



\$~3

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

+ **BAIL APPLN. 74/2024**

TASLIM

.....Petitioner

Through: Mr. Shadman Ali, Advocate.

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Amol Sinha, ASC (Crl.) for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms. Chavi Lazarus, Advocates with SI Kartar Singh, Narcotic Cell, Outer North Distt. and ASI Vikas, NAV, DAP, Vikaspuri.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

19.07.2024

%

By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No.781/2021 dated 09.11.2021 registered under sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S.: Bhalswa Dairy, Delhi.

2. In brief, as per the FIR, the allegation against the petitioner is that he was one of the 03 persons riding a taxi, in which a bag containing 01 kilogram of heroine (which is 'commercial quantity') was recovered.
3. Mr. Shadman Ali, learned counsel appearing for the petitioner has argued that notice dated 08.11.2021 served upon the petitioner under section 50 of the NDPS Act, at the time when the search and seizure



was conducted, was defective inasmuch as it did not say that the petitioner had the right to be produced before the ‘nearest’ gazetted officer; but instead, the notice only stated that the petitioner was entitled to be produced before ‘any’ gazetted officer for his search.

4. The only point raised by learned counsel for the petitioner in support of the bail plea is that the wording of the notice served upon him vitiates the notice; and therefore the petitioner is entitled to regular bail. In support of his contention, counsel refers to the judgment of ***Mohd. Jabir vs. State of NCT of Delhi***¹, to argue that in the said decision, a Co-ordinate Bench of this court has held that the use of the word ‘any’ instead of ‘nearest’ appearing before the words ‘gazetted officer’ was a defect that vitiates the notice under section 50 of the NDPS Act.
5. In the circumstances, counsel argues that the petitioner is entitled to be admitted to regular bail.
6. Opposing the grant of bail, Mr. Amol Sinha, learned ASC (Criminal) appearing for the State argues, without prejudice to their contention that there was no defect in the section 50 notice served upon the petitioner, in the present case the question of the section 50 notice being faulty is immaterial, since no recovery of any contraband was made from the *person* of the petitioner and that contraband was recovered from a bag in the taxi in which the petitioner was also riding; and therefore the service of notice under section 50 is itself irrelevant.

¹ (2023) SCC OnLine Del 1827



7. Mr. Sinha argues, that a notice under section 50 of the NDPS Act is of relevance only if a *person* is searched pursuant to a defective notice, in which case such search and seizure is vitiated. Counsel submits that the allegation against the petitioner is that he, alongwith other co-accused persons, was engaged in the trafficking, sale and supply of contraband in Delhi and Uttar Pradesh; and that at the relevant time, the 03 accused persons had come to Delhi to deliver a consignment of contraband near Bhalswa Lake in a taxi. Mr. Sinha submits, that it is the prosecution case, that the contraband was recovered *from a bag in the taxi* and *not from the personal search* of any of the accused persons who were in the taxi.
8. In the circumstances, it is argued that even assuming that the section 50 notice was defective, that would be of no consequence since nothing was recovered from the person of the petitioner.
9. In any event, Mr. Sinha submits, that in a subsequent judgment a Co-ordinate Bench of this court in ***Bantu vs. State Govt of NCT of Delhi***² has opined that the mere omission of the term ‘nearest’ in the context of ‘gazetted officer’ in a notice under section 50 of the NDPS Act is not fatal to the prosecution case, while also noting that the decision of the earlier Co-ordinate Bench in *Mohd. Jabir* (supra) is pending consideration before the Supreme Court.
10. Since the only point raised in support of the bail plea is the validity of section 50 notice, in the circumstances, this court is not persuaded to

² 2024:DHC:5006



allow the present petition, which is accordingly dismissed; without making any observations on the merits of the matter.

11. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 19, 2024/ak