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

+ **BAIL APPLN. 771/2024**

RAJI

.....Petitioner

Through: Mr. Amit Gupta and Mr.
Vivek Kumar, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Amol Sinha, ASC
with Mr. Kshitiz Garg,
Mr. Ashvini Kumar and
Ms. Chavi Lazarus,
Advocates for State
alongwith SI Sanjeev
Gupta, P.S. Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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02.08.2024

1. The present application is filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') for grant of regular bail in FIR No. 242/2022 dated 12.10.2022, registered at Police Station Crime Branch, for the offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). Chargesheet has been filed against the applicant for the offence under Section 29 of the NDPS Act.

2. The brief facts of the case are that on 12.10.2022, on the basis of secret information, accused Amanpreet Kaur was apprehended at a hotel in Paharganj, Delhi. It is alleged that one brown parcel containing 1410 grams of Charas was recovered from her.



3. It is alleged that accused Amanpreet disclosed that she used to sell the contraband in Delhi and Rajasthan after procuring Charas from Himachal Pradesh from the applicant and co-accused Gopal (the applicant's son).
4. The applicant was arrested in the present case on 28.03.2023.
5. The learned counsel for the applicant submits that the applicant has clean antecedents and she has been falsely implicated in the present case.
6. He submits that the chargesheet has already been filed in the present case and there is no need to subject the applicant to further incarceration.
7. He submits that no recovery has been effectuated from the applicant in the present case. He submits that Section 37 of the NDPS Act is not attracted *qua* the applicant in the present case, and his bail applicant ought to be considered without applying the rigours thereof.
8. He submits that co-accused Gopal was granted bail by this Court *vide* order dated 19.01.2024. He further submits that co-accused Shivansh Dutta has also been granted pre-arrest bail by this court by order dated 24.02.2023.
9. *Per contra*, the learned Additional Standing Counsel for the State vehemently opposes the grant of any relief to the applicant. He submits that the learned Trial Court has rightly dismissed the applicant's bail application by order dated 24.02.2023.
10. He further submits that there is recovery of commercial quantity of the contraband and thus the bar under Section 37 of the NDPS Act would act against the applicant in the present case.
11. I have heard the counsel for the parties and perused the



record.

12. *Prima facie*, the applicant has been implicated in the present case primarily on the basis of the disclosure statement of the accused Amanpreet. It is relevant to note that while the veracity of the disclosure statement of the co-accused is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Supreme Court in ***Tofan Singh v. State of Tamil Nadu*** (*supra*), wherein it was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration. The relevant paragraphs of the said judgment is set out below:-

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments in Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law. 158.

We answer the reference by stating: 158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS

Act.”



(emphasis supplied)



13. A Coordinate Bench of this Court in ***Phundreimayum Yas Khan Vs. State (GNCT of Delhi) : 2023 SCC OnLine Del 135***, has held that when there is no material to link the applicant with the recovery of the commercial quantity from the co-accused persons, the rigors of Section 37 would not apply. It was further held that the disclosure statement of co-accused is per se not admissible without there being any corroboration.

14. It is pertinent to note that no recovery has been effectuated from the applicant in the present case. It is alleged that there are certain WhatsApp chats, bank transactions and CDR that show the connectivity between the accused persons.

15. Even though the Status Report indicates that there are certain WhatsApp chats between the applicant and accused Amanpreet, from whom recovery was effectuated in the present case, however, on being asked, the learned ASC fairly concedes that the WhatsApp chats relied upon by the prosecution have been exchanged between the accused Amanpreet and the son of the applicant, that is, co-accused Gopal. It is stated that no WhatsApp messages have been exchanged between the applicant and the accused Amanpreet.

16. This Court, in the case of ***Dalip Singh v. State (NCT of Delhi) : 2019 SCC OnLine Del 6494***, had observed as under:

11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration.



*Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. **Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.***

12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.

(emphasis supplied)

17. Merely because the applicant was in regular touch with the co-accused Gopal, who is her son, the same is not sufficient to *prima facie* establish the offence against the applicant.

18. It is also alleged that accused Amanpreet transferred ₹15,000/- to one Jabe Singh as payment for the contraband at the instance of the applicant. There is no material on record to link the bank transaction with the purchase of the contraband except for the disclosure of accused Amanpreet. In such circumstances, at this stage, the same is insufficient to link the applicant to the offence.

19. The State has contended that the applicant cannot be enlarged on bail unless the conditions laid down in Section 37 of the NDPS Act are met.

20. The Hon'ble Apex Court, in the case of ***Union of India v. Shiv Shanker Kesari*** : (2007) 7 SCC 798, has observed as under:

“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for



believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.”

21. The Hon’ble Apex Court, in the case of ***Mohd. Muslim v. State (NCT of Delhi)*** : 2023 SCC OnLine SC 352, has reiterated the law in regard to Section 37 of the NDPS Act as under:

“20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

22. In the present case, as discussed above, there are reasonable grounds to believe that the applicant is not guilty of the alleged offence. The applicant is also stated to have clean antecedents. In view of the above, this Court is of the opinion that the embargo of Section 37 of the NDPS Act does not come in the way of granting bail to the applicant.

23. It is also not disputed that the co-accused Gopal has already been granted bail by a Coordinate Bench of this Court by order dated 19.01.2024, in BAIL APPLN. 1652/2023. The role



of the applicant at this stage is not alleged to be graver than that of the co-accused Gopal.

24. In the present case, the prosecution has been given an adequate opportunity to oppose the present application. In view of the facts of the case, in the opinion of this Court, the applicant has *prima facie* established a case for grant of bail and she is entitled to the same on the ground of parity.

25. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. She 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. She shall under no circumstance leave the boundaries of the country without informing the concerned IO/SHO;
- c. She shall appear before the learned Trial Court as and when directed;
- d. She shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;
- e. She shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.

26. 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.



27. 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.

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

AMIT MAHAJAN, J

AUGUST 02, 2024

“SSC”