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

+ **BAIL APPLN. 2889/2024**

BHURE

.....Petitioner

Through: Mr. Kundan Kumar, Adv.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State with SI Kartuv Singh Rawat,
Anti Narcotics Cell.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

16.12.2024

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1. The present bail application has been filed under Section 439 Cr. PC read with Section 167(2) Cr. PC for grant of statutory bail in case FIR No. 341/2024, dated 02.04.2024, PS Narela Industrial Area under Section 21/25 NDPS Act.
2. The detailed facts, as recorded in the order dated 16.08.2024, indicate that pursuant to the arrest of Rajender @ Yusuf on 02.04.2024, 520 grams of heroin and Rs.5 lakh in cash were recovered from his possession. The present petitioner was arrested on 04.04.2024, and 100 grams of heroin were recovered from his workplace. Subsequently, based on the disclosure made by the present petitioner, Nawab Salam was arrested on 05.04.2024, and 108 grams of heroin were recovered from his house.
3. The prosecution's case is that the present petitioner has a prior



criminal antecedent under the NDPS Act and has been identified as the primary supplier of heroin to Rajender and Nawab.

4. Learned counsel for the petitioner primarily seeks bail on the grounds that the alleged recovery from the petitioner constituted an "intermediate quantity." Therefore, as the chargesheet was not filed within the statutory period of 60 days, the petitioner claims entitlement to default bail.
5. Learned counsel has placed reliance upon *Anita V. State (NCT of Delhi)* in Bail Appln. 1538/2022, DOD 20.07.2022, *Raju Diwarkar @ Pappu v. The State* in Bail Application No. 44/2020 decided on 13.02.2020, *Vicky Kaur v. State of Punjab* 2018 SCC OnLineP&H 6949 and *Amar Singh Ramji Bhai Barot v. State of Gujarat* 2005 7 SCC 550.
6. Learned APP for the State has opposed the bail application on the grounds that the petitioner cannot claim parity with the co-accused Nawab, who was granted bail in Bail Application No. 2458/2024 titled *Nawab vs. State (NCT of Delhi)* dated 05.08.2024. It is submitted that the petitioner has been identified as a supplier and there is evidence establishing his link with Rajender @ Yusuf. The learned APP further contends that the chargesheet has been filed against the petitioner under Section 29 of the NDPS Act and hence opposes the bail plea.
7. At the outset, there is no doubt regarding the principle highlighted by the learned APP that in serious offence cases an accused cannot claim bail on the ground of parity, each case must be evaluated on its own facts and circumstances. However, the fact remains that the



contraband recovery from the co-accused falls under the category of “intermediate quantity”. The question to be addressed is whether the recovery made from other accused persons can be clubbed to constitute a commercial quantity, thereby extending the statutory period for filing the chargesheet.

8. In ***Raju Diwarkar @ Pappu*** (supra), the Court, vide order dated 13.02.2020, considered the principle of purity percentage in contraband and inter alia held that 51 grams of heroin was recovered which fall in the category of “intermediate quantity”. The State, in that case, argued that the total quantity recovered from all the accused should be clubbed. However, the Court, after analyzing the judgments in ***Vicky Kaur*** (supra) and ***Amar Singh Ramji Bhai Barot*** (supra), inter alia concluded that the quantity of contraband carried by each accused could not be aggregated to classify it as a commercial quantity. Consequently, Section 29 was deemed inapplicable, and the Court thus, granted statutory bail.
9. This Court, in ***Anita v. State (NCT of Delhi)*** (supra), inter alia, held that the recovery made from the co-accused cannot be added to the quantity recovered from the petitioner/applicant. As far as the evidence regarding Section 29 is concerned, it is a matter for the trial court to consider during the adjudication of the case.
10. In view of the above facts and circumstances, the petitioner is admitted to bail on furnishing a personal bond of Rs.25,000/-with one surety of the like amount to the satisfaction of the concerned learned Trial Court with 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 not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- d) 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.

11. Copy of the order be sent to the concerned Jail Superintendent for information and compliance.

12. In view of the above, the present application stands disposed of.

DINESH KUMAR SHARMA, J

DECEMBER 16, 2024

Pallavi/NA