

via Video-conferencing

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

+ **BAIL APPL.1681/2020**

FIROZ

.....Petitioner/Applicant

Through: Mr. Kedar Yadav, Advocate.

versus

STATE OF DELHI

.... Respondent

Through: Ms. Neelam Sharma, APP for the State
with S.I. Rajesh Kumar.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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03.09.2020

The applicant is an undertrial in case FIR No. 418/2019 dated 20.11.2019 registered under sections 20/25 of Narcotic Drugs and Psychotropic Substances Act 1985 ('NDPS Act' for short) at PS: Okhla Industrial Area and has been in custody since 24.12.2019.

2. By way of the present application, the applicant seeks regular bail pending trial.

3. Notice in this application was issued on 13.07.2020.

4. Status report dated 26.08.2020 has been filed. SCRB report dated 25.08.2020 has also been placed on record. Charge-sheet is also stated to have been filed in the matter.

5. Mr. Kedar Yadav, learned counsel for the applicant submits that a perusal of the FIR shows that the applicant was not arrested from the

spot, when on 19.11.2019, according to the prosecution, an auto carrying alleged contraband was spotted, chased-down and co-accused auto-driver Ravi and passenger Warish Ali were apprehended. While the allegation is that the applicant was the other passenger in the auto, who fled from the spot, it is unbelievable and false that the policemen who chased the applicant were unable to apprehend him there and then. The applicant came to be arrested more than a month later on 24.12.2019.

6. Mr. Yadav further points-out that no recovery of any contraband has been made from the applicant. He states that though it is the prosecution case that the applicant's SCRB report shows some 30 other criminal cases pending against him, it will be noticed that these are mainly cases under section 379 IPC, which apart from being false, relate to as far back as to 1997. Counsel further points-out that while now it is being contended that the applicant has some 30 cases pending against him, as recorded by its order dated 22.04.2020, before the learned Sessions Court it was said that there are some 12 or 13 other cases. By the said order, the learned Sessions Court has dismissed the applicant's bail plea.

7. Ms. Neelam Sharma, learned APP for the State, while opposing the grant of regular bail does not dispute that no recovery was made from the applicant and that he has been implicated only on the basis of disclosure statement of co-accused Warish Ali. Ms. Sharma however contends that there are other matters pending against the applicant,

whereby it appears he is a repeat offender. It is also submitted that the applicant is a 'bad character' of the area.

8. Nominal roll of the applicant shows that the applicant has been in custody as an undertrial for some 08 months. The nominal roll lists only 03 other criminal cases pending against him, thereby further contradicting the prosecution stand before the learned Sessions Court and the position disclosed in the SCRB report. While in the nominal roll the applicant's jail conduct is stated to be 'unsatisfactory', it records only one prison punishment, which related to a scuffle arising from some trivial matter, where no specific wrongdoing has been alleged against the applicant.

9. While from the record the exact number of other criminal cases pending against the applicant is not clear, it is seen that there is no other case pending against him under the NDPS Act. Furthermore, since no recovery whatsoever is even alleged to have been made from him, the provisions of section 37 of the NDPS Act are not attracted against the applicant.

10. Upon a conspectus of the foregoing facts and circumstances, this court is persuaded to admit the applicant to *regular bail* subject to the following conditions:

- (a) The applicant shall furnish a personal bond in the sum of Rs.25,000/- with 01 surety in the like amount from a family member, to the satisfaction of the Duty Magistrate;

- (b) Till such time as cognizance is taken by the trial court, the applicant shall present himself before the I.O./SHO PS: Okhla Industrial Area on the first Monday of every month between 11 a.m. and 11:30 a.m. to mark his presence. However, he will not be kept waiting for longer than one hour for this purpose;
 - (c) The applicant shall furnish to the I.O./SHO a cell phone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
 - (d) If the applicant has a passport, he shall also surrender the same to the Duty Magistrate;
 - (e) The applicant shall not contact, nor visit, nor offer any inducement, threat or promise to the first informant/complainant or to any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending matter.
11. Nothing in this order shall be construed as an expression on the merits of the pending matter.
12. The bail application stands disposed of.
13. Other pending applications, if any, also stand disposed of.
14. A copy of this order be sent to the concerned Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 03, 2020/Ne