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

+ **BAIL APPLN. 94/2025**

SUHAG

.....Petitioner

Through: **Mr. Kundan Kumar, Advocate**

versus

THE STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: **Mr. Manoj Pant, APP for the State
with SI Kartar Singh Rawat, Anti
Narcotic Cell.**

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

17.02.2025

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1. The present application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter '*BNSS*') has been filed on behalf of the applicant seeking grant of regular bail in FIR No. 587/2024, registered at the Police Station Narela Industrial Area, Delhi for offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter '*NDPS Act*').

2. Briefly stated, the facts of the present case are that on 24.06.2024, at about 1:30 PM, a secret information was received that the accused herein was involved in sale of Heroin, in bulk. It was further revealed to the Police officials that the accused would come at Sirka Chowk, G Block near JJ Colony, Bawana, between 3 PM to 4 PM to deliver a consignment of Heroin to one of his customers. Eventually, a raiding team was constituted to



apprehend the accused. At around 03:10 PM, the accused was seen waiting at the spot and on suspicion, he had started running. The accused was thereafter apprehended by the search team, and was served the notice under Section 50 of the NDPS Act. On search, a black coloured polythene and a transparent polythene packet were recovered from his jeans, and upon testing the same with the Narcotics Drugs Detection kit, it was confirmed that the substance was Heroin weighing about 280 grams. Thereafter, the present accused was arrested in relation to the present case.

3. The learned counsel appearing on behalf of the applicant/accused states that the applicant has been falsely implicated in this case and has been in judicial custody since 24.06.2024. It is argued that the applicant was served with notice under Section 50 of the NDPS Act, however, it was nowhere mentioned in the notice that he was also offered that he may be taken to nearest Gazetted officer or Magistrate for search. Therefore, the said notice was bereft of twin conditions as mandated under Section 50 of the NDPS Act. In this regard, reliance is placed on certain case laws. It is further submitted that the chargesheet has already been filed and no useful purpose will be served by keeping the accused/applicant in custody. Therefore, it is prayed that applicant be released on bail.

4. The learned APP for the State appearing for the State opposes the present bail application and submits that the allegations against the applicant are serious in nature. It is stated that the applicant was apprehended on spot and all compliances, including Section 42 and Section 50 of the NDPS Act, were made. The chargesheet has been already filed and the FSL Report has been obtained. It is stated that there is a strong possibility that the applicant may abscond, if he is released on bail. Therefore, it is prayed that the bail



application be dismissed.

5. This Court has heard the arguments addressed by the learned counsel for both the parties and has perused the material on record.

6. In the present case, the accused herein was apprehended at the spot, pursuant to receipt of a secret information, and a black coloured polythene containing about 280 grams of Heroin was recovered from him. Concededly, the quantity of narcotic substance recovered in this case from the present applicant is commercial quantity, i.e. about 280 grams of Heroin. Therefore, the twin conditions under Section 37 of the NDPS Act will have to be satisfied by the applicant so as to be entitled to grant of bail. Section 37 of the NDPS Act is set out below:

"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

a) every offence punishable under this Act shall be cognizable;

b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

7. The Hon'ble Apex Court in *Narcotics Control Bureau v. Mohit Aggarwal*: 2022 SCC Online SC 891, while explaining the meaning of 'reasonable grounds' under Section 37(1)(b) of NDPS Act, has held as under:

"14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds



for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.”

8. As per the case of prosecution, recovery of commercial quantity of Heroin was made from the present applicant. FSL report has already been received which supports the case of prosecution. Thus, there are no grounds, at this stage, to *prima facie* believe that applicant herein is not guilty of the alleged offence.

9. As far as the argument of learned counsel for the applicant, that provisions of Section 50 of the NDPS Act, were not followed by the Police Officials and therefore bail should be granted to the applicant is concerned, this Court finds the same unmerited. In case of ***Mohd. Rahis Khan v. State: [(2014) (1) LRC 363 (Del)]***, the Coordinate Bench was examining a notice under Section 50 of NDPS Act in which it was mentioned that "If you desire, your search may be carried out in front of a gazetted officer or a Magistrate, who can be requested to come to the spot". It was held by the Court that it was nowhere mentioned in clear words, in the said notice, that the accused had a right in law to be searched in the presence of a Magistrate or a gazetted officer. In ***Emeka Emmanuel v. State: 2022 SCC OnLine Del 4493*** also, it had not been mentioned in the notice that the accused had such a legal right. In ***Ikram v. State of NCT of Delhi: MANU/DEOR/151089/2023***, the notice had mentioned that search of accused may be conducted by calling "some gazetted officer or Magistrate". The said decisions are however distinguishable inasmuch as the notice under Section 50 of NDPS Act, issued in the present case, mentions clearly that the



accused had a 'legal right' to get himself searched in presence of a 'nearest' gazetted officer or Magistrate. Therefore, at this stage, no case for grant of bail is made out on this ground. Needless to state, the accused will be at liberty to raise all the issues pertaining to notice under Section 50 of NDPS Act at an appropriate stage before the learned Trial Court.

10. In view thereof, when this Court considers the material placed on record, specifically the fact that the accused/applicant was apprehended on spot, and recovery of 280 grams of heroin, which is a commercial quantity, was made from him, this Court finds no ground to grant regular bail to the applicant at this stage.

11. The present bail application is accordingly dismissed.

12. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

13. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 17, 2025/SS

Click here to check corrigendum, if any