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

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Reserved on: August 28, 2023
Decided on: September 05, 2023

+ **BAIL APPLN. 2464/2023****MOHD. FARMAN****..... Petitioner**

Through: Mr. Aditya Aggarwal and
Ms. Kajol Garg, Advocates.

V**STATE GOVT. OF NCT OF DELHI Respondent**

Through: Mr. Utkarsh, APP for the
State with SI Ramkishan,
P.S. Crime Branch, ANTF.

CORAM**HON'BLE DR. JUSTICE SUDHIR HUMAR JAIN****J U D G M E N T**

1. The present bail application is filed on behalf of the petitioner/applicant under section 439 Cr.P.C. read with section 36A(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “**NDPS Act**”) for grant of regular bail in FIR bearing no.0051/2023 registered under sections 20/25 of NDPS Act at P.S. Crime Branch.

2. The perusal of FIR bearing no.0051/2023 dated 27.02.2023 registered under sections 20/25 of the NDPS Act reflects that SI Naresh Kumar on receipt of secret information on 27.02.2023 at around 02:50 P.M. apprehended the petitioner/applicant Mohd.



Farman, resident of Gautum Puri, Shastri Park, Delhi, who was stated to be indulged in the supply of charas in Delhi, when he came near Rohini between 03:45 P.M. to 04:15 P.M. to deliver charas to someone in front of City Centre Mall under construction MCD Parking, Prashant Vihar. The secret information was reduced to writing for compliance of section 42 of NDPS Act and thereafter a raiding party was prepared on the direction of senior officers. The raiding party proceeded towards the informed place along with necessary equipments and secret informer and reached there at around 03:40 P.M. The public persons refused to join raiding party, despite request, after citing their difficulties. At about 03:50 P.M., one person came from the side of Unity One Mall, Rohini and parked his cherry coloured scooty bearing registration no. DL 5 SCM 1394 and was carrying a red bag in his hand. He was identified as Mohd. Farman i.e. the petitioner/applicant. The raiding party apprehended him. Notice under section 50 of NDPS Act was also given to him. The petitioner/applicant was found in possession of 500 grams of charas.

3. The petitioner/applicant filed a bail application before the



Sessions Court in SC no.262/2023 which was dismissed vide order dated 15.07.2023 passed by the court of Sh. Dharendra Rana, ASJ/Special Judge (NDPS), North, Rohini Courts, Delhi.

4. The counsel appearing on behalf of the petitioner/applicant argued that the petitioner/applicant is in judicial custody since 28.02.2023. He stated that after conclusion of investigation, the charge-sheet has already been filed. He further argued that the quantity of charas recovered from the petitioner/applicant is 500 grams which is an intermediate quantity i.e. more than small quantity but less than commercial quantity. The counsel for the petitioner/applicant seeks the grant of regular bail to the petitioner/applicant on the ground that the rigour of section 37 of NDPS Act is not applicable in cases where the quantity of contraband recovered is an intermediate quantity. The counsel appearing on behalf of the petitioner/applicant cited the decisions of Coordinate Benches of this Court which are **Anita V State (NCT of Delhi)**, Bail Application no. 1538/2022 decided on 20.07.2022, **Sunil V The State of NCT of Delhi**, Bail Application no. 495/2022 decided on 28.07.2022, **Rehmatullah @ Arman V State of Delhi**, Bail



Application no. 2866/2022 decided on 24.11.2022, **Narsimman V State (Govt. of NCT of Delhi)**, Bail Application no.3863/2022 decided on 09.02.2023, **Gajender Bahadur V The State Govt of NCT of Delhi**, Bail Application no. 3655/2022 decided on 31.01.2023.

5. The Additional Public Prosecutor appearing on behalf of the respondent/State argued that the co-accused persons namely Shahin and Yameen were found in possession of 500 grams of charas each, as such the total quantity of contraband recovered from all the accused persons comes within the category of commercial quantity and in view of this fact, the petitioner/applicant is not entitled for bail.

6. The argument advanced by the Additional Public Prosecutor is without any basis in view of the order dated 20.07.2022 passed by Coordinate Bench of this Court in **Anita V State (NCT of Delhi)**, Bail Application no. 1538/2022, wherein it was observed as under:-

3. He further draws my attention to another judgment of the Coordinate Bench passed in BAIL APPLN. 44/2020 titled as Raju Diwakar @ Pappu v. The State and more particularly, para 10 which reads as under:-

“10. Similar issue came before High Court of Punjab & Haryana at Chandigarh in Vicky Kaur vs. State of



Punjab, wherein while citing case of LawSuit (P&H) Amar Singh Ramji Bhai Barot vs. State of Gujarat (2005) 7 SCC 550 held that quantity of contraband carried by both accused could not be added to bring it within the meaning of commercial quantity and Section 29 will not be attracted.”

4. In this view of the matter, I am of the view that the recovery made from the co-accused cannot be added to the quantity recovered from the applicant.

7. The Coordinate Benches of this Court have considered the issue regarding grant of bail in cases of possession of intermediate quantity of contraband. In **Sunil V The State of NCT of Delhi**, Bail Application no. 495/2022 decided on 28.07.2022, it was observed as under:-

Without any observations on the merits or demerits of the trial that is in progress, taking into account the factum that the recovery from the applicant is stated to be only of 8 gms of heroin falling within the ambit of an intermediate quantity with no previous adverse antecedents against the applicant, the applicant is allowed to be released on bail...

7.1 In **Rehmatullah @ Arman V State of Delhi**, Bail Application no. 2866/2022 decided on 24.11.2022, it was observed as under:-

Taking into account the factum that the allegations against the petitioner relate to the alleged recovery of an intermediate quantity of Ganja, to which the parameters of Section 37 of the NDPS Act, 1985 are not applicable and there being no previous adverse antecedents against the applicant, the applicant is allowed to be released on bail...

7.2 In **Narsimman V State (Govt. of NCT of Delhi)**, Bail



Application no.3863/2022 decided on 09.02.2023, it was observed as under:-

5. In the instant case, 1.730 kg 'Gaanja' which was recovered from the petitioner is within the intermediate quantity, therefore, the rigors of Section 37 NDPS Act do not apply to the present case. Furthermore, all the witnesses are police officials.

6. Keeping in view the entire circumstances of the case and the fact that petitioner is in judicial custody since 25.09.2022, the petition is allowed. Accordingly, petitioner is admitted to bail...

7.3 In Gajender Bahadur V The State Govt of NCT of Delhi,

Bail Application no. 3655/2022 decided on 31.01.2023, it was observed as under:-

6. These are issues which can only be adjudicated after evidence. For the time being, the quantity alleged to be recovered from the applicant is at best 1170 grams of Ganja which is an intermediate quantity. The applicant has been in custody since 09.10.2020, charge-sheet already has been filed and no custodial interrogation of the applicant is required. As regards the other two cases against the applicant under the NDPS Act are concerned, the applicant has already been granted bail by the competent Courts of jurisdiction. The trial is not likely to conclude in near future and the continued incarceration of the applicant will not serve any purpose.

7. For the aforesaid reasons, the applicant is directed to be released on bail in FIR No. 473/2020 dated 07.10 2020, under Section 20 of the NDPS Act, registered at Police Station- Shastri Park...

8. The petitioner/applicant is in judicial custody since



28.02.2023. The investigation has been concluded and the charge-sheet has already been filed. The petitioner was found in possession of 500 grams of charas which is an intermediate quantity. In view of the facts and circumstances of the present case, the petitioner/applicant Mohd. Farman is admitted to bail on his furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties of the like amount to the satisfaction of the concerned Trial Court with directions to the petitioner/applicant to the effect that:

- i) he shall not leave the country under any circumstances;
- ii) he shall appear before the learned Trial Court as and when directed by the learned Trial Court;
- iii) he shall keep his mobile phone operational and reachable at all times;
- iv) he shall not tamper with the evidence or try to influence or threaten the witness.

9. The present bail application along with pending applications, if any, stands disposed of.

10. *Dasti.*

DR. SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 05, 2023/N/AM