



\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 2715/2023**
GAURAV CHOPRA

..... Petitioner

Through: Mr.Aditya Aggarwal,
Mr.Naveen Panwar, Mr.Manas
Agarwal & Mr.Mohd. Yasir,
Adv.

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr.Aman Usman, APP.
Insp. Manish Chaudhary & ASI
Prakash, PS Mehrauli.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **19.01.2024**

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') seeking release on regular bail in FIR No. 407/2020 registered with Police Station: Malviya Nagar, New Delhi under Sections 20/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act').

2. It is the case of the prosecution that on 25.09.2020, on secret information received, the applicant was apprehended on a scooty from near the MCD office, Ravi Mehta MCD Park, Banshi Lal Verma Marg, Malviya Nagar, New Delhi. On search, a total of 1028 grams of *Charas* (Hashish) was recovered from the person/his scooty in the



form of three block shape pieces. Two sets of samples were drawn on the spot, weighing 20 grams each, leaving the remaining quantity as 988 grams. Later, in compliance with Section 52A of the Act, the sampling was again conducted before the learned Sub Divisional Magistrate concerned, and three samples of 10 grams each were drawn.

3. The learned counsel for the applicant submits that the FSL report indicates that the samples received by it weighed 9.1 grams, 5 grams, 4.6 grams, and 4.6 grams each. He submits that there is a huge discrepancy in the quantity of the samples allegedly drawn and what was sent to and received by the FSL for examination. He further submits that the sampling could only have taken place before a Magistrate in terms of Section 52A of the Act, and before the Magistrate, the quantity of alleged *Charas* was only 988 grams, which is not a commercial quantity and, therefore, the rigours of Section 37 of the Act will not apply.

4. On the other hand, the learned APP submits that the recovered *charas* would have some moisture, which, with the passage of time would evaporate, leaving the correct weight of the contraband recovered. He submits that it is for this reason that in all the samples there is a proportionate decrease in weight. He submits that the quantity recovered from the applicant at the time of seizure has to be considered and the same was 1028 grams, which is a commercial quantity, and rigours of Section 37 of the Act would be applicable.

5. I have considered the submissions made by the learned counsels for the parties.



6. It presently cannot be disputed that there is a discrepancy in the weight of the samples drawn and what was found to be the actual weight of the samples by the FSL. The reason for such discrepancy will be a matter of trial, however, in my view, it is sufficient to cast a doubt on the case of the prosecution at this stage. Coupled with the above is the fact that the quantity which was produced before the learned Magistrate was 988 grams, which is not commercial. In my view, even otherwise, the applicant has made out a case for release on bail under Section 37 of the Act.

7. Keeping in view the above, the applicant is directed to be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one local surety of the like amount, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. Applicant shall provide his permanent address to the learned Trial Court. The applicant shall intimate the learned Trial Court by way of an affidavit and to the IO regarding any change in the residential address.
- iii. Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. Applicant shall provide his mobile numbers to the IO concerned, which shall be kept in a working condition at all times and shall not be switched off or changed without prior intimation to the IO concerned. The mobile location shall also be kept on at all times.
- v. Applicant shall report before the concerned IO in every 15 days.



- vi. Applicant shall not communicate with or come in contact with any of the prosecution witnesses, the victim or any member of the victim's family or tamper with the evidence of the case while being released on bail.
 - vii. Applicant shall not indulge in any criminal activity. In case the applicant is again found to be involved in any case relating to the NDPS Act, it will be open to the prosecution to move an appropriate application seeking cancellation of his bail.
8. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the matter.
9. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
10. The Bail Application is disposed of in the above terms.

JANUARY 19, 2024/rv/AS

NAVIN CHAWLA, J

[Click here to check corrigendum, if any](#)