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

% *Date of decision: 18th July, 2023*

+ BAIL APPLN. 957/2023

ANITA @ KALLO

..... Petitioner

Through: Mr. Ankaj Giri, Advocate.

versus

THE STATE(NCT OF DELHI)

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for
State with ASI Naresh Kumar, Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. By way of the present petition, the petitioner seeks grant of regular bail in FIR No. 256/2022 under Sections 21/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS), registered at Police Station Crime Branch, Delhi.
2. The counsel for the petitioner submits that the petitioner, aged about 37 years was arrested on the basis of the disclosure statement of co-accused Shahban. It is further submitted that only 89 grams of Heroin was recovered from the petitioner's person.
3. The counsel for the petitioner submits that the petitioner was arrested on 12th November, 2022 and the chargesheet has already been filed, though

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the Forensic Science Laboratory (FSL) Report is awaited. He further submits that there is no other case pending against the petitioner.

4. It is submitted that the recovery made from the co-accused Shahban cannot be clubbed with the recovery made from the petitioner and therefore the recoveries made from the petitioner cannot be considered to be commercial quantity.

5. The counsel for the petitioner has relied upon the judgment of a coordinate Bench of this Court in *Anita v. State (NCT of Delhi)*, Bail Application No. 1538/2022 dated 20th July, 2022, wherein it was observed that recovery made from co-accused cannot be added to the quantity recovered from the petitioner.

6. The learned APP appearing on behalf of the State opposes the bail application by submitting that recovery of two kgs of Heroin was made from the co-accused Shahban. He further submits that Call Detail Record (CDR) of the petitioner's phone is matching with the phone of the main supplier.

7. I have heard the counsel for the parties and perused the material on record.

8. In the present case, recovery made from the petitioner is 89 grams of Heroin which amounts to intermediate quantity and not commercial quantity. In light of the judgment in *Anita* (supra), the recovery made from the petitioner cannot be clubbed with the recovery made from the co-accused. Therefore, in my considered view, the rigours of Section 37 of the NDPS Act would not apply in the facts and circumstances of the present case.

9. The applicant has been in custody since 12th November, 2022 and has not been involved in any other offence.

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10. Considering the facts noted above and taking into account that the trial is likely to take some time, the petitioners cannot be kept under incarceration for an indefinite period of time. Therefore, this Court considers it fit to grant bail to the petitioners.

11. For the forgoing reasons, the petition is allowed and the petitioner is directed to be released on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court and further subject to the following conditions:

- i. The petitioner shall not leave the country without the prior permission of the Court.
- ii. The petitioner shall appear before the Trial Court as and when the matter is taken up for hearing.
- iii. The petitioner shall join investigation as and when called by the Investigating Officer (IO) concerned.
- iv. The petitioner shall provide his latest/fresh mobile numbers to the IO concerned, which shall be kept in working condition at all times and shall not switch off or change the mobile number(s) without prior intimation to the IO concerned. The petitioner shall keep his live location on at all times.
- v. The petitioner shall provide his permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in his residential address.
- vi. The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case.



12. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.

13. Accordingly, the petition is disposed of.

JULY 18, 2023

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AMIT BANSAL, J.

