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

+ **BAIL APPLN. 1115/2024**

SURESH

.....Petitioner

Through: Mr. S. K. Santoshi, Advocate.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastva, APP for the
State with SI Dharmender, Special
Cell.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

16.12.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No.111/2023 dated 23.04.2023 registered under sections 18/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S.: Special Cell, Delhi.

2. Notice on this petition was issued on 01.04.2024.
3. Status Report dated 01.05.2024 has been filed in the matter.
4. Nominal Roll dated 22.04.2024 has also been received from the concerned Jail Superintendent.
5. Furthermore, in the context that was recorded in last order dated 29.11.2024, Mr. Tarang Srivastva, learned APP appearing for the State has handed-up a Status Report dated 05.12.2024, which encloses FSL Report dated 06.09.2024 in relation to the voice samples of the petitioner alongwith a transcript of the conversation the petitioner is



alleged to have had with the co-accused Lakhpat. The status report is taken on record.

6. The court has heard Mr. S. K. Santoshi, learned counsel appearing for the petitioner; as well as learned APP for the State.
7. Mr. Santoshi argues that the petitioner had joined the services of Lakhpat as a 'helper' on a truck that Lakhpat used to ply for hire. He submits that admittedly Lakhpat is the owner of the truck; and was driving it on the day when some 100 kgs of opium is alleged to have been seized from the truck.
8. Counsel further argues, that a perusal of the transcript of the conversation, which has been attached to the status report would show, that the petitioner had just about joined the services of Lakhpat, and in the course of that conversation with Lakhpat he was in fact inquiring about his proposed salary, in response to which Lakhpat told the petitioner that he would be paid a salary of Rs.6000/- per month, and over and above that, depending on the number of rounds the truck would make, the petitioner would be entitled to a salary of upto Rs.25,000/- per month.
9. Mr. Santoshi submits, that a perusal of the conversation between the two would also show that there is no reference whatsoever to the carrying of any suspicious goods or articles, much less any contraband in the truck.
10. Counsel further submits, that the petitioner was unaware that the truck was laden with contraband; and he has been implicated in the case only because he happened to be in the truck at that time, but only as a 'helper'.



11. Counsel also points-out, that as the petitioner's nominal roll shows, the petitioner has already suffered judicial custody of more than 1½ years as an undertrial; that he has no other criminal involvements; and his jail conduct has been 'satisfactory'.
12. Learned APP on the other hand submits, that the truck in which the petitioner was also riding was found carrying 100 kgs of opium, which is a 'commercial' quantity; of which about 05 kgs of opium was recovered from Lakhpatt's backpack and the remaining quantity was recovered otherwise from the truck. Learned APP also submits that the voice calls between the petitioner and Lakhpatt, which were 10 in number, show that the petitioner was also involved in the commission of the offence.
13. Mr. Srivastva submits, that the truck was intercepted based on the information received from a secret informer on 23.04.2023, which was duly reduced into writing, as required under section 42 of the NDPS Act. He further submits that since a commercial quantity of opium was recovered from the truck, the rigours of section 37 of the NDPS Act apply; and the petitioner is not entitled to the relief of regular bail.
14. Upon a conspectus of the facts and circumstances of the case, it is clear that the main piece of evidence available against the petitioner is that he was riding in the truck which was intercepted and found to be carrying 100 kgs of opium, which is a commercial quantity. However, there is no allegation that any contraband was recovered either from the person of the petitioner, or from any bag or receptacle that the petitioner was carrying; and it is also not the allegation that the



petitioner was driving the truck nor that he was the one dictating where the truck was headed.

15. A perusal of the transcript of conversation appended to the status report, in which the voices of the petitioner and Lakhpatt have been confirmed by the FSL report, would show that the conversations are dated 13.04.2024 and 14.04.2024, *i.e.*, about 10 days before the date on which the truck was intercepted and contraband was allegedly seized from it on 23.04.2023 and the conversations appear to be banal and ordinary. In particular, the petitioner is heard discussing his salary with Lakhpatt in the following terms :

“L - अच्छा..... तो गाड़ी पर चलोगे बताओ

S - चलेंगे गाड़ी के लिए बात करी है उन ने

L - लाइसेंस है?

S - लाइसेंस

L - हाँ

S - लाइसेंस चाहिये है

L - गाड़ी पर मांग लेते है आदमी डाबल लाइसेंस वाम उड़ीसा मे

S - अ है

L - आंध्रा उड़ीसा मे

S - अच्छा ना हो तो

L - ना हो तो भी कोई दिक्कत नहीं है और बताओ।

S - अच्छा..... तो पैसों का हिसाब किताब क्या है?

L - हिसाब किताब तनख्वा तो 6000 रुपये दे रहे है महीने में.....

6000 रुपये महीना तनख्वा दे रहे है। बाकी चक्कर लगगो.....

लगगो तो वा मजूद होगी।

S - हाँ

L - तो 25000 रुपये दे देंगे ना लगा तो तनखा वो ही है।

S - अच्छा

L - ऊपर वाले की दुआ से अब तो चक्कर लग रहे है फिलहाल।”



16. At least on a first blush reading of the conversation therefore, it would appear that the petitioner was discussing his employment with Lakhpat, including whether he would need to have a license (presumably to drive a truck) and his monthly salary. No long or prior association of the petitioner with Lakhpat is discernible, at least from that conversation.
17. As submitted on behalf of the petitioner, the nominal roll shows that the petitioner has been in judicial custody for more than a year-and-a-half as an under-trial; that his jail conduct has been 'satisfactory'; and no other criminal involvement is listed against him.
18. Though, it is true that where an offence under the NDPS Act concerns recovery of a commercial quantity of contraband, the rigours of section 37 of the NDPS Act come into play; but application of that provision would require that *at least the foundational allegations* of the offence under the NDPS Act must be made-out against a particular accused person. In the present case admittedly, nothing has been recovered from the person of the petitioner; nor from any bag or receptacle that he was carrying; and he has been implicated in the case only for the reason that he was riding in the truck as a 'helper' at the time the truck was intercepted and contraband was seized from it.
19. Upon enquiry, the court is informed that the proceedings before the learned trial court are at the stage of framing of charges; and that the prosecution has cited 25 witnesses, none of whom have obviously been examined as of date. It is therefore very unlikely that the trial in the matter will be completed anytime soon.



20. In the circumstances of the case, this court is persuaded to grant to the petitioner – **Suresh s/o Chhatra Pal** – *regular bail* pending trial, subject to the following conditions :
- 20.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rs. Twenty-five Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 20.2. The petitioner shall furnish to the Investigating Officer/S.H.O., Special Cell, Delhi a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 20.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 20.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and
- 20.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
21. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.



22. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
23. The petition stands disposed-of.
24. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 16, 2024

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