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

+ **BAIL APPLN. 2769/2023**

SH. BRAHAM SINGH

..... Petitioner

Through: Mr. Anil Kumar Sharma and
Mr. Narender Kr. Sharma, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms.Shubhi Gupta, APP for the State
with SI Rohit, ANTF, Crime Branch.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

29.01.2024

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1. This application has been filed under Section 439 Cr.P.C. for grant of regular bail to the Applicant Braham Singh (through parokar/son), S/o Late Sh. Khajan Singh in FIR No.289/2022 dated 16.12.2022 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) PS: Crime Branch.

2. Status report has been filed. The case of the prosecution is that on secret information being received that one woman namely, Bazi R/o Jamia Nagar, Okhla, Delhi, has kept large quantity of heroin at her home and supplies the same in Delhi and that if raid was conducted, she could be apprehended with large quantities of heroin. HC Amit who had received the information produced the secret informer before ASI Naresh and after verifying the secret information, the secret informer was produced before Insp. Jasbir Singh in his office. Finally, ASI Naresh lodged a DD entry vide No. 0001A dated 16.12.2022 and the same was produced before Insp. Jasbir Singh for compliance of Section 42 of NDPS Act. A search warrant was



obtained from the ACP/ANTF Crime Branch under Section 41(2) of NDPS Act and ASI Naresh constituted a raiding team which along with the secret informant and necessary equipment departed to the house of Bazi. Thereafter, when the team reached the given address and knocked at the door of the house, one lady, namely Haseena Khatoon @ Bazi, wife of Masoom Alam, aged 22 years, came at the door. She was shown a search warrant/authorization of search under Section 41(2) of NDPS Act and was explained the meaning of the warrant and the procedure. After hearing that her house would be searched by the Police, the lady tried to flee, but was apprehended by W/HC Uma Chaudhary. Notice under Section 50 of NDPS Act in Hindi was served upon her and she was informed of her legal rights and also explained the meaning of Gazetted Officers and Magistrates. Haseena Khatoon refused to be searched before any GO or Magistrate and her refusal was recorded in Hindi in her own handwriting. During the search of Haseena Khatoon's house, 350+37 grams of heroin was recovered and the same was converted into parcels A and B and later taken into police possession through seizure memos. Present FIR No. 289/2022 was thereafter registered under Section 21 of NDPS Act at PS: Crime Branch and investigation was initiated.

3. It is further stated in the report that during the course of investigation, accused Haseena Khatoon disclosed in her disclosure statement that she used to procure heroin from Kajal R/o Palam village and that around three days ago, she had bought 500 grams of heroin from Kajal at the rate of Rs. 900/- per gram, out of which, she sold 100 grams of heroin at the rate of Rs. 1200/- per gram to one person, namely, Braham Singh (Applicant), who lives in Kalyanpuri, Delhi. Thereafter, two days PC remand of Haseena



Khatoon was obtained from the Trial Court. At the instance of Haseena Khatoon, two persons were arrested from Palam Village, Manglapuri, Delhi being Kajal @ Sanjeet @ Kali @ Surjeet Kaur w/o Lt. Vijay Kumar R/o Jhuggi No. 25, Naseerpur Road, Manglapuri, Palam Village, Delhi, aged 39 years, from whom 176 grams of heroin and Rs.1,32,500/- cash were recovered and the other being Ravi Kumar @ Toni s/o Samunder Singh R/o B-649, 50 JJ Colony, Uttam Nagar, Delhi, aged 35 years, from whom recovery of 428 grams of heroin was made. During further investigation on 03.01.2023, receiver of the contraband i.e. the Applicant was arrested on the basis of disclosure statement of accused Haseena Khatoon and CDR connectivity among them. Two mobile phones with calling numbers 9773561992 and 9910167055, respectively, were recovered from the possession of the Applicant and on the basis of CDR analysis, it was found that Applicant was well connected with accused Haseena Khatoon, as a total of 24 calls were made between them. On completion of investigation, Charge Sheet was filed before the learned Trial Court on 31.05.2023 and the case is at the stage of framing of charge. FSL result of the recovered contraband is also pending and a letter has been written by DCP/Crime to FSL Rohini to expedite the FSL result.

4. It is submitted on behalf of the Applicant that he is 71 years of age and for the past several years has been running a sugarcane juice stall with the help of one worker namely, Sonu and is somehow making the two ends meet for himself and his family. Applicant was arrested in the present case on the basis of the disclosure statement of the prime accused Haseena Khatoon and there is no other incriminating evidence against him. It is a settled law that disclosure statement of a co-accused is inadmissible without



any corroboration. No recovery of any narcotic or psychotropic substance was made from the Applicant and/or his premises on search by the raiding team. Reliance by the prosecution on CDR details is also misconceived as merely telephone calls would not be sufficient to deny bail to the Applicant guilty and in any case, evidentiary value of the CDRs will be tested only during trial. Learned counsel in support of his submissions relies on the judgment of the Supreme Court in ***State (BY NCB) Bengaluru v. Pallulabid Ahmad Arimutta and Another, (2022) 12 SCC 633***, wherein the Supreme Court has held that in view of the judgment of the Supreme Court in ***Tofan Singh v. State of T.N., (2021) 4 SCC 1***, confessional statement recorded under Section 67 of the NDPS Act is inadmissible in the trial of an offence under NDPS Act and further that CDR details of some of the accused is an aspect that would be examined at the stage of trial. Reliance is also placed on the judgment of this Court in ***Deepak Nagiya v. State (NCT of Delhi), 2023 SCC OnLine Del 5641***, wherein the Court has held that in the absence of any other incriminating material, CDR details cannot be a ground to deny bail. Learned counsel also relies on the judgment of this Court in ***Phundreimayum Yas Khan v. State (NCT of Delhi), 2023 SCC OnLine Del 135***, for the proposition that where there is no recovery, rigours of Section 37 would not apply, as also that in the absence of any substantive independent evidence, bail cannot be denied purely by relying on the disclosure statement of a co-accused. For the same propositions, learned counsel also relies on the judgment of this Court in ***Amit Ranjan v. Narcotics Control Bureau, Delhi, 2022 SCC OnLine Del 1532***.

5. *Per contra*, learned APP submits that commercial quantity has been recovered from the main accused Haseena Khatoon and therefore, rigours of



Section 37 of NDPS Act would apply in the present case. It is stated that in addition to the disclosure statement of the co-accused, CDR analysis shows that the Applicant had made as many as 24 calls to the main accused Haseena Khatoon and the last one was on 13.12.2022, which was in close proximity to the date of Applicant's arrest on 03.01.2023. Applicant is involved in a heinous crime against the society at large besides the fact that there is another case pending against him under Section 307 IPC and keeping into account the totality of the facts and circumstances, he should not be admitted to regular bail.

6. I have heard the learned counsel for the Applicant and learned APP for the State.

7. From a close reading of the status report, there is no doubt that the only incriminating material against the Applicant is the disclosure statement of the main accused Haseena Khatoon, who stated that she had sold 100 grams heroin to the Applicant. This disclosure statement is not admissible in view of the judgment of the Supreme Court in *Tofan Singh (supra)*. The Supreme Court in *State of Haryana v. Samarth Kumar, 2022 SCC OnLine SC 2087*, has held that the advantage of the law laid down in *Tofan Singh (supra)* can be availed of by the accused at the stage of arguing a regular bail application. It is also an admitted position that despite search by the raiding team, no recovery of any narcotic or psychotropic substance was made from the Applicant or his premises. In *Phundreimayum Yas Khan (supra)*, this Court has held that where there is no recovery from or at the instance of the Applicant and there is no other material to link the Applicant to the recovery of commercial quantity from the co-accused, rigours of Section 37 of NDPS Act would not apply. Insofar as the CDR analysis of the



Applicant and the co-accused Haseena Khatoon is concerned, it has been repeatedly held by the Supreme Court and this Court that merely because the Applicant has made frequent calls with the co-accused, would not be sufficient to deny him bail in the absence of any other corroborative substance and the evidentiary value of the CDRs has to be tested at the stage of trial. In this context, I may allude to the judgment of this Court in **Deepak Nagiya (supra)**, wherein relying on the judgment of the Supreme Court in **State (BY NCB) Bengaluru (supra)** and of this Court in **Phundreimayum Yas Khan (supra)**, as also considering the fact that the only incriminating evidence against the Applicant therein was a disclosure statement of the co-accused, the Court granted anticipatory bail to the Applicant. Relevant passages are as follows:-

“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.

21. 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.

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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. For the aforesaid reason, this Court is not inclined to interfere in the orders.....”

(emphasis supplied)

25. Likewise, a Coordinate Bench of this Court in Phundreimayum Yas Khan v. State (NCT of Delhi), 2023 SCC OnLine Del 135 has observed that in the absence of any other incriminating material, the CAF/CDR details cannot be a ground to deny the bail. The relevant para reads as under:—

Existence of any conspiracy between the applicant and Sayed Javed Hussain based on the CDRs

a. It is stated by learned counsel for the Respondent that the call record details show that the applicant was in frequent contact with one Amarjit Singh Sandhu on 26.01.2021, i.e, the date when the Tramadol tablets were collected by the co-accused Sayed Javed Hussain. He further states that according to the CAF/CDR details, location of the co-accused Sayed Javed Hussain and the applicant is also found to be in Rajouri Garden on 26.01.2021.

b. In my view, in the absence of any financial dealings, any recovery of narcotic substance or psychotropic substance from the applicant or from the premises of the applicant and/or at the behest of the applicant, the fact that the CAF/CDR details show calls between the applicant and Amarjit Singh Sandhu and the applicant and Sayed Javed Hussain, cannot be a ground to deny him the bail in the present matter.



c. It is for the prosecution to establish the guilt, abetment, conspiracy of the applicant beyond a reasonable doubt which is not borne out from the CAF/CDR details.

(emphasis supplied)

8. Similar view has been taken by another Bench of this Court in ***Amit Ranjan (supra)***, the facts of which to the extent of no recovery, disclosure statement of a co-accused and CDR details between the Applicant and the main co-accused, are close to the facts of this case. In the said case, noting that apart from the voluntary statement of the Applicant under Section 67 of the NDPS Act, which he retracted and statements made by co-accused, which were not admissible, in view of the verdict of the Supreme Court in ***Tofan Singh (supra)*** as well as the fact that there was no other incriminating material and no recovery was effected from the Applicant and the evidentiary value of CDR details being a matter of trial, the Court admitted the Applicant to regular bail. As noted above in the present case, there is no incriminating material against the Applicant, save and except, an inadmissible disclosure statement of the prime accused Haseena Khatoon. Admittedly, there is no recovery from the Applicant and in the absence of any corroborative evidence, the CDR details at this stage can be of no help to the prosecution as these will have to be tested during the trial. Insofar as the FIR registered against the Applicant under Section 307 IPC is concerned, the nominal roll indicates that he is on bail in the said case. For all these reasons, this Court is satisfied that there are reasonable grounds for believing that the Applicant is not guilty of commission of the offence alleged and is not likely to commit any offence under the NDPS Act while on bail. It is therefore directed that the Applicant be released on regular bail on furnishing a personal bond in the sum of Rs.50,000/- with two sureties of



the like amount to the satisfaction of the Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court and would surrender his passport, if any;
 - ii. He shall furnish his permanent address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in the residential address;
 - iii. He shall provide his mobile number to the IO concerned and shall keep the mobile in working condition at all times and the number shall not be changed without prior intimation to the IO and the Court;
 - iv. He shall not indulge in any criminal activity or communicate with or come in contact with the witnesses and/or any other person associated with the present case and/or intimidate them;
 - v. He shall report to concerned IO once a month; and
 - vi. He shall appear on every date of hearing before the Trial Court unless exemption is sought and granted by the Court on any given date.
9. Nothing stated in this order shall tantamount to expression of opinion on merits of the case.
10. Application is allowed and disposed of.
11. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

JANUARY 29, 2024/shivam