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

Date of decision: 08th OCTOBER, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 1572/2024**

ABRAR@BALE

.....Petitioner

Through: Mr. Rovin Kumar and Ms. Babita,
Advocates.

versus

STATE THROUGH CRIME BRANCH SHORespondent

Through: Ms. Nandita Rao, ASC for the State.
SI Om Prakash, ANTF, Crime Branch

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking bail in FIR No. 222/2021, registered at Police Station Crime Branch for offences under Sections 20/25/29 of the NDPS Act.

2. The facts, in brief, leading to the present Petition are as under:

- a) It is stated that on 15.11.2021, at about 11:43 PM, a call was received to Constable Anuj Kumar, who is posted in Narcotics Cell, Crime Branch, on his mobile phone number from one Zakir Hussan @ Aakir, who is a resident of Bareilly, UP. The said Zakir told the Constable that he is the driver of a Tata vehicle bearing number UP-25 DT-2874 and is accompanied by a helper Shahnwaz Khan and a person namely Shahzeb, who has hired his vehicle from Bareilly to Balangir, Odisha. Zakir further told that the said Shahzeb had loaded some gunny bags containing goods in his truck, which seemed like Ganja. Zakir



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informed the Constable that they would be reaching Majnu ka Tila between 12:30 AM to 01:30 AM and would be climbing down Wazirabaad Pull towards Burari, Delhi where the goods would be unloaded. The truck driver also stated that some persons, who had gone to Balangir, Odisha along with his Tata truck by car bearing number DL-9C AS/AC-1936 to bring the goods back to Delhi, are also accompanying his truck in their car. It is stated that on receiving the information, Constable Anuj gave the information to SI Lekhraj, who noted it on a paper and after sharing the information with the Inspector and ACP Narcotics Cell, Crime Branch and upon getting approval for taking necessary legal action, the secret information was reduced into writing vide GD No. 0001A dated 16.11.2022, PS Crime Branch in compliance of Section 42 NDPS Act. It is stated that a raiding team was constituted and trap was laid at Ring Road after climbing down Wazirabad Flyover towards Burari, Delhi. It is further stated that some public persons were also requested to join the raiding team but none of them agreed. It is stated that the raiding team reached the spot and started waiting for Tata truck bearing number UP 25DT 2874. It is stated that at about 1:10 AM, the above-mentioned Tata vehicle was seen descending from Wazirabad bridge towards Burari. It is stated that the truck was stopped by the raiding team. On enquiry, the name of the person sitting on the driving seat was revealed as driver Zakir Hussain @Askir Aakir Hussain, s/o Iqrar Hussain R/o Village-Sijatpur, P.S Mirganj, Bareilly, UP



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and the identity of other person was revealed as Shah Nawaz Khan s/o Afsar Ali R/o Mohalla Sufi Tola, Bareilly, UP, who is the helper of the driver of the truck. The name and address of the third person was revealed as Shahzeb Chaudhary s/o Nawab Chaudhary R/o House No.-179, Lodhi Tola, Old City, Bareilly, UP. It is stated that when the Police asked Shahzeb Chaudhary about the goods loaded in the truck, he could not give any satisfactory answer. The driver and helper of the truck told that Shahzeb and his associates had got *Ganja* packed in sacks loaded in the truck from Odisha. During inspection, it was found that empty plastic crates were kept in the truck. It is stated that ACP Narcotics Cell, Crime was called for the search of truck. It is further stated that Notice in Hindi under Section 50 of the NDPS Act was given to Shahzeb Chaudhary, however, he refused to be searched before any nearest Gazetted officer or Magistrate. It is stated that Personal search of Shahzeb Chaudhary was conducted by SI Lekhraj. It is further stated that persons who had gathered on the spot were asked to join the proceedings, but none of them agreed and went away from there without telling their name and address. It is stated that at about 01:55 AM, ACP Narcotics Cell, Crime Branch reached at the spot and during search of the truck, total 300 Kg. *Ganja* packed in 12 white plastic bags which was hidden beneath the plastic crates was recovered. It is stated that the recovered *Ganja* was seized and taken into police possession along with Tata Truck and the present FIR was registered at PS



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Crime Branch.

- b) Shahzeb Chaudhary was taken into custody. During investigation, Shahzeb Chaudhary disclosed that one Sushil @ Sonu, one Akram @ Raju and Mahesh had gone to Odisha on the directions of the Petitioner herein and got *Ganja* loaded in the truck. It is stated that the accused Sushil @ Sonu was interrogated and arrested under Sections 20/25/29 NDPS Act on 18.11.2021 in the present case. It was revealed that the car No. DL-9C-AS-1936 (Renault Quid Car) used by the accused persons for piloting the truck belonged to Sushil @ Sonu. The above-mentioned Renault Quid Car was also taken into police possession and ownership of the car was found registered in the name of the accused Sushil @ Sonu. He further stated that the entire operation was being done on the directions of the Petitioner herein.
- c) Charge-sheet has been filed against Shahzeb Chaudhary and Sushil @ Sonu. Raids were conducted to arrest Akram @ Raju, Mahesh, and the Petitioner herein. Notices under Section 67 of the NDPS Act were pasted outside the houses of the Akram @ Raju, Petitioner herein and Mahesh asking them to join investigation. However, they did not join the investigation. Accordingly Non-bailable Warrants were issued against Akram @ Raju, Mahesh and the Petitioner herein.
- d) It is stated that Akram @ Raju was arrested on 08.09.2022 as he was in judicial custody in another FIR, being FIR No.280/2022 registered at Police Station Special Cell for offences under



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Sections 186/353 IPC and Sections 25/27 Arms Act.

- e) It is stated that Petitioner herein was arrested on 12.09.2022 from the Trial Court premises after taking necessary permission from the concerned Court.
 - f) It is stated that Mahesh was arrested on 08.12.2022 from the Trial Court premises after taking necessary permission from the concerned Court.
 - g) Supplementary charge-sheet has been filed on 28.01.2023.
 - h) Charges against the accused persons, including the Petitioner herein have been framed on 22.12.2023 and trial has commenced.
 - i) Petitioner approached the Trial Court by filing an application for grant of bail and the said application was rejected *vide* Order dated 21.03.2024.
 - j) The Petitioner has, thereafter, approached this Court by filing the present Bail Application.
3. It is stated by the learned Counsel for the Petitioner that other than disclosure statement there is nothing to implicate the Petitioner herein. He states that the primary allegation against the Petitioner is that he was in touch with Shahzeb Chaudhary, who is the main accused in the present case. Learned Counsel for the Petitioner states that Shahzeb Chaudhary is the nephew of the Petitioner herein and, therefore, he used to be in touch with him but only on the basis of Call Detail Records it cannot be said that the Petitioner herein was involved in the offence. He, therefore, states that the Petitioner be granted bail.
4. *Per contra*, learned ASC for the State, submits that Mahesh, Shahzeb



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Chaudhary, Sushil @ Sonu and Akram @ Raju travelled from Delhi to Odisha on the directions of the Petitioner herein and had returned in the car with them. She further states that the Call Detail Records of the Petitioner herein and other co-accused establishes that he was in constant touch with Shahzeb Chaudhary. She states that the Petitioner herein is the kingpin of the whole network. She further states that the Petitioner herein has previous antecedents. She, therefore, states that there is strong apprehension that if released on bail, the Petitioner may be involved in similar offence. She, therefore, states that bail ought not to be granted to the Petitioner herein.

5. Heard the learned Counsel for the Petitioner and the learned ASC for the State and perused the material on record.

6. The Call Detail Records given in the Status Report is being reproduced herein and the same reads as under:

Name & Mobile No. of accused	Date	Time	Location
Akram @ Raju: 7064009512	08.11.2021	00:34 AM to 04:44 AM	Location Near Okhla Mandi
	08.11.2021	07:07 AM	Laxmi Nagar
Accused Abrar @ Bale: 9811506407	08.11.2021	00:48 AM to 12:04 PM	Location Near Okhla Mandi
Shahzeb Choudhary: 8979767330	08.11.2021	03:44 AM to 12:29 PM	Location Near Okhla Mandi
	11.11.21 to	14.11.21	Odisha
	09.11.2021 to 13.11.2021	05:45 PM to 08:59 PM	District Raygada, Odisha

7. A perusal of the Call Detail Records indicate that on 08.11.2021 from 03:44 AM to 12:00 PM, Shahzeb Chaudhary, Akram @ Raju and the Petitioner herein were present near Okhla Mandi for loading the crates. Material on record also shows that the Petitioner herein and Shahzeb Chaudhary were in constant touch with each other. The Petitioner herein is



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the uncle of Shahzeb Chaudhary. He was in constant touch with Shahzeb Chaudhary. The Petitioner also went to the Okhla for loading the crates in the truck. All these instances are sufficient to believe that the Petitioner herein has indulged in the crime.

8. The parameters for grant of bail for offences punishable under the NDPS Act, is governed by Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:-

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"



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9. A perusal of Section 37 of the NDPS Act indicates that bail can be granted only when there are reasonable grounds for believing that the accused is not guilty of an offence and he is not likely to commit any offence when released on bail. The parameters for grant of bail to an accused under Section 37 of the NDPS Act have been laid down by the Apex Court in a number of judgments.

10. In Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549, the Apex Court has observed as under:

"6. As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court 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.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not



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guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....."
(emphasis supplied)

11. In Union of India v. Rattan Mallik, (2009) 2 SCC 624, the Apex Court has observed as under :

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted



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above, is *sine qua non* for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of “not guilty”. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.” (emphasis supplied)

12. In State of Kerala & Ors. v. Rajesh & Ors., (2020) 12 SCC 122, the Apex Court has observed as under :-

“19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression “reasonable grounds” means something more than prima facie grounds. It



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contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

13. Applying the law laid down by the Apex Court to the facts of the present case, the CDR shows that the Petitioner was in touch with the other co-accused. Applying the parameters of Section 37 of the NDPS Act, it can be easily inferred that there are reasonable grounds to believe that the Petitioner is guilty of the offence.

14. Material on record discloses that the Petitioner is also involved in FIR No.160/11, registered at Police Station Usmanpur for offences under Sections 302/396/397/412/120B/34 IPC and Sections 25/27 of the Arms Act, and therefore the possibility of the Petitioner repeating the same offence cannot be ruled out more particularly, because he is the kingpin of the well-knit network. The likelihood of the Petitioner fleeing from justice also cannot be ruled out. This Court is therefore not inclined to accede to the prayer of the Petitioner for grant of regular bail at this juncture.

15. The bail application is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 08, 2024/Rahul