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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3047/2024**

LUCKY@ HIMESH

.....Applicant

Through: Mr. Amit Chadha, Mr.
Atin Chadha, Mr. Harjas
Singh Chhatwal & Mr.
Saarthak Sethi, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Om Prakash, ANTF,
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **24.10.2024**

CRL.M.A. 25573/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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1. The present application is filed seeking regular bail in FIR No. 222/2023 dated 20.09.2023, registered at Police Station Crime Branch, for offences under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**'). Chargesheet has been filed against the applicant for the offences under Sections 21/25/29 of the NDPS Act and Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('**JJ Act**').

2. The brief facts of the case are that on 20.09.2023, on the basis of secret information, the accused Jyoti (that is, the mother of the applicant) along with the applicant was apprehended. It is
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alleged that during search, 480 grams of Heroin and cash of ₹44,140/- was recovered from the bags being carried by the co-accused Jyoti.

3. During interrogation, it is alleged that the accused Jyoti and the applicant stated that they used to procure Heroin from their relative Seema, her son Rajiv and Yash Rana. It is alleged that the applicant and accused Jyoti had CDR connectivity with the co-accused persons– Seema, Rajiv and Yash.

4. It is also alleged that accused persons– Manish and Harish, also disclosed that they used to make small *pudias* from raw Heroin with the help of the applicant to further sell the same to local consumers.

5. Section 77 of the JJ Act was added in the present case on the basis of the statement of a minor victim who alleged that the applicant and accused Jyoti used to sell smack to him and he had become addicted to smack due to the same.

6. The learned counsel for the applicant submits that the applicant was only 19 years of age when he was apprehended while travelling with his mother. He submits that it is an admitted case of the prosecution that the mother of the applicant, that is, accused Jyoti, was carrying the bag which allegedly contained the contraband.

7. He further submits that in regard to the alleged recovery of the contraband from the applicant's mother, it is relevant to note that there is no independent witness even though admittedly the allegedly recovery was made from the public place.

8. He contends that no joint liability can be fastened on the applicant and he cannot be attributed any knowledge of his



mother allegedly carrying the contraband solely because he was travelling with her.

9. He lastly contends that the applicant is in custody since 20.09.2022. He submits that the chargesheet has already been filed and the custody of the applicant is not required for any purpose. He submits that the trial has not even started and, therefore, there is no likelihood of it being completed in near future.

10. He relies upon the judgment passed by the Hon'ble Apex Court in the case of *Amar Singh Ramjibhai Barot v. State of Gujrat* : (2005) 7 SCC 550.

11. The learned Additional Public Prosecutor ('APP') for the State submits that the recovery was not effected from any stranger but from the mother of the applicant.

12. He submits that the applicant and his mother were travelling together on a motorcycle and in such circumstances, it cannot be argued that the applicant was not aware that his mother was in possession of the contraband.

13. He submits that by virtue of Section 29 of the NDPS Act, the applicant would also be liable for the same offence as his mother has been implicated for. He submits that even in such circumstances, the bar of Section 37 of the NDPS Act would apply.

14. I have heard the parties and perused the record.

15. In the present case, the contraband has been recovered from the mother of the applicant when she was travelling with him. It is the prosecution's case that the rigours of Section 37 of the NDPS Act will be attracted against the applicant as the



contraband recovered from the applicant's mother is of commercial quantity.

16. The Hon'ble Apex Court in the case of ***Amar Singh Ramjibhai Barot v. State of Gujrat*** (*supra*) has considered the issue whether the quantity of recovered contraband can be clubbed in order to attract the Section 29 of the NDPS Act if two persons are travelling together but carrying contraband individually. It was held that the appellant therein and the co-accused, while travelling together, were individually carrying the recovered substances and in the absence of any other evidence to suggest that there was any abetment or criminal conspiracy, Section 29 of the NDPS Act could not be invoked.

17. Relying upon the judgment of the Hon'ble Apex Court in the case of ***Amarsingh Ramjibhai Barot v. State of Gujrat*** (*supra*), the Coordinate Bench of this Court in the case of ***Karan Singh v. The State (NCT of Delhi) : 130 (2006) DLT 114*** granted bail to the accused by observing that in the absence of any other evidence to show conspiracy, Section 29 of the NDPS Act cannot be attracted so as to invoke rigors of Sections 37 of the NDPS Act merely because two persons are travelling together and one of them is carrying the contraband.

18. In the present case as well, at this stage, there is no material to show that the applicant was aware that his mother was in possession of the contraband and that he was involved in a conspiracy with his mother. The same would be seen during the course of the trial, however, at this stage, it cannot be ignored that the primary factor on the behest of which the applicant has been linked to the offence is that he was travelling with his mother when the recovery was effectuated.



19. Insofar as the CDR connectivity is concerned, Coordinate Bench of this Court observed as under in the case of ***Dalip Singh v. State (NCT of Delhi) : 2019 SCC OnLine Del 6494*** :

“11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner. 12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.”

(emphasis supplied)

20. Having noted that at this stage *prima facie* knowledge of possession of contraband cannot be attributed to the applicant, in the absence of any material to show as to why the applicant was in touch with the co-accused persons, the same is not sufficient to *prima facie* establish the offence against the applicant. The same is to be tested during the course of trial.

21. It is also relevant to note that although the recovery was made at a public place near the GTB Hospital, however, no independent witness was joined by the prosecution even though the applicant was apprehended on the basis of secret information.

22. This Court in the case of ***Bantu v. State Govt of NCT of Delhi : 2024: DHC: 5006*** has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of



independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case.

23. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

24. It is stated in the present case that 4-5 people were asked to join the investigation, however, they left citing some reasons. No notice under Section 100 (8) of the CrPC was given to any person on the refusal to support the Investigating Agency during the search procedure. It is peculiar that the Investigating Agency was unable to associate even a single public witness in the same time, especially since the prosecution had prior secret information and the applicant was apprehended at a public place.

25. While it is true that the effort, if any, made by the prosecution to have the search conducted in the presence of the independent witnesses would be tested during the course of trial and the same may not be fatal to the case of the prosecution, however, the benefit, at this stage, cannot be denied to the accused.

26. Even though it is contended by the learned APP for the State that the applicant does not have clean antecedents and on an earlier occasion he was involved in a case in regard to violation of Delhi Excise Act, 2009. In the opinion of this Court, the previous involvement of the applicant is in relation to a petty offence and the same cannot be a reason for not granting bail to the applicant in the present case.



27. The applicant is stated to be young man of 20 years of age and keeping him in further custody would serve no purpose.

28. In view of the above, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

29. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall appear before the learned Trial Court on every date;
- c. The applicant shall, after his release, appear before the concerned Investigating Officer once in every month;
- d. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

30. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

31. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application



and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

32. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 24, 2024

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