of independent corroboration significantly weakens the prosecution's version.

3.5 The prosecution primarily relies on video footage purportedly capturing the apprehension, search, and recovery of the contraband. However, the authenticity and evidentiary value of this footage remain to be tested at trial, and it cannot be conclusive evidence at the stage of bail.

3.6 The Applicant has been in judicial custody since 28th August, 2022, and has already undergone incarceration for nearly 2 years and 6 months. The investigation is complete, and chargesheets have been filed, thereby negating any apprehension of tampering with evidence or influencing witnesses. Further, the co-accused, Trilok Chand, has already been granted interim bail, warranting similar consideration for the Applicant.

3.7 There has been a significant delay in trial proceedings. While charges have been framed, only 2 out of 16 prosecution witnesses have been examined so far. Given the protracted nature of the trial and the Applicant's lack of prior criminal antecedents, continued detention would serve no purpose. Consequently, the Applicant is entitled to bail in the present case.

4. Mr. Mukesh Kumar, APP for the State, opposes the present bail application, contending that the Applicant was apprehended red-handed while handing over a bag containing 4 kilograms of Heroin to co-accused Trilok Chand, and an additional 200 grams of Heroin was recovered from the Applicant's possession. Accordingly, he was in conscious possession of

⁷ "CDRs"



a total of 4.2 kilograms of Heroin, which far exceeds the commercial quantity threshold of 250 grams. Given the significant quantity of contraband, the stringent conditions of Section 37 of the NDPS Act are squarely applicable. He further submits that the Applicant has previously filed three bail applications, two before the Trial Court and one before this Court, all of which have been dismissed after due consideration. He argues that, given the gravity of the offence and the substantial quantity of narcotics involved, there is a high likelihood that the Applicant may abscond if released on bail or re-engage in similar criminal activities. In view of the foregoing, the State strongly opposes the grant of bail to the Applicant.

5. The Court has considered the submissions advanced on behalf of the Applicant but finds no merit in them. The recovery of contraband in the present case was based on specific intelligence received by the Special Cell of Delhi Police, pursuant to which a raiding team was constituted, leading to the apprehension of the Applicant while he was in the process of handing over a backpack containing 4 kilograms of Heroin to co-accused Trilok Chand. The facts clearly indicate that the Applicant was in conscious possession of the contraband, as he exercised control and dominion over the backpack before transferring it to the co-accused.

6. The argument advanced by the Applicant that only 200 grams of Heroin were recovered from his possession, and that the recovery of 4 kilograms of Heroin from the co-accused Trilok Chand cannot be attributed to him, is legally untenable. The record clearly establishes that the Applicant was apprehended while handing over the bag containing 4 kilograms of Heroin to Trilok Chand. This act, in itself, demonstrates that the Applicant was in conscious possession of the contraband, as he exercised dominion



and control over the substance before transferring it. In **Awadhesh Yadav v. State Govt. of NCT of Delhi**⁸, the Delhi High Court has held that when an accused is involved in a conspiracy or common design for drug trafficking under Section 29 of the NDPS Act, the entire quantity of contraband recovered from all co-conspirators can be attributed collectively. Further, the Supreme Court in **Mohan Lal v. State of Rajasthan**⁹ has clarified that possession under the NDPS Act is not limited to physical custody but extends to dominion and control over the narcotics, which is manifest in the present case. Thus, the contention of the Applicant that the recovery from him was only of an intermediate quantity does not assist his case for bail. Given that the total quantity of contraband attributed to the Applicant is 4.2 kilograms of Heroin, well beyond the commercial quantity threshold of 250 grams, the rigors of Section 37 of the NDPS Act are fully attracted. The Applicant must, therefore, satisfy the twin conditions under Section 37(1)(b), i.e., (i) the Court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of the alleged offence, and (ii) the accused is not likely to commit any offence while on bail.

7. As regards the Applicant's contention that no independent public witness joined the investigation and that there is no CDR analysis to corroborate the prosecution's case, it is noted that the most crucial piece of evidence in the present case is the videography conducted by the raiding team. This video footage captures the recovery of the contraband from the bag in possession of the Applicant which was handed over to the co-accused Trilok Chand. While the veracity and evidentiary value of this video will be

⁸ 2023 SCC OnLine Del 7732

⁹ (2015) 6 SCC 222



assessed during trial, at this stage, it provides *prima facie* proof of the Applicant's conscious possession of the contraband. This video evidence *prima facie* corroborates the prosecution's version and negates the Applicant's claim of lack of conscious possession. Therefore, the first condition under Section 37 of the NDPS Act, which requires the Court to be satisfied that the Applicant is not guilty of the alleged offence, is not met.

8. The Applicant has been in custody for approximately 2 years and 6 months, whereas the minimum prescribed punishment under Section 21 of the NDPS Act for possession of a commercial quantity of Heroin is 10 years, extendable up to 20 years. While the Court acknowledges that the trial has been ongoing and, despite the framing of charges on 6th May, 2024, only 2 out of 16 witnesses have been examined so far, the gravity of the offence remains a significant consideration. In view of these factors, the Court had sought a status report regarding the progress of the trial. The Trial Court has indicated that the proceedings can be concluded within 1.5 years. Given the serious nature of the allegations, the stringent mandate of Section 37 of the NDPS Act, and the reasonable timeframe projected for the completion of the trial, the ground of prolonged incarceration and delay in trial does not, at this stage, justify the grant of bail to the Applicant.

9. The contention of the Applicant that he deserves similar consideration as co-accused Trilok Chand, who has been granted interim bail, is misconceived. The order granting interim bail to Trilok Chand, as explained by APP for the State, was based on specific personal medical circumstances. As such, the plea for bail on the ground of parity with Trilok Chand is untenable.

10. However, considering that the trial has been pending for nearly 10



months and only 2 out of 16 witnesses have been examined so far, the Trial Court is directed to expedite the proceedings and make all possible efforts to ensure the timely conclusion of the trial, preferably within the timeline indicated in its status report.

11. With the above directions, the present application is dismissed, along with pending applications.

SANJEEV NARULA, J

MARCH 7, 2025
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