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

+ **BAIL APPLN. 2723/2023**

SHAHIDUL

..... Applicant

Through: Mr.S.Islam and Mr.Shan Ul
Islam, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr.Aman Usma, APP with SI
Murari Krishan & ASI Bedi
Ram, PS NFC, New Delhi.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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15.01.2024

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973, praying for being enlarged on bail in FIR No. 0164/2023, registered at Police Station: New Friends Colony, South- East, Delhi, under Sections 21/61/85 of the Narcotic-Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act').

2. It is the case of the prosecution that on 13.05.2023, on a secret information being received, the police party raided Taimoor Nagar, wherefrom they apprehended the applicant herein. At the time of his arrest, he was found with 66 grams of smack. At the time of drawing of samples before the learned Magistrate in terms of Section 52A of the NDPS Act, however, the weight of the smack was found to be 30.369 grams. This was attributed as a mistake at the time of weighing the seized smack at the spot of arrest, stating that it was taken in Lb (pound).



3. The learned counsel for the applicant submits that the alleged quantity of smack recovered from the applicant is 'intermediate' and, therefore, the rigours of Section 37 of the NDPS Act will not be applicable. He further submits that the discrepancy in the weight of the smack allegedly recovered from the applicant, itself is sufficient to cast a doubt on the case of the prosecution. He further submits that there is also a doubt on the alleged notice under Section 50 of the NDPS Act being served on the applicant, inasmuch as, the same appears to be in a cyclostyle form, not bearing the signatures of one of the witnesses, and the date. The signature of the applicant also appears above the recording of the alleged waiver of the applicant to be searched before a Gazetted Officer or a Magistrate and not underneath it, as would be in normal circumstances. In support, he places reliance on the judgment of this Court in *Anita @ Kallo v. The State (NCT of Delhi)* 2023:DHC:4934.

4. He submits that the applicant is not alleged to be involved in any other case. The applicant has been in judicial custody since 13.05.2023. The charge-sheet stands filed already.

5. On the other hand, the learned APP for the State submits that only on the alleged discrepancy in the weight of the smack recovered from the applicant, the applicant cannot claim to have made out a case for being released on bail. He submits that the weight of the contraband recovered from the applicant is, in fact, found to be lesser than what is mentioned in the FIR and, therefore, if at all, a benefit has been given to the applicant. He further submits that, in any case, these are matters to be considered in the trial and cannot be a ground for



releasing the applicant on bail. He submits that there is no discrepancy in the notice issued to the applicant under Section 50 of the Act. He submits that it duly reflects the DD number.

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

7. The FIR reflects 66 grams of smack being recovered from the applicant, while it is now admitted that during the sampling procedure, it was found to be only 30.369 grams. This casts a *prima facie* doubt on the alleged recovery and the sanctity of the seizure. The explanation of the respondent that while seizing the material, it was weighed in Lb (pound), also cannot be accepted inasmuch as 66 pounds would, in fact, convert into 29937.1 grams.

8. I also find *prima facie* merit in the submission made by the learned counsel for the applicant with respect to the alleged discrepancy in the notice served under Section 50 of the NDPS Act on the applicant.

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

- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any



change in his residential address.

- iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses.

10. 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 merits of the matter.

11. The bail application is disposed of in the above terms.

12. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

13. *Dasti.*

NAVIN CHAWLA, J

JANUARY 15, 2024/ns/RP

Click here to check corrigendum, if any