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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4248/2024**
MUMTAZ ALIPetitioner
Through: Mr. Hasim Alam, Adv.

versus

STATE OF NCT OF DELHIRespondent
Through: Ms. Priyanka Dalal, APP for State
with SI Rajendra Dhaka, ISC, Crime
Branch, Chanakyapuri.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
06.12.2024

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1. This is a petition filed under section 483 of BNSS, 2023 seeking regular bail in FIR No. 73/2024 under Sections 21/25/29 of NDPS Act registered at PS Crime Branch.
2. As per the allegations in the FIR, two accused persons namely Shahzeb and Naved were apprehended and recovery of 406 gms and 304 gms of heroin were recovered respectively. Both the accused persons in their statement disclosed the name of the petitioner and stated that they procured from the petitioner. The petitioner has CDR connectivity with the accused namely Shahzeb and Asim Khan.
3. It is stated that besides the CDR connectivity and an amount of Rs. 9000/- being transferred from the petitioner to Shahzeb, there is nothing linking the petitioner with the main accused Shahzeb or Asim Khan. Further, there is no recovery affected from the petitioner nor his name is mentioned in the FIR.



4. It is further stated that the petitioner has been in custody since 04.04.2024, investigation is complete and the chargesheet has already been filed. In addition, the petitioner is about 72 years old and is a senior citizen.

5. A coordinate bench of this Court in ***Amit Ranjan v. Narcotics Control Bureau, 2022 SCC OnLine Del 1532*** has already taken a view that the reliance placed on CDR and monetary transactions are to be seen at the stage of trial. Relevant paras are extracted below:-

“46. The contention that the Narcotics Control Bureau had raised therein in relation to those accused persons on the ground that the High Court had erred in returning a finding that the rigors of Section 37 of the NDPS Act, 1985 were not attracted and that none of the preconditions stipulated in Section 37 of the NDPS Act, 1985 which starts with a non-obstante clause had been met with and that a concession had been granted to those accused persons on an erroneous presumption that there was a reasonable ground for believing that they were not guilty of such an offence, was not accepted in the facts put forth therein where there were only confessional/voluntary statement made by the co-accused under Section 67 of the NDPS Act, 1985 and CDR details of contact between the co-accused persons with it having been observed that the aspect of the CDR detail and even allegations of tampering of evidence on the part of one of the accused was an aspect that would be examined at the stage of trial.

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50. It is essential to observe that the aspects of the CDR details



and alleged connection between K.K. Pharma Solutions and Vinay Pharmaceuticals and the applicant and the co-accused persons and monetary transactions between them being in relation to illicit trafficking of narcotic or psychotropic substances can only be gauged at trial.”

6. Ms. Dalal, learned APP placed reliance on ***Awadhesh Yadav v. State (NCT of Delhi), 2023 SCC OnLine Del 7732*** and more particularly on para 49 which reads as under:-

“49. From the provisions of law and the essence of case-laws, as discussed above, following principles can be culled out governing clubbing of the quantity of contraband recovered from two or more co-accused, at the stage of bail:

i. invocation of offence of abetment and/or conspiracy under Section 29 of the Act is must for clubbing of quantity. However, there cannot be a straight jacket formula for clubbing the quantity of contraband recovered from all the accused, merely on the basis of invocation of offence under Section 29 of the Act. It will depend on the factual backdrop of each case and the incriminating material available against the accused persons.

ii. the incriminating material relied upon to invoke the offence of abetment and/or conspiracy under Section 29 of the Act, has to be cogent and convincing against each one of the accused charged with the offence of abetment and/or conspiracy.

iii. in a case where joint recovery of contraband has been



effected from two or more co-accused, the recovered contraband cannot be equally divided amongst the number of accused to determine whether the quantity of contraband recovered in “commercial quantity” or not.

iv. where accused persons are travelling together in the same private vehicle individually carrying contraband, it will not be proper to consider the alleged recovery to be an individual recovery and the contraband recovered from all persons can be clubbed.

v. if an accused is a habitual offender, it gives rise to an inference that he knows the tricks of the trade. In such a situation, previous involvement of the accused in the case(s) under the NDPS Act, is an additional factor which could be considered, besides other incriminating circumstances, for adding the quantities of contraband recovered from two or more co-accused.

50. Needless to state that the above noted circumstances are only illustrative and not exhaustive. As a matter of principle, bail applications are to be decided having regard to facts and circumstances of each case and the aforementioned principles may only act as guiding factors.”

7. On perusal, the above paras itself reflect that there cannot be any straight jacket formula for clubbing the quantity of contraband recovered. However, each case has to be tested on its own merits. Further, there has to be cogent and convincing materials against the accused persons to invoke section 29 of NDPS Act, as noted above, it is a matter of trial. Sub para III



of the above para specifically states that joint recovery of the contraband cannot be equally divided amongst the number of accused.

8. In the present case, there is no recovery made from the petitioner. Further, the petitioner with regard to the financial transactions states that the petitioner was running a fish shop and Shahzeb was his employee and hence, the money was given to him in the course of his employment. *Prima facie*, the same seems to be plausible as the main accused Shahzeb was working with the petitioner since 8-10 years ago. The petitioner also has no previous involvements. As regards co-accused Asim Khan is concerned, there was only a transaction of Rs. 20,000/- which was in the year 2023 and not in April 2024 i.e. when the recovery was made.

9. In view of the totality of facts and circumstances, the petitioner is admitted to regular bail on the following terms and conditions:-

- i. The petitioner shall furnish a personal bond in the sum of Rs. 10,000/- (Rupees Ten Thousand Only), with one surety of the like amount to the satisfaction of the concerned Trial Court;
- ii. The petitioner shall provide his mobile number to the concerned IO, which shall be kept in working condition and switched on at all times.
- iii. The petitioner shall inform the concerned IO about his current residential address;
- iv. In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned IO as well as to the concerned Court;
- v. The petitioner shall not leave the country without permission of the concerned Court during the bail period and surrender his



passport, if any, at the time of release before the concerned Court;

- vi. The petitioner shall appear before the Court as and when the matter is taken up for hearing;
- vii. The petitioner shall not indulge in any criminal activity during the bail period;
- viii. The petitioner shall not directly/indirectly try to get in touch with any prosecution witnesses or tamper with the evidence.

10. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present application.

11. The petition stands disposed of in the aforesaid terms.

12. A copy of this order be forwarded to the concerned Jail Superintendent for information and compliance.

JASMEET SINGH, J

DECEMBER 6, 2024/akc

Click here to check corrigendum, if any