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

+ **BAIL APPLN. 4299/2023**

DEEPU @ PARAS

..... Petitioner

Through: Mr. U.A. Khan, Mr. Tushar Upadhyaya, Mr. Shahrukh Khan, Mr. Alok Kumar Karn and Ms. Rizwana Khan, Advocates

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Richa Dhawan, APP for State with SI Arvind Kumar, ER-3, Crime Branch.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

30.01.2024

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1. This application has been filed under Section 438 Cr.P.C. on behalf of the Applicant Deepu @ Paras S/o Sh. Ajay Kumar seeking anticipatory bail in case FIR No.267/2023 dated 04.11.2023 registered under Sections 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at PS: Crime Branch.

2. Status report has been filed. The case of the prosecution is that on 04.11.2023, a team was constituted, led by ASI Jitender Singh for the purpose of surveillance in Delhi in regard to narcotic drug trafficking vide GD No. 21A, dated 04.11.2023. During patrolling/surveillance, at about 08:37 AM, when ASI Jitender Singh along with the team was present near TR Sawhney, Maruti Showroom, North-East, Delhi, an information was received through one informer that one Sanjay R/o Nand Nagri, Delhi along



with his associates namely Chintu and Paras, both residents of Nand Nagri, Delhi were indulging in supply of heroin in wholesale as well as in retail and would be coming to D-Block, Nand Nagri, near Pratibha School's wall, for supplying heroin to someone between 01:00 PM to 02:00 PM on that day and thus if the raid was conducted, they could be apprehended with the contraband drugs. ASI Jitender Singh reduced the information in writing and at about 12:54 PM, shared the information with Insp. Lichhman, who in turn informed the ACP Sh. Arvind Kumar, Crime Branch and was directed to take appropriate legal action. Accordingly, information was lodged under Section 42 of NDPS Act by Insp. Lichhman vide GD No. 102A, dated 04.11.2023. ASI Jitender Singh along with team and secret informer reached near the spot. The team was briefed and a trap was laid down with the instructions that on a specific signal, co-accused Sanjay along with his associates be apprehended. At about 01:40 PM, Sanjay along with his Scooty No. DL1S AA 9497 was apprehended at the instance of the secret informer. Notice under Section 50 of NDPS Act was served upon him and he was apprised of his legal rights including a right to be searched before the nearest Gazetted Officer or Magistrate. On search of the co-accused Sanjay, nothing incriminating was recovered from his body or clothes and a nil recovery memo was prepared. Search warrant for the search of Scooty could not be obtained due to shortage of time. Subsequently, upon search of the Scooty, one black colour polythene, having one knot was found and after opening the knot, two transparent polythenes having pink colour powder, tied with rubber bands, were found inside the big polythene. The pink colour powder was examined by Field Testing Kit/Drug Detection Kit and was found to be heroin. Thereafter, both the transparent polythenes were tied



with the same rubber bands and marked as 'A' and 'B'. Polythene marked 'A' was weighed on electronic weighing machine and was found to be 200 grams while polythene marked 'B' contained 300 grams of heroin. The polythenes were placed in a rectangular plastic box and converted into pulanda with the help of doctor's adhesive tape and marked as 'C' and sealed. Seal of 'JS' was put on them and they were taken into police possession through seizure memo, after which written report was prepared and the FIR was registered at P.S. Crime Branch.

3. It is stated in the status report that all mandatory provisions under Sections 42/50/52/55/57 of NDPS Act were duly complied with. During investigation of the case, co-accused Sanjay was arrested and on interrogation, in his disclosure statement, he disclosed that he procured the recovered 300 grams heroin contraband from source lady Chandani R/o Tilak Nagar/Nand Nagri, Delhi. 100 grams heroin contraband was procured from Pradeep @ Chintu R/o Nand Nagri and 100 grams heroin contraband was procured from Paras (Applicant) R/o Nand Nagri, Delhi. Sanjay disclosed that he used to visit the house of the Applicant for procuring heroin as both Sanjay and Applicant's houses were in the same locality. He further disclosed that he was supplying heroin to one Sunita @ Sonu W/o Jile R/o Nand Nagri and he could lead the police to the house of the source Chandani, Chintu and Applicant and receiver Sunita @ Sonu as also to their hideouts in Nand Nagri and Tilak Nagar, Delhi and help the police in tracing them. During PC remand, co-accused Sanjay led the police to the residence of the Applicant and House Identification Memo was prepared at his instance. Notices under Section 67 of NDPS Act dated 10.11.2023, 13.11.2023 and 15.11.2023 were pasted on the identified address of the



Applicant, but he intentionally did not join the investigation. Applicant has previous involvement in case FIR No.604/2017 under Section 33 of Delhi Excise Act, 2009, P.S. Seema Puri, Delhi. NBWs have been obtained against the Applicant from the Trial Court.

4. Learned counsel for the Applicant strenuously contends that from the status report it is evident that the only incriminating evidence at this stage against the Applicant is the disclosure statement of the main co-accused Sanjay, which is inadmissible and therefore, bail cannot be denied on this ground. Admittedly, no recovery has been made from the Applicant or his premises or at his instance. Applicant is not involved in drug trafficking and is engaged in a small business of providing lights and sound facilities for events, marriage functions etc. Nothing has been brought forth by the prosecution to show any connection between the Applicant and co-accused even in the form of WhatsApp calls/chats/messages, *albeit* even the CDR details cannot be looked at, at this stage.

5. Learned APP opposes the application on the ground that the quantity recovered from the prime co-accused is a commercial quantity, i.e. 500 gms heroin. On interrogation, the co-accused disclosed the name of the Applicant in addition to disclosure by the secret informer, after which Section 29 of NDPS Act was invoked. It is further urged that the alleged offence is serious and a crime against the society at large besides the fact that Applicant does not have clean antecedents.

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

7. Indisputably, there is no incriminating evidence at this stage against the Applicant, save and except, the disclosure statement of the co-accused



Sanjay. In ***Phundreimayum Yas Khan v. State (GNCT of Delhi)***, 2023 SCC OnLine Del 135, 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 stand relaxed. I may also allude to the judgment of this Court in ***Deepak Nagiya v. State (NCT of Delhi)***, 2023 SCC OnLine Del 5641, wherein relying on the judgment of the Supreme Court in ***State (BY NCB) Bengaluru v. Pallulabid Ahmad Arimutta and Another***, (2022) 12 SCC 633, 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. To the same effect is an order of this Court in ***Babli v. State NCT of Delhi, Bail Appln. 3258/2023, decided on 03.11.2023***, where the Court has held that a mere disclosure statement of a co-accused or an accused under Section 67 of NDPS Act cannot be called in to lend assurance to other evidence and fortify the case of the prosecution, as it would be an infringement of fundamental rights of an accused under Articles 14, 20(3) and 21 of the Constitution of India. Admittedly, there is no other corroborative evidence in the form of recovery or even phone calls connecting the Applicant to the co-accused. In this context, I may also allude to a judgment of this Court in ***Amit Ranjan v. Narcotics Control Bureau, Delhi***, 2022 SCC OnLine Del 1532, where despite there being CDR details *prima facie* connecting the Applicant to the co-accused, this Court granted bail on the ground that there was no recovery and the disclosure statement of the co-accused was even inadmissible.



8. In totality of the facts and circumstances of this case, present application is allowed. In the event of arrest, Applicant shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- with one surety of like amount to the satisfaction of the learned Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court and shall ordinarily reside at the address given to the IO concerned. Any change in residential address shall be with advance intimation to the IO and the Court by way of an affidavit;
- ii. He shall join investigation as and when directed by the IO concerned and will provide the mobile number to the IO, which shall be kept in working condition at all times. Any change in mobile number will be with prior intimation to the IO;
- iii. He shall appear before the Trial Court as and when the matter is taken up for hearing;
- iv. He shall report to the IO once every month in the first week, until any further order by any Court to the contrary; and
- v. He shall not indulge in any criminal activity and shall not communicate or come in contact with any prosecution witness or tamper with any evidence;

9. At this stage, the IO SI Arvind Kumar, who is present in Court, submits that Applicant be directed to join investigation on 02.02.2024 at 4:00 P.M.

10. Learned counsel for the Applicant, on instructions, submits that Applicant will join the investigation on the said date as also on any other



date as directed by the IO.

11. Nothing stated in this order shall tantamount to expression of opinion on merits of the case.
12. Application is allowed and disposed of.
13. Copy of the order be sent to the concerned SHO/IO for information and necessary compliance.

JYOTI SINGH, J

JANUARY 30, 2024/kks