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

+ **BAIL APPL. 1906/2020**

MOHIT GUPTA

.....Petitioner/Applicant.
Through : Mr. Ashish Upadhyay and Mr.
Pradeep Jain, Advocates.

versus

STATE

..... Respondent
Through : Mr. Tarang Srivastava, APP for
State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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18.09.2020

The applicant, who is an accused in case arising from FIR No. 73/2020 dated 31.05.2020 registered under sections 21/25/29 of the NDPS Act at PS : Crime Branch, Delhi, seeks regular bail.

2. Notice in this application was issued on 27.07.2020.
3. Status report dated 14.08.2020 has been filed by the State.
4. Nominal roll dated 14.08.2020 has been received from the Jail Superintendent.
5. Mr. Pradeep Jain, learned counsel appearing for the applicant submits that the allegation is that the applicant was found carrying 13 gms. of cocaine, which is considered an 'intermediate' quantity of that drug under section 2(viia) of the NDPS Act and the notified schedule.
6. Mr. Jain submits that investigation is complete and charge-sheet in the matter has been filed on 27.07.2020; that the applicant is a

young man about 32 years of age; that his family comprises his parents, a wife and child; that the applicant has no other or prior criminal involvement, whether under the NDPS Act or otherwise; and that no purpose will be served by detaining him in judicial custody any longer.

7. Mr. Jain also contends that at the time of the alleged recovery, the provisions of section 50 of the NDPS Act were not followed inasmuch as the Gazetted Officer before whom personal search was conducted was the same Assistant Commissioner of Police who authorized the search/raid, allegedly conducted on the basis of secret information.

8. Mr. Jain also points-out that in view of the sections alleged against the applicant and the intermediate quantity recovered, the rigors of section 37 of the NDPS Act are not attracted.

9. Attention is also drawn to the medical problems presently being faced by the applicant's aged parents; and the fact that the applicant's 7-month-old son also needs the attention and care of both parents, especially in the present times of the prevailing coronavirus pandemic.

10. Relying upon status report dated 14.08.2020, Ms. Neelam Sharma, learned APP appearing for the State opposes grant of bail, submitting that even an intermediate quantity of cocaine is significant enough ; and that, as alleged in the FIR and the charge-sheet, the applicant was a conduit or courier.

11. She further argues that on the applicant's disclosure statement, a foreign national has also been arrested for the offence.

12. Ms. Sharma however does not dispute that section 37 of the NDPS Act is not attracted in the present case.

13. Nominal roll dated 14.08.2020 shows that the applicant has been in judicial custody for more than 02 months as on 14.08.2020; that his jail conduct is 'satisfactory'; and that he has no other or previous involvement in any criminal matter, whether under the NDPS Act or otherwise. The co-accused is shown to be in judicial custody.

14. Ms. Sharma's main apprehension is two-fold. One, she submits that if enlarged on bail the applicant may indulge in similar criminal activity again; and second, that it is important to ensure the applicant's presence for the trial.

15. Upon a conspectus of the foregoing, while appreciating the contentions of the State, this court is unable to discern any objective, rational basis for detaining the applicant in judicial custody *as an undertrial* any longer. This court is also unable to see what purpose in aid of investigation and/or trial will be served by the continued judicial custody of the applicant. Insofar as the apprehensions expressed on behalf of the State are concerned, those can be addressed adequately by imposing requisite conditions for the grant of bail.

16. In the circumstances, this court is persuaded to grant to the applicant *regular bail* pending trial, upon the following conditions :

- (a) The applicant shall furnish a personal bond in the sum of Rs. 1,00,000/- (Rupees One Lac) with 01 surety in the like amount from a family member of the applicant, to the satisfaction of the trial court;

- (b) The applicant shall furnish to the Investigating Officer/SHO, PS: Crime Branch 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;
- (c) If the applicant has a passport, he shall surrender the same to the trial court;
- (d) The applicant shall not leave the country without prior permission of the trial court and shall *ordinarily* reside at the address mentioned in this application. The applicant shall inform the trial court if he changes his ordinary place of residence ;
- (e) The Investigating Officer shall put the applicant through drug use tests, *randomly from time-to-time* and without advance notice, during the tenure of his bail. The applicant shall cooperate in such tests. If the applicant tests positive for use of any notified drug, the State may seek cancellation of bail ;
- (f) The applicant shall not contact, nor visit, nor offer any inducement, threat or promise to the first informant/complainant or 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 matter.

17. Nothing in this order shall be construed as an expression on the merits of the pending trial.

18. The bail application is disposed of in the above terms.

19. Other pending applications, if any, also stand disposed of.

20. A copy of the order be sent to the concerned Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J.

SEPTEMBER 18, 2020