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

+ **BAIL APPLN. 1280/2024**

TANVEER ALIAS PRINCE

.....Petitioner

Through: Mr. Rahul Sharma, Mr. Kshitij Goel,
Mr. Gaurav Raghuvanshi, Mr.
Deepak Ghai, Advs.
Mr. Arvind Vats, Adv.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP for State
and SI Arvind Kumar, PS ER-1,
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

04.09.2024

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1. The present bail application has been filed under Section 439 Cr.P.C. for grant of regular bail to the accused in case FIR No. 121/2023 registered under Section 21/29 NDPS Act at PS Crime Branch.
2. Briefly stating, on 21.05.2023, co-accused Reena was arrested as contraband i.e., 400 grams heroin was recovered from her possession. During interrogation she disclosed the name of co-accused Gaurav as source of recovered contraband and accused Rahul @ Bunty as receiver of the contraband. She also identified photograph of accused Rahul@ Bunty by his dossier. On 23.05.2023, at the instance of co-accused Reena, co-accused Gaurav was apprehended. Co-accused Gaurav



disclosed the name of further source of supply of contraband i.e., Heroin as accused Tanveer @ Prince and also disclosed his mobile number through which he used to talk with accused Tanveer @ Prince regarding supply of Heroin.

3. During investigation, three notices under section 67 NDPS Act were served upon the accused Mohd. Tanveer, however, he did not join the investigation. Proceedings under section 82 CrPC were initiated against accused Mohd. Tanveer @ Prince. Thereafter, he surrendered before the court and after obtaining permissions from the court, he was arrested. During interrogation, he disclosed that he was procuring heroin supply from one Nigerian National "Frank", who used to meet him in the area of Deowli, Tilak Nagar and Saket, Delhi.
4. Learned counsel for the petitioner submits that the petitioner is in custody since 24.11.2023. Learned counsel submits that no recovery was affected from the present petitioner. It has further been submitted that the petitioner was arrested merely on the disclosure statement of co-accused Gaurav. It has been submitted the only evidence available with the prosecution is the call detail records between the petitioner and the co-accused. Learned counsel submits that therefore in absence of any recovery having been affected from the petitioner and merely on the basis of call detail record, the petitioner's fundamental right of liberty cannot be curtailed. Therefore, the petitioner may be admitted to bail.
5. Learned APP for the State has vehemently opposed the grant of bail to the petitioner and submits that this is a fit case where Section 29 of the NDPS Act can be imposed. Learned APP submits that on the disclosure



statement of Reena accused Gaurav was arrested and from his possession to mobile phones make iPhone having mobile number 8800359204 and OPPO mobile phone without Sim Card were recovered. Learned counsel submits that at his disclosure statement the present petitioner was arrested. The petitioner disclosed his mobile number 8287838936. Accused Gaurav also disclosed the mobile number of the present petitioner as 8287838936. Learned counsel submits that in fact Gaurav has not cooperated with the investigation and during the investigation it was found that mobile number 8287106522 was also running from 21.02.2023 to 17.05.2023.

6. Learned APP submits that the mobile number of the present petitioner 8287838936 was also found saved in the OPPO mobile phone of co-accused Gaurav in the name of “Meenu 2”. It has been submitted that as per CDR analysis of mobile number 8287106522 of co-accused Gaurav, there were total 19 called from 24.04.2023 to 15.05.2023 between co-accused Gaurav and mobile number 8287838936 belonging to the petitioner. Learned counsel submits that it is pertinent to mention that Reena was arrested on 21.05.2023 with commercial quantity. It has also been submitted that the mobile number 8287838936 was found registered in the name of one Dharam Veer. However, Dharam Veer stated that he lost his mobile phone.
7. Learned APP submits that CDR of mobile number 8287838936 of the petitioner was analyzed and it was found that maximum call 1123 were made by petitioner on mobile number 8745814034 which is found registered in the name of Gaurav S/o Raja Ram who is a friend of the petitioner. Learned APP therefore submits that there are enough



material on the record to show that the petitioner was using mobile number 8287838936 and there were 19 calls between co-accused Gaurav and the petitioner from 24.04.2023 to 15.05.2023. Learned APP further submits that the investigation has also revealed that there were WhatsApp Chat between Reena and co-accused Gaurav showing that co-accused Gaurav was a supplier. Learned APP submits that the CDR shows that there was regular interaction between co-accused Gaurav and the petitioner during the relevant time period.

8. Learned APP for the state has relied upon the judgment of ***Awadhesh Yadav vs. State Govt. of NCT of Delhi***, Bail Appln. 1692/2023. Learned APP submits that the coordinate bench of this Court after taking into account the material pointing out to the conspiracy inter alia held that in view of the overwhelming incriminating material on record, which cannot be negated at this stage of bail, there is no reasonable ground for believing that the petitioner is not guilty of the alleged offence. Learned APP therefore submits that the petitioner may not be entitled to be admitted to bail. Learned APP has also relied upon ***Ridhm Rana vs. State (NCT of Delhi)*** 2022 SCC OnLine Del 771. Learned APP has also submitted that the charges have also been framed against the petitioner under Section 29 r/w Section 21(c) NDPS Act.
9. I have considered the submissions. The bail during the course of the trial can only be denied taking into account the gravity of the offence, antecedents of the accused, non-possibility of accused attending the trial and other attending circumstances. Besides the rigors provided in Cr.P.C., there are special provisions in the NDPS Act which provides further restriction on the grant of bail. However, it is a settled



proposition that though the statutory provision as contained in Section 37 of the NDPS Act which prescribes the conditions that are required to be satisfied or conditions on which a person accused of an offence under the act can be released. However, the Constitutional Courts have time and again directed that the court has to read these provisions along with the fundamental rights as granted in Article 21 of the Constitution of India. It is no longer *res integra* that Section 37 does not impose a blanket ban on the grant of the bail. In ***Mohd. Muslim v. State (NCT of Delhi)***, 2023 SCC OnLine SC 352, the Apex Court while dealing with the rigors of Section 37, *inter alia* held as under:

“19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused



cooperating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.”

10. The perusal of this judgment makes it clear that the Court has to interpret this provision reasonably. Courts assessing bail applications must carefully navigate between two key conditions: consider a reasonable satisfaction on a prima facie look at the material present on record and the assurance that the accused will not commit another crime while on bail. Sections 436, 437, and 439 of the CrPC mandate that bail decisions account for the gravity of the offence, with more stringent requirements for serious crimes. Additionally, Special Acts like the NDPS Act impose extra conditions, necessitating a court's satisfaction that the accused might not be guilty and that they pose no further risk of committing crimes if released. These conditions often take precedence over other factors, such as cooperation with the investigation or flight risk. Thus, the court's role under these laws involves a nuanced balance between upholding individual liberty and addressing public safety concerns, particularly when special laws apply.
11. The prosecution has mainly opposed the bail on the ground that the CDR shows the telephonic calls between the petitioner and co-accused Gaurav. The similar question was examined by the coordinate bench of



this Court in **Anwar vs. The State (NCT of Delhi)** Bail Appln. 180/2024 vide order dated 28.03.2024 it was inter alia held that evidentiary value of CDR can only be tested during the trial. The reliance was placed on **Deepak Nagiya v. State (NCT of Delhi)**, 2023 SCC OnLine Del 5641 it was inter alia held as under:

“20. The only incriminating material against the petitioner is the disclosure statement of accused Nisha Malik and CDRs showing the petitioner's family being in touch with said Nisha Malik. Though disclosure statement of co-accused Nisha Malik under Section 67 of the NDPS Act is not admissible per se in view of the decision of the Supreme Court in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, but even if the advantage of the same is not extended to the petitioner at this stage of considering his anticipatory bail application in view of the decision of Supreme Court in State of Haryana v. Samarth Kumar : (Crl.A.1005/2022), wherein it has been observed that the advantage of Tofan Singh (supra) perhaps can only be taken at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial but not at the stage of anticipatory bail, still it cannot be overlooked that co-accused Nisha, who has named the present petitioner has already been granted regular bail on the ground that no recovery of contraband has been made from her. Further, recovery from the co-accused Neha was also of intermediate quantity and there is nothing on record to connect her to the petitioner on one hand and to the main accused Surender @ Bhalu on the other hand. xxx xxx xxx 24. Insofar as the CDRs are concerned, I am of the view that the evidentiary value of the same shall be seen at the stage of the trial and it cannot be a ground to deny anticipatory bail to the petitioner at this stage. I am supported in my view by the judgment of the Supreme Court in State (by NCB) Bengaluru v. Pallulabid Ahmad Arimutta, (2022) 12 SCC 633, the relevant paragraph of which reads as under:—



“12. It has been held in clear terms in Tofan Singh v. State of T.N. [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246], that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar 3516], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433], [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431], [Abu Thahir v. State, 2019 SCC OnLine Kar 3517], [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294], [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial.....”

12. The coordinate bench of this court relying upon the judgment of **Amit Ranjan v. Narcotics Control Bureau, Delhi**, 2022 SCC OnLine Del 1532. In **Amit Ranjan (Supra)** the contentions of the application were similar to those of the present case. It was urged that no recovery was made on the accused and the only incriminating evidence was disclosure statement of co-accused persons.
13. The prosecution had relied upon the CDR details. However, it was inter alia held that this being a matter of trial cannot be the singular reason for denial of bail. Similarly, in **Memboob Khan vs. State GNCT of Delhi**, Bail Appln. 2474/2023 there was no recovery of contraband from the applicant. The prosecution in that case also relied upon the



call detail records. The coordinate bench of this court *inter alia* held that as far as the call detail record which allegedly shows that the appellant was in touch with the co-accused prior to the date of apprehension, there was no recorded conversation and this can at best only raise a suspicion. In the present case also there were allegedly 19 calls between the petitioner and co-accused Gaurav. However, there is no recorded conversation and there is no other material to link such calls with the recovery.

14. It is also pertinent to mention here that in ***Toofan Singh v. State of Tamil Nadu***, (2021) 4 SCC 1 it was *inter alia* held that the disclosure statement cannot be taken at the stage of bail to deny the bail. It is no longer *res integra* that the advantage of the law laid down in ***Toofan Singh (Supra)*** can be availed out by the accused at the stage or arguing a regular bail application. It has also been submitted that the charge-sheet has already been filed.
15. In view of the facts mentioned herein above, the petitioner is admitted to regular bail on furnishing a personal bond of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of Ld. Trial Court subject to the following conditions:
 - a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the petitioner shall report to concerned SHO/IO once in a month;



- d) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - e) the Petitioner shall provide his mobile number(s) to the Investigating Officer and shall keep it operational at all times;
 - f) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
16. The application stands disposed of.
17. A copy of this order be sent to concerned jail superintendent for necessary compliance.

DINESH KUMAR SHARMA, J

SEPTEMBER 4, 2024/AR/HT..