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

\+ BAIL APPLN. 3415/2024

BISWAJIT MAHAPATRA ALIAS DJ .....Petitioner

Through: Mr. Rahul Sharma, Mr. Kshitij Goel, Mr. Deepak Ghai, Ms. Drishti Juneja, Advs.

versus

STATE NCT OF DELHI .....Respondent

Through: Ms. Priyanka Dalal, APP for the State with ASI Randhir Singh,WR-I, Crime Branch, PS Rajouri Garden.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

O R D E R

% **05.11.2024**

1. The present petition has been filed on behalf of petitioner seeking regular bail in case FIR No 290/2023 registered at PS Crime Branch, under Section 20/29 NDPS.
2. Briefly stated, according to the status report dated 02.11.2024, on December 18, 2023, SI Raja Ram of the Crime Branch received a tip about a narcotics supplier, leading to a raid in Gandhi Vihar, Delhi, where Harsh Vardhan was apprehended with 227.86 kg of cannabis. Following his arrest, Harsh Vardhan identified Biswajit Mahapatra, alias "DJ," from Odisha as the supplier. The investigation revealed communications between Harsh and several contacts, including customers and associates in Delhi, through WhatsApp and phone calls, with substantial financial transactions linked to Biswajit's bank accounts. Subsequent arrests included associates such as Ramesh

Kumar Sharma, who was also found with cannabis, and Harsh's roommate, Harsh Yadav, who was allegedly involved in handling payments via Paytm. The charge sheet has been filed, and the next court hearing is scheduled for November 7, 2024, for framing charges.

3. The learned counsel for the petitioner submits that no recovery has been effected from the petitioner, and the only evidence against him is the disclosure statement of the co-accused. The learned counsel also submits that the petitioner has been in custody since 19.12.2023. The chargesheet has already been filed, and therefore, the petitioner may be admitted to bail.

4. The learned APP for the State opposes the bail application, submitting that the petitioner is, in fact, the main source of contraband and has connections with the accused Harsh Vardhan and Harsh Yadav. It is submitted that the petitioner was arrested at the instance of accused Harsh Vardhan and was found to be in touch with him through normal calls and WhatsApp chats, using mobile number 9777900410 to contact Harsh Vardhan at 9105271572. The learned APP for the State further submits that in WhatsApp chats found on Harsh Vardhan's mobile, the petitioner shared his Axis Bank account number 922010010495184. Additionally, it is submitted that the petitioner received over Rs 6.67 lakh in his two bank accounts, 134810100064245 (Union Bank) and 922010010495184 (Axis Bank), from the bank account of alleged associate Harsh Yadav, as well as Rs. 22,500 from accused Harsh Vardhan through money transfers. It is further submitted that the mobile phone of the petitioner, recovered

from his possession, contained SIM numbers 9777900410 and 7735459265, both registered in the petitioner's name.

5. The learned APP submits that, according to the investigation, the petitioner, who is the source of the contraband, met with Harsh Vardhan and Harsh Yadav in Bhubaneswar, Odisha, in connection with procuring Ganja. The CDR locations of the petitioner, Biswajeet Mahapatra, and the accused Harsh Vardhan and Harsh Yadav, established that they had indeed met in Bhubaneswar. The investigation also revealed that Harsh Vardhan shared Biswajeet Mahapatra's bank account details with the receiver of the contraband, Arul Pandiyan, through WhatsApp. It has been submitted that the petitioner's earlier bail applications were dismissed by the learned NDPS court on 06.04.2024 and 04.09.2024. Furthermore, the case is at the stage of charge, and therefore, the petitioner may not be granted bail.
6. It is an admitted fact that no recovery has been effected from the possession of the petitioner. It is also a matter of record that the only evidence against the petitioner is the disclosure statement of the co-accused and the CDRs.
7. The learned APP has predominantly opposed the bail on the ground that the CDRs show telephonic calls between the petitioner and the co-accused persons.
8. The similar question was examined by this Court in ***Tanveer Alias Prince v. State of NCT of Delhi*** in Bail APPL. 1280/2024 vide order dated 04.09.2024 and coordinate Bench of this Court in ***Anwar v. The State (NCT of Delhi)*** in Bail APPL. 180/2024 vide order dated

28.03.2024 and it was inter alia that the evidentiary value of CDR can only be tested during the trial.

9. In ***Deepak Nangiya v. State (NCT of Delhi)***, 2023 SCC OnLine Del 5641, it was inter alia held as under,

> *"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.*
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> *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. xxx xxx xxx 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:—*
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> *"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 Parambath 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……"

10. Reliance can also be placed on ***Amit Ranjan v. Narcotics Control Bureau, Delhi***, 2022 SCC OnLine Del 1532. In this case, similar principles were upheld regarding the inadmissibility of confessional statements under Section 67 of the NDPS Act and the consideration of CDRs at the trial stage. This further supports the view that such evidence should not be a basis for denying anticipatory bail.
11. It is also pertinent to mention that in ***Tofan Singh v. State of Tamil Nadu***, (2021) 4 SCC 1, it was held that a disclosure statement cannot be used to deny bail at this stage. The advantage of the law laid down in ***Tofan Singh*** (Supra) is well-established and can be utilized by the accused when arguing for regular bail. Furthermore, it has been submitted that the charge-sheet has already been filed.
12. In view of the facts mentioned above, the petitioner is admitted to regular bail upon furnishing a personal bond of Rs. 20,000/- with one surety of the same amount, subject to the satisfaction of the learned

Trial Court and the 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 report to concerned SHO/IO once in a month;

d) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

e) the Petitioner shall provide his mobile number(s) to the Investigating Officer and shall keep it operational at all times;

f) 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.

13. The application stands disposed of.

14. A copy of this order be sent to concerned jail superintendent for necessary compliance.

DINESH KUMAR SHARMA, J

NOVEMBER 5, 2024
Pallavi/NA