



\$~17

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

+ **BAIL APPLN. 881/2024**

ASLAM

..... Petitioner

Through: Mr. Suraj Prakash Sharma, Adv.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
State with SI Vishan Kumar, PS.
ANTF, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

09.04.2024

%

1. The present petition has been filed under Section 439 CrPC seeking regular bail in connection with FIR No. 162/2022 under Sections 20/29 of NDPS Act registered at Police Station Crime Branch, Delhi.
2. The case of the prosecution is that on the basis of a secret information one co-accused Mr. Ashok Kumar @ Lala was intercepted who was carrying suitcase in his left hand. On search of his suitcase, *charas* weighing 1.100 kg was recovered. Accused Ashok Kumar was apprehended and the FIR was registered. Subsequently, co-accused Guddu was also apprehended when he came to receive *charas* from accused Ashok Kumar.
3. The learned counsel for the petitioner submits that the primary incriminating circumstance against the present petitioner is that SIM registered in the name of the petitioner was recovered from the co-accused Ikram and Guddu who have been using the same for drug trafficking. He submits that the said co-accused persons have already been enlarged on bail. Co-accused Ikram was enlarged on bail by this Court *vide* order dated



20.09.2023 passed in BAIL APPLN. 1089/2023 and co-accused Guddu was enlarged on bail *vide* order dated 06.11.2023 passed by the learned Special Judge (NDPS), North, Rohini Court, Delhi.

4. He submits that another incriminating material against the present petitioner is the CDRs which shows that the petitioner was in regular touch with the co-accused Ashok, as well as, Guddu. He submits that CDRs are not substantive piece of evidence and the same could be used only for corroboration.

5. He submits that there is no substantive evidence available against the petitioner nor recovery of any contraband has been made from the present petitioner. The recovery of contraband, if any, is from the co-accused Ashok Kumar.

6. He further submits that the petitioner is in custody since 18.08.2023 and the investigation is complete, therefore, the custody of the petitioner is no more required.

7. *Per contra*, the learned APP for the State has argued on the lines of the Status Report.

8. He submits that the recovery of the contraband has been made from the co-accused Ashok Kumar with whom the petitioner was found to be in contact on the basis of CDRs. He further submits that the SIMs registered in the name of the present petitioner were recovered from the co-accused persons.

9. I have heard the learned counsel for the petitioner, as well as, the learned APP for the State and have perused the record.

10. It is not in dispute that the recovery of the contraband in the present case was only made from the co-accused Ashok and there is no recovery of



any contraband, whatsoever, made from the present petitioner.

11. In so far as the SIM registered in the name of the petitioner being used of Ikram and Guddu is concerned, it is important to note that the co-accused Guddu has already been granted bail by the learned Special Judge. Further, the co-accused Ikram against whom similar allegations have been made was also granted bail by this Court vide order dated 20.09.2023 passed in BAIL APPLN. 1089/2023.

12. In so far as the incriminating circumstances in the form of CDR is concerned, suffice it to say that the CDRs is not a substantive piece of evidence and can be only used for the purpose of corroboration. It is trite that no conviction can be based solely on the basis of CDRs.

13. Having regard to the aforesaid circumstances, I am *prima facie* of the view that rigours of Section 37 of NDPS Act will not apply to the present petitioner.

14. It is also not the case of the prosecution in the Status Report that the petitioner is a flight risk or he is likely to influence the witnesses, in the event he is enlarged on bail. Further, it not alleged in the Status Report that the petitioner has a criminal record.

15. Considering the aforesaid circumstances in entirety, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on bail subject to his furnishing a Personal Bond in the sum of Rs. 50,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:

a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.



b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.

c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

16. The petition stands disposed of.

17. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on the merits of the case.

18. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

19. Order *dasti* under signatures of the Court Master.

20. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

APRIL 9, 2024/dss