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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 12th February, 2025***+ **BAIL APPLN. 62/2025****SHAMMI @SHANNI**

S/o Jagmohan,
R/o 1405/8, Gali Gurunanak Chowk,
Jai Singh, Amritsar

.....Petitioner

Through: Mr. J.S. Kushwaha & Ms. Tanya
Kushwaha, Advocates.

versus

THE STATE GOVT. OF NCT OF DELHI

Through SHO,
P.S. Crime Branch, Delhi

.....Respondent

Through: Ms. Meenakshi Dahiya, APP for
State.
S.I. Rohit, PS ANTF, Crime Branch,
Delhi.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. The Bail Petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS, 2023"*) has been filed on behalf of the Petitioner seeking Regular Bail in FIR No. 151/2022 under Sections 21/27A/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act, 1985"*) registered at Police Station Crime Branch, Delhi.



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2. It is submitted that the Petitioner was arrested on 23.07.2022 and since then he is in Judicial Custody.
3. According to the prosecution, on 22.07.2022, S.I. Naresh Kumar along with his team, had gone to District Centre, Dwarka to collect the information regarding purchase and sale of drugs. He at about 01:45 A.M., met a secret informer informed him that Applicant Shammi @ Shanni, resident of Amritsar, Punjab, presently living in Gali No. 15, Mahavir Enclave, Part-II, Delhi was about to go to Punjab with a huge quantity of Heroin between 02:30 A.M. to 03:30 A.M., and can be apprehended with Heroin. The information was conveyed to Assistant Commissioner of Police (ACP) who ordered to take action accordingly. S.I. Naresh apprehended the Petitioner and recovered 500 grams of Heroin and Rs. 22,00,000/- in cash from his bag.
4. On completion of investigation, the Chargesheet under Sections 21/27A/29 of NDPS Act, 1985 was filed before the learned Trial Court which is pending adjudication.
5. The Applicant moved a Bail Application under Section 483 of BNSS, 2023 before the learned Additional Sessions Judge who dismissed it *vide* Order dated 21.05.2024.
6. The Bail is sought by the Petitioner on the ground that he has nothing to do with the commission of alleged offence and he has been falsely implicated in this case.
7. Inspector Jasbir Singh, who received the secret information, did not convey it to ACP himself, but the information was conveyed by the Head Constable Nihal Singh, Duty Officer over phone. It is asserted that there is non-compliance of Section 42 of NDPS Act, 1985 which is mandatory and



vitiates the alleged recovery. In support of this assertion, reliance has been placed on the decision in Jagroop Singh @ Ceeta vs. Directorate of Revenue Intelligence, 2016 (3) JCC (Narcotics) 165, wherein it was observed that if the secret information is recorded by the concerned Official and is not placed before the immediate superior, it amounts to non-compliance of Section 42 of NDPS Act, 1985 thereby entitling the accused to acquittal.

8. It is further asserted that ACP without making any enquiry from the secret informer and without any discussion with Inspector Jasbir Singh, empowered him to take action, which again is in violation of Section 42 of NDPS Act, 1985. The information conveyed by Head Constable Nihal Singh to ACP, was only hearsay. In support of his assertion, the counsel for the Petitioner has placed reliance on the decision in State of Rajasthan vs. Jag Raj Singh @ Hansa, 2016 (3) JCC (Narcotics) 153.

9. Similar observations have been made in Sarija Banu Alias Janarthani Alias Janani and Another vs. State through Inspector of Police, (2004) 12 SCC 266 and in Kmaruddin vs. State (NCT of Delhi), 2023 (1) JCC 387 (Delhi).

10. Furthermore, it is asserted that no independent witness from the neighbourhood joined the police at the time of alleged recovery. The site plan depicting the Petitioner is totally defective as he was never apprehended at the spot, but was lifted from his house and was forced to sign some blank papers.

11. It is further asserted that there is non-compliance of mandatory provision of Section 50 of NDPS Act, 1985 as no public witness was served or made to join as a witness at the time of serving Notice under Section 50 of NDPS Act, 1985. There was no proper compliance of Section 50 of



NDPS Act, 1985 and it was defective. In support of his assertion, learned counsel for the Petitioner has placed reliance on the decision in Ali Mustaffa Abdul Rahman Moosa vs. State of Kerala, (1994) 6 SCC 569, wherein it was held that the Searching Officer is obliged to inform the person to be searched that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate, as mandated under Section 50 of NDPS Act, 1985. If the contraband is seized in an illegal manner without following the procedure under Section 50 of NDPS Act, 1985, the accused cannot be held guilty.

12. In Ashok Kumar Sharma vs. State of Rajasthan, 2013 (3) JCC (Narcotics) 133, it was similarly held that where the Officer who has conducted the search fails to follow the procedure of Section 50 of NDPS Act, 1985, it vitiates the entire proceedings against the accused.

13. It is also asserted that there is non-compliance of Section 52A of NDPS Act, 1985.

14. Furthermore, the recoveries have been planted on the Petitioner.

15. In the end, it is submitted that the Petitioner is in Judicial Custody from 23.07.2022 i.e., for more than two years and five months, but till date, no Charge has been framed. There is undue delay in the completion of trial. The bar of Section 37 of NDPS Act, 1985 cannot be invoked where the evidence against the Petitioner appears to be unbelievable and does not seem to be sufficient for the purpose of conviction.

16. It is submitted that the Petitioner has clean antecedents and is not a previous convict. He undertakes to abide by any terms and conditions that may be imposed by the Court while granting Bail to him.

17. Hence, it is submitted that the Petitioner may be admitted to Regular



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Bail.

18. *The Status Report has been handed over in the Court today on behalf of the State*, wherein it is submitted that on the basis of secret information received by Inspector Jasbir Singh on 22.07.2022, the Applicant, who was having his hide out in Gali No. 15, Mahavir Enclave, Delhi, was apprehended and after due compliance of Section 42 of NDPS Act, 1985, 500 grams of Heroin was recovered from one white colour polythene which he was carrying in his *Pithoo* Bag which was seized in accordance with law and was deposited in Malkhana after compliance of Section 55 of NDPS Act, 1985.

19. The Petitioner was arrested during investigation. During his interrogation, he disclosed that he had procured the contraband from one Pankaj @ Amit who is resident of Amritsar, Punjab. The Police Custody Remand of the Petitioner was taken to trace out his links with Pankaj @ Amit. The Petitioner further disclosed that raw material used for producing Heroin and ready contraband was lying in his Flat No. A-595, 2nd Floor, Gali no. 15, Mahavir Enclave Part-II, Delhi. A raid was conducted at his Flat after following the due procedure. Three polythene bags containing 6 kgs, 2.5 kgs and 2 kgs of Heroin respectively (total 10.5 Kg) were recovered which were seized by the Police and deposited in Malkhana.

20. Further, the Applicant during his Police Custody Remand disclosed that the kingpin of the drugs syndicate was Pankaj @ Amit and pointed out the house of co-accused Rajat Gupta who works as an Accountant for Pankaj @ Amit. Later, Rajat Gupta was arrested on the instance of the Applicant and significant number of documents, like VISA cards, ATM cards, passbooks, Loan Closure Certificates and signed blank cheques,



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relating to Pankaj @ Amit, were recovered from him.

21. It is further submitted that it has been found that Pankaj @ Amit is wanted by Jammu and Kashmir Police in FIR No. 208/2020 under *Unlawful Activities (Prevention) Act, 1967* ('UAPA Act' *hereinafter*) registered at Police Station R.S. Pura, Jammu and Kashmir and has been declared Proclaimed Offender. He was eventually arrested in this case and during his interrogation, he revealed that he received instructions from Afghanistan, indicating the involvement of *international drug syndicate*. The house where the contraband was stored by the Applicant, was purchased by Pankaj @ Amit, but was registered under the name of his relative Vishal Puri's name.

22. Further, on the basis of disclosures made by Pankaj @ Amit, another individual Mahender Singh @ MH was arrested from Punjab and 1,820 grams of Heroin was recovered from his possession.

23. Later, during the pendency of Section 82 of the *Code of Criminal Procedure, 1973* proceedings, one co-accused Shamsheer Singh and one Lovepreet Singh were arrested. Another co-accused Ramesh Kumar @ Mecchi, was also arrested.

24. The present Bail Petition is opposed on the grounds that the offence is serious in nature and there is involvement of an international drug syndicate. In addition to the 500 gms of Heroin, 10.5 kgs of drug material was recovered from the Applicant's residence out of which 4.5 kgs was found to be positive. The bar of Section 37 of NDPS Act, 1985 is therefore, applicable.

25. Further, cash of Rs. 22,00,000/- has been recovered from the possession of the Petitioner.

26. Therefore, it is submitted that the present Bail Petition is liable to be



dismissed.

27. Submissions heard and record perused.

28. The parameters for grant of bail to an accused under the NDPS Act have been provided in various cases by the Hon'ble Supreme Court. The Supreme Court in Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549 has observed as under:

“6. As observed by this Court in Union of India v. Thamisharasi, (1995) 4 SCC 190, clause (b) of subsection (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are : (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are : the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves



to justify satisfaction that the accused is not guilty of the alleged offence...”

29. Further, in State of Kerala v. Rajesh, (2020) 12 SCC 122, the Hon'ble Supreme Court while discussing the expression 'reasonable grounds' has observed as below:

“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

30. As per the case of the Prosecution, the Petitioner was found in possession of 500 grams of Heroin which is a commercial quantity and Rs. 22,00,000/- in cash, thereby mandating the satisfaction of the stringent twin conditions under Section 37 of the NDPS Act, 1985 which are necessarily required to be satisfied.

31. In the present case according to the prosecution, apparently there is an international drug syndicate being run for import of Heroin, of which Pankaj @ Amit is the kingpin and is wanted in a case by the Jammu and Kashmir Police under UAPA Act.

32. The *first ground of challenge* taken on behalf of the Petitioner is that



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though the secret information was received by Inspector Jasbir Singh, but instead of conveying it to the superior officer, he informed Duty Officer Head Constable Nihal Singh who conveyed it to ACP who in turn gave permission for conducting the raid through the Duty Officer. Moreover, as per the prosecution, the information had been recorded by Inspector Jasbir Singh on a white paper. Therefore, it is vehemently contended that there was non-compliance of Section 42 of NDPS Act, 1985.

33. The issue of non-compliance with the procedural requirements under Section 42 of the NDPS Act at the stage of Bail was considered in Union of India v. Nawaz Khan, Criminal Appeal No. 1043 of 2021 (Arising out of SLP (Crl) No. 1771 of 2021). Reference was made to Karnail Singh v. State of Haryana, (2009) 8 SCC 539 wherein it was *inter alia* held that the compliance with the requirements of Sections 42 (1) and 42 (2) in regard to writing down the information received and sending a copy thereof to the superior Officer, should normally precede the entry, search and seizure by the officer. However, in special circumstances involving emergent situations, these requirements may get postponed by a reasonable period, that is, after the search, entry and seizure, along with the reason for the delay. The Apex Court emphasized that while total non-compliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42.

34. The Apex Court in Karnail Singh (supra) further held:

“To illustrate, if any, delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non sending of a



*copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. **Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case.** The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”*

35. The Coordinate Bench of this court in Gurjeet Singh v. State of NCT of Delhi Bail Appln. 2209/2022 vide Order dated 07.09.2022, *inter alia* held that the effect of non-compliance, if any, of any mandatory provision or any irregularity or illegality committed by the Investigating Officer, is essentially a matter of trial and cannot be looked into in detail at this stage for grant of Bail unless there is any glaring irregularity which will make the seizure itself illegal.

36. Further, it cannot be said that merely because Inspector Jasbir Singh recorded the information on a white paper on account of paucity of time, whether it was contrary to the procedure under Section 42 of NDPS Act, 1985 as the attending circumstances, resulting in recording of information on a white paper, are yet to be explained by way of evidence. At this stage, it cannot be said that there is an absolute non-compliance of Section 42 of NDPS Act, 1985 vitiating the entire recovery procedure and thereby entitling the Petitioner to Bail.



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37. The *second contention* made by the Applicant is the non- compliance of S.50 of the Act. The Constitution Bench of the Apex Court in State of Punjab vs. Baldev Singh, 1999 (2) JCC (SC) 348, observed that while there is an obligation on the Authorised Officer to ensure compliance of Section 50 of NDPS Act, 1985 which is mandatory. Further, after referring to the earlier judgments, it was observed that compliance of Sections 42 and 50 of NDPS Act, 1985 are mandatory and if not complied with, entitle the accused to acquittal, but whether there is a substantial compliance of these provisions, is a matter of trial.

38. For the similar reasons, whether there is blatant violation of Section 50 of NDPS Act, 1985, cannot be ascertained at this stage of deciding the Bail of the Petitioner.

39. The *third contention* raised on behalf of the Petitioner is that there is a delay in trial. It is submitted that the Petitioner is in judicial custody from 23.07.2022. Though the Chargesheet got filed in January, 2023 but the Charges have not been framed till now.

40. However, it has been explained by the prosecution that though out of 7 accused in the present case, 5 accused persons have been admitted to Bail, but out of those 5 accused persons, three are in jail in other cases in different States. Getting the attendance of all 7 accused persons on one date in the Trial Court, is creating a challenge which has caused delay in trial. Thus, it cannot be said that there is inordinate delay at this stage which can be considered as the sole ground to grant bail.

41. Considering the gravity of the offence and the amount of recovery of Heroin as well as a cash of Rs. 22,00,000/- from the Applicant, it is not a fit case for grant of Bail.



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42. Accordingly, the present Bail Petition is dismissed in the above terms.
43. The Registry is directed to take the Status Report as handed over today in the Court by the learned Additional Public Prosecutor, on record.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 12, 2025
S.Sharma