

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

Reserved on : 21.03.2023

%

Pronounced on : 17.04.2023

+ **BAIL APPLN. 548/2023**

TASLIM

..... Petitioner

Through: Mr. Kunwar Siddhartha, Mr. Abhay Singh Yadav and Mr. Ajay Singh, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State with Insp. Omvir Dabas and with ASI Raj Kumar, Narcotics Cell.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 781/2021 under Sections 21, 25 and 29 NDPS Act registered at Police Station Bhalswa Dairy, Delhi.

2. In brief the facts of the case are that on 08.11.2021 at about 5:00 pm, a secret information was received by SI Dilbag about a person, namely, Arshad Ali who in association with Asif Kasai and Bhure r/o Fateh ganj Bareilly, UP was indulging in sale and supply of Heroin in Delhi and UP and they were coming to deliver a consignment of Heroin near Bhalswa

Lake, Delhi in Taxi No. UP-25-DT-5525 between 9:00 pm to 11:00 pm. The raiding party left for the spot vide DD No. 6 at 7:30 pm along with informer in a private vehicle No. DL-8C-AZ-7412 driven by Ct. Arun. At about 10:10 pm, a white colored taxi car No. UP-25DT-5525 was intercepted. The persons sitting in the car were identified as Arshad Ali, Taslim (petitioner herein) and Arshad Khan/driver. During cursory search of Arshad Ali, a black colored raxin bag was recovered and the said bag was found containing a black colored polythene packet. The black colored polythene packet further contained a transparent polythene packet duly tied with rubber band and on opening the transparent packet, it was found containing light brown colored powdery substance. On checking and weighing, the transparent polythene packet was found containing 1 kg of HEROIN. Samples were drawn from the seized contraband and all the mandatory provisions of NDPS Act were duly complied with. After following due procedure, the case vide FIR No. 781/2021 under Sections 21, 25 and 29 NDPS Act was got registered at Police Station Bhalswa Dairy, Delhi.

3. I have heard the learned counsel for the petitioner, learned APP for the State and perused the status report filed by the state.

4. It is submitted by the learned counsel for the petitioner that the petitioner has been falsely implicated in this case and is in judicial custody since 09.11.2021. It is further submitted that the petitioner is a barber by profession, and he was being taken by the co-accused Arshad Ali for hair cutting to some marriage ceremony when he got caught along with the co-accused. He submitted that he was only a companion in the vehicle which

was driven by co-accused Arshad Khan and no recovery has been effected from the petitioner and the chargesheet has already been filed, therefore, no purpose will be served by keeping the petitioner in judicial custody.

5. On the other hand, learned APP vehemently opposed the bail application and has argued on the lines of the status report. It is submitted by the Ld. APP that the petitioner was sitting in the car when the recovered contraband i.e., 1 kg heroin which is commercial quantity was recovered from the co-accused. He further submitted that even the CDR shows that co-accused from whom the recovery has been effected was present along with the petitioner at the same location. He further submitted that all the three accused persons including the petitioner herein were apprehended from the same spot while carrying the recovered contraband and petitioner was sitting on rear seat of the car. It is contended by the Ld. APP that the petitioner and co-accused Arshad Ali are residents of the same locality of Bareilly, UP and were in connivance with each other in commission of the offence and the petitioner was being paid by the co-accused Arshad Ali for accompanying him for the delivery of the said contraband. Lastly, it is submitted by the Ld. APP that keeping in view the recovery of commercial quantity and the serious allegations against the petitioner, there is strong likelihood of him absconding if released on bail.

6. In the present case, a black colored raxin bag was recovered from co-accused Arshad Ali and inside the bag was another black colored polythene packet in which a transparent polythene packet duly tied with rubber band was found containing 1 kg of Heroin. It is also pertinent to note that the

recovered substance falls under the commercial quantity and embargo of Section 37 of the NDPS Act is applicable.

7. The scheme of Section 37 NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

8. The expression "*reasonable grounds*" means something more than prima facie grounds. It contemplates substantially probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

9. As far as the contention of the Ld. Counsel for the petitioner that no recovery has been effected from the petitioner, the same has no force in it as mere absence of possession of the contraband on the person of the accused-petitioner herein, does not absolve him of the level of scrutiny required

under Section 37(1)(b)(ii) of the NDPS Act. Reliance can be placed upon *Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, Criminal Appeal No. 1043 of 2021 (Arising out of SLP (Crl) No.1771 of 2021)* and *Union of India v. Rattan Mallik [(2009) 2 SCC 624]*. Moreover, the contention of the Ld. Counsel for the petitioner that the petitioner was being taken by co-accused Arshad Ali for hair cutting to some marriage ceremony does not cut much ice as it appears to be a mere bald statement, bereft of any details as to the date, place and time of the marriage ceremony for which he was allegedly engaged.

10. Therefore, looking into the entire circumstances of the present case and the fact that 1 kg of Heroin which is commercial quantity has been recovered from the co-accused with whom the petitioner was travelling in the same car all the way from Bareilly in UP to Delhi, there are no reasonable grounds for believing that the petitioner is not guilty of the offence. That being the case, the limitations prescribed for the grant of bail under Section 37 NDPS Act are not satisfied and thus, no benefit can be given to him at this stage. The bail application is, therefore, dismissed.

11. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

APRIL 17, 2023/_p