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

+ **BAIL APPLN. 432/2024**

ASIF

..... Applicant

Through: Mr. Hasim Alam & Mr.
Faiz Alam, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Sanjeev Bhandari,
Additional Standing
Counsel.
SI Ravi Beniwal (P.S.
Govind Puri).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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02.04.2024

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in FIR No. 337/2023 dated 07.06.2023 registered at Police Station Govind Puri, for offence under Sections 21/61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. It is alleged that on 06.06.2023, on the basis of secret information, a recovery of 11 grams of Heroin was made from the right pocket of the jeans of the applicant during the search and seizure proceedings. Thereafter, the applicant was arrested and has remained in custody since then.

3. The bail application filed by the present applicant before the learned Trial Court was dismissed on two occasions that is, on 09.08.2023 and 06.12.2023.



4. The learned counsel for the applicant submits that the applicant is in custody since 06.06.2023, the investigation is complete and the chargesheet has been filed. The charges in the present case have been framed by the learned Trial Court.

5. He submits that the contraband allegedly recovered from the applicant is of intermediate quantity and thus the rigors of Section 37 of the NDPS Act are not attracted in the present case.

6. He submits that the search and seizure, in the present case, is also riddled with anomalies wherein the search and seizure of the contraband took place in the absence of any public witnesses.

7. He further submits that the applicant has deep roots in the society and previous involvement cannot be a ground to deny bail to the applicant.

8. *Per Contra*, the learned Additional Standing Counsel for the State strongly opposes the grant of any relief to the applicant. He submits that the offence alleged against the applicant is serious in nature and there is sufficient material on record that shows that the applicant was involved in drug trafficking.

9. He submits that in the present case the recovery has been effectuated directly from the applicant. He further submits that the applicant has involvements in other criminal cases as well.

10. I have heard the learned counsel for the parties and have also perused the records.

11. 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. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

12. There is no cavil that only because the bar under Section 37 of the NDPS Act is not attracted, the accused would not be entitled for bail automatically. In such circumstances, the Court has to consider the parameters as enshrined in relation to grant of bail.

13. It is not denied that the contraband recovered from the applicant is Heroin weighing 11 grams which is an intermediate quantity, and the bar under Section 37 of NDPS Act is not attracted in the present case.

14. The learned counsel for the applicant contends that the process of search and seizure in the present case was carried out in the absence of any public witnesses. He disputes the recovery made from the personal search of the applicant and further states that the contraband was planted. There is no other evidence about the recovery of contraband from the applicant except the Police witnesses. He submits that even the CDR of the applicant has not been obtained to show his presence. Any defence in this regard is a matter of trial.

15. Speedy trial in the present case does not seem a possibility. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.



16. The applicant is in custody since 06.06.2023. The applicant is stated to be a young boy aged 23 years and prolonged incarceration may itself result in the denial of his fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India.

17. In so far as the argument that the applicant is involved in four more cases, it is pointed out that the applicant has been enlarged on regular bail in the said cases. The Hon'ble Supreme Court in the case of ***Prabhakar Tiwari v. State of U.P. : (2020) 11 SCC 648*** has held that the involvement of the accused in other cases cannot be the sole ground for dismissal of the bail application.

18. In view of the above, without commenting on the merits of the case or the technical arguments as raised, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not leave the boundaries of the National Capital Region without prior permission of the learned Trial Court ;
- b. The applicant shall provide the details of his permanent address to the learned Trial Court and intimate the Court, by way of an affidavit, as well as the IO about any change in his residential address;
- c. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times;
- d. The applicant shall appear before the learned Trial Court as and when directed;



e. 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.

19. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

20. 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.

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

AMIT MAHAJAN, J

APRIL 2, 2024

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