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

+ **BAIL APPLN. 760/2024**

SAAKIL

..... Applicant

Through: Mr.Sitab Ali Chaudhary,
Mr.Gufran Ali, Mr.Sadik,
Adv.

versus

STATE GNCT OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP with SI
P.C. Sharma.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

09.05.2024

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1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on bail in FIR No. 33/2023, registered at Police Station: Greater Kailash-I, Delhi for offence under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act').

2. It is the case of the prosecution that on the intervening night of 9/10th March, 2023, when Head Constable Harish was present at BRT Road on night patrolling duty, he intercepted an auto rickshaw. During its search, four different bags containing a total of 79.80 KGs of *ganja* were found. Thereafter, the above FIR was registered against accused Wasim. On checking the mobile phone of the co-accused Wasim and



further interrogation, it came to the light that people from Bengal are in touch with Wasim telephonically and the recovered *ganja* was brought to Delhi from Bengal through a truck driver, that is, the applicant herein. The applicant was arrested on 12.03.2023.

3. The prosecution alleges that the applicant used to transport goods from Delhi to Assam and Assam to Delhi in a truck. On checking his phone, it was found that same suspicious numbers from Bengal area that were in contact with the co-accused Wasim were also in contact with the applicant prior to the incident. It is further alleged that the applicant had received a sum of Rs.11,000/- from the co-accused Zubir Salmani.

4. The learned counsel for the applicant submits that the applicant was merely a truck driver and had no knowledge about the contraband. He submits that the only transaction alleged against him is of Rs.11,000/-. He submits that as far as the common contacts are concerned, the same cannot raise any presumption against the applicant of him being involved in the supply of contrabands. He submits that the applicant is in custody since 12.03.2023 and has no criminal antecedents.

5. On the other hand, the learned APP points out that 79.80 KGs of *ganja* has been recovered from the co-accused, and from his mobile phone, the details of the applicant were recovered. Later, upon study of the mobile phone of the applicant, common suspicious number/contacts were found in the phone of co-accused Wasim as also the applicant. He has also received Rs.11,000/- from the co-accused Zubair Salmani. He submits that therefore, there is enough



material to invoke Section 29 of the NDPS Act against the applicant.

6. I have considered the submissions made by the learned counsels for the parties.

7. As is evident from the above, the case of the prosecution hinges around the two common contacts that were found in the mobile phone of the co-accused Wasim and the applicant. It is also the case of the applicant that the applicant was simply the truck driver and was not aware of the contraband that was being transported. Therefore, merely because the two common contacts are found in the phone of the co-accused and the applicant, it may not be sufficient to draw the presumption of guilt of the applicant by invoking Section 29 of the NDPS Act. Similarly, there is only one transaction of Rs.11,000/- between the applicant and the co-accused Zubair Salmani. The prosecution has also not alleged any other financial transaction between the two of them or any other co-accused with the applicant.

8. The applicant has been in custody since 12.03.2023; he has no criminal antecedents; and his conduct in jail is found to be satisfactory.

9. Keeping in view the above, the applicant has been able to satisfy the test of Section 37(1)(b) of the NDPS Act for being enlarged on bail.

10. Accordingly, it is directed that the Applicant be released on Bail in FIR No. 33/2023, registered at Police Station: Greater Kailash-I, Delhi under Sections 20/25/29 of the NDPS Act on furnishing a personal bond in the sum of Rs.50,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further



subject to the following conditions:

- i. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- ii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iii. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the Applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned.
- iv. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact in any manner with the prosecution witnesses or tamper with the evidence of the case while being released on bail.

11. Needless to state, any observation touching upon the merits of the case is 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 matter.

12. The application is disposed of in the above terms. The pending application is also disposed of.

13. Copy of this order be sent to the Jail Superintendent for



information and necessary compliance.

14. *Dasti.*

NAVIN CHAWLA, J

MAY 9, 2024/Arya/RP

Click here to check corrigendum, if any