



2024:DHC:5373



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

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Judgment delivered on:22.07.2024

+ **BAIL APPLN. 163/2024 & CRL.M.A. 1272/2024**

**NITIN RATHORE**

..... Applicant

versus

**STATE NCT OF DELHI**

..... Respondent

**Advocates who appeared in this case:**

For the Applicant : Mr. Manohar Pratap, Adv. (through VC)

For the Respondent : Mr. Y.R. Ansari, ASC for the State with  
Mr. Alok Sharma & Mr. Vasu Agarwal,  
Advs.  
SI Rajendra Meena, PS-Anti-Narcotics  
Squad, West Distt., New Delhi

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

**FACTUAL MATRIX-**

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No. 317/2023 dated 05.05.2023, registered at Police Station Rajouri Garden for offences under Sections 22/29 of the Narcotics Drugs & Psychotropic Substances Act, 1985 ('NDPS Act').

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2. It is alleged that on 04.05.2023, at about 11:00 PM, on the basis of the secret information received by a police official, the applicant, coming from Uttarakhand to Delhi, along with his friend Azeem by his Corolla Car bearing No. UK 04 Z 7209, was chased and intercepted near Tagore Garden Metro Station.

3. After the due compliance of notice under Section 50 of the NDPS Act, a personal search of the accused persons was carried out, and no contraband was recovered. Further, it was upon the search of the car that four polythene zippers were found in the hand rest compartment and tested positive for '*amphetamine*' with the help of field testing kit. It weighed around 280 grams.

4. The applicant and the co-accused both were arrested on 05.05.2023. During the further investigation, the applicant disclosed that the recovered contraband was purchased from one, Abrar Ahmad.

5. The applicant's bail application was dismissed by the learned Trial Court *vide* order dated 21.11.2023, due to the embargo under Section 37 of the NDPS Act. Hence, the present application.

6. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. It is submitted that there are serious infirmities in the case of the prosecution.

7. He submitted that the FSL report dated 30.05.2024 has been filed in the present case. The examination report stated that '*amphetamine*' could not be detected in the exhibit sent for FSL examination.



8. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

9. It is pertinent to note that the applicant has been in custody since 05.05.2023 and after more than a year, the FSL report dated 30.05.2024 has been filed which tested negative for 'amphetamine'. The relevant part is reflected as under:

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6. Purpose of Reference: - For Chemical Examination & Report.

10. Dates of Examination: 14.03.2024 to 15.03.24.

11. RESULTS OF EXAMINATION REPORT

On Chemical, TLC & GC/MS examination, Amphetamine could not be detected in substance 'P1', 'Q1', 'R1' and 'S1'.

12. After the examination, the remnants of the results have been sealed with the seals of J K FSL DHC/HC impression as per specimen provided below:

Examiner Seal: [Seal]

Examined by:  
Name: JYOTIENDRA KUMAR  
Designation: Asst. Forensic Scientist (Chemistry)  
FSL, DHC/HC, District Court, Patna

Note: 1. Results related only to substance tested.  
2. Report shall not be reproduced except in full without approval of courts or law or Director/FSL GNCT of Delhi or concerned forwarding authority.  
3. Reference to Procedure(s) used: Working Procedure Manual.

10. In the wake of the aforesaid report, it is evident that the substance which was recovered from the applicant during the raid, at this stage does not appear to be a narcotic drug or a psychotropic substance to fall under the purview of the NDPS Act.



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11. The continued detention of the applicant, in light of the above clarification, is now deemed unlawful.

12. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. Liberty of an individual is of paramount importance and it is the fulcrum of the Indian democracy.

13. The Hon'ble Apex Court in a catena of judgments has held that the deprivation of personal liberty, even for a single day, is one day too many. In the present case, the applicant has been deprived of his liberty without any legal justification.

14. Given the negative FSL report and the principles of personal liberty enshrined in the Constitution, continuing the detention of the applicant would be an affront to the fundamental rights guaranteed to every individual in the Constitution of India.

15. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹5000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;



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c. The applicant shall appear before the learned Trial Court as and when directed;

d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

16. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

17. The bail application is allowed in the aforementioned terms.

**AMIT MAHAJAN, J**

**JULY 22, 2024**

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