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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3941/2024**
MOHD KHUSHIPetitioner

Through: Mr. K.P Sharma, Mr. Tushar Talwar,
Advts.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Amit Ahlawat, APP for State with
ASI Sachin Singh, PS: Crime Branch.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
29.11.2024

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1. This petition has been filed seeking regular bail in FIR No. 44/2024, under Sections 20/29 of NDPS Act registered at PS Crime Branch.
2. The case of the prosecution is based on recovery of 33.5 kgs of *ganja* from one Varis and Arif at the Sarai Kale Khan, Railway Station on 26th February, 2024 at 11:40 a.m.
3. While the procedure of recovery was taking place, it is alleged by prosecution that a call from the petitioner was received by Varis, stating that he was standing at Sarai Kale Khan, Railway Station side bridge and they should come with the parcels. On this basis the petitioner was apprehended.
4. Counsel for petitioner points out that petitioner is a taxi driver, and has no connection with the allegations against the co-accused.
5. Further, there is neither any recovery from him and no financial transaction which has been pointed out by the prosecution.
6. As far as the CDR connectivity is concerned, there is communication



on the same day.

7. APP, however, states that there was some CDR connectivity even prior. The investigation is complete and the charge sheet has already been filed. He states on instructions that another 50 kgs of *ganja* was recovered from Varis on his disclosure.

8. Admittedly, there is no seizure from petitioner and he has been arrested only on the basis of the phone call which was received by Varis at the time of the search and seizure which was going on at Nizamuddin Railway Station.

9. Merely on CDR connectivity, this Court has held in many previous decisions, *inter alia Ajmal T.A. @ Kuru v State* SLP (CrI.) No(s). 6599/2023, ***Phundreimayum Yas Khan v State (NCT of Delhi)*** 2023 SCC OnLine Del 135, ***Usha Devi v The Govt. of NCT of Delhi*** 2024:DHC:5229 and ***Badakulu Ladu @ Sushant v State*** 2024:DHC:7038, that CDR connectivity alone cannot be a ground to implicate an accused.

10. Coordinate Bench of this Court in ***Phundreimayum Yas Khan v State (NCT of Delhi)*** 2023 SCC OnLine Del 135 has observed that in the absence of any other incriminating material, the CAF/CDR details cannot be a ground to deny the bail.

“23....b. In my view, in the absence of any financial dealings, any recovery of narcotic substance or psychotropic substance from the applicant or from the premises of the applicant and/or at the behest of the applicant, the fact that the CAF/CDR details show calls between the applicant and Amarjit Singh Sandhu and the applicant and Sayed Javed Hussain, cannot be a ground to deny him the bail in the present matter.

c. It is for the prosecution to establish the guilt, abetment, conspiracy of the applicant beyond a reasonable doubt which is not borne out from the CAF/CDR details.”

(emphasis added)



11. The Supreme Court, *vide* Order dated 23rd August 2023 in ***Ajmal T.A. @ Kuru v State*** SLP (Crl.) No(s). 6599/2023, having noted that, petitioner's role was that co-accused was in touch with him, search of person had not revealed anything, and he was implicated purely on the statement of co-accused and on CDR details, enlarged the accused on bail subject to terms and conditions. The relevant paragraph is extracted as under:

“Having regard to the nature of the evidence, this Court is, prima facie, satisfied that there is a remote likelihood of the petitioner's involvement – as the alleged involvement is entirely based upon the co-accused's statement and alleged CDR details. As a consequence, he is directed to be enlarged on bail subject to such terms and conditions as the trial Court may impose.”

(emphasis added)

12. Further, this Court, in ***Usha Devi v The Govt. of NCT of Delhi*** 2024:DHC:5229 and ***Badakulu Ladu @ Sushant v State*** 2024:DHC:7038, granted bail to a party having been accused, solely basis, alleged disclosure, no recovery and CDR analysis.

13. In these circumstances, rigors of Section 37 of NDPS Act are met, and considering that the petitioner has been in custody for more than 9 months, has no previous involvement and his jail conducted is satisfactory as per the Nominal Roll, the Court finds it fit case for grant of bail.

14. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the



following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
 - ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
 - iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
 - iv. Petitioner shall join investigation as and when called by the IO concerned.
 - v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - vi. Petitioner will mark presence physically before the concerned I.O. every first and third Thursday of each month at 4 p.m., and will be not kept waiting for more than an hour.
 - vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
15. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.
16. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.



17. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

18. *Dasti.*

19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 29, 2024/RK

Click here to check corrigendum, if any