



2025:DHC:3271



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

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Judgment reserved on: 07.04.2025
Judgment pronounced on: 05.05.2025

+ BAIL APPLN. 138/2025

PRADIP BARMAN

.....Petitioner

Through: Mr. Shreesh Chadha, Mr.
Divjot S. Bhatia, Mr. Aman S.
Bakshi and Mr. Shaurya
Agarwal, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for
State with SI Nitesh, Special
Staff/South West District.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking Regular Bail in FIR No. 0377/2024 dated 07.07.2024, registered at Police Station Palam Village, for offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. Succinctly put, the factual matrix giving rise to the present petition is as follows. On 07.07.2024, while on routine crime



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prevention and detection duty in the area of South-West Delhi, a team comprising seven personnel from the Special Staff is stated to have apprehended five individuals, including the present petitioner, near the CGHS Dispensary, Palam Flyover, Palam, Delhi. It is alleged that each of the five apprehended persons was found in possession of *Ganja*, concealed in backpacks. Following preliminary inquiries, the identities of the five apprehended persons were ascertained.

3. In compliance with the mandate of Section 50 of the NDPS Act, the accused were apprised of their legal right to be searched before a Gazetted Officer or a Magistrate. All five, however, declined to be searched in the presence of a Gazetted Officer or a Magistrate, asserting that they carried no further contraband. Notices under Section 50 were served accordingly, which were duly acknowledged. A search of their persons yielded no additional recovery.

4. The *Ganja* recovered from the backpacks of the accused was weighed, amounting in total to 27.7 Kgs. The distribution of the recovered contraband, as per the prosecution, is as under: (i) Deepak – 7.266 Kgs (ii) Rabindera- 6.008 Kgs (iii) Pradip (petitioner)- 3.944 Kgs (iv) Arjun-1.990 Kgs (v) Gautam- 8.942 Kgs.

5. On the basis of the said recovery, the aforesaid FIR came to be registered, initially invoking only Section 20 of the NDPS Act. During investigation, all five individuals were arrested. Interrogation of the co-accused led to disclosures to the effect that they were transporting *Ganja* at the instance of the accused Deepak, purportedly for monetary



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gain. The accused Deepak then disclosed that he supplied the said contraband on the instructions of one Arin, who is also a resident of the same district as all of the accused.

6. While the four accused other than Deepak were remanded to judicial custody, Deepak was taken into police custody for the purpose of tracing and apprehending the said Arin. However, the investigation yielded no information as to Arin's whereabouts. In the interregnum, Section 29 of the NDPS Act came to be added to the FIR. An application under Section 52A of the NDPS Act was also preferred before the learned Special Judge (NDPS), Dwarka Courts, on 08.07.2024.

7. The Charge-Sheet in the FIR was filed on 03.09.2024, followed by a supplementary Charge-Sheet on 25.10.2024, incorporating the FSL report. The petitioner filed a Bail Application in the aforementioned FIR, which was dismissed by the learned Special Judge on 21.12.2024, compelling the petitioner to file the present application.

8. The learned counsel for the petitioner, at the outset, submitted that the quantity of *Ganja* allegedly recovered from the petitioner is 3.944 Kgs. This quantity, he submitted, is well below the threshold of *commercial quantity* as prescribed under the NDPS Act, the said threshold being 20 Kgs. It is submitted that the present case involves only *intermediate quantity* and, therefore, the rigors of Section 37 of the NDPS Act, which are attracted solely in cases involving



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commercial quantity, would have no application in the facts of the present case.

9. It is further submitted that the learned Special Judge, NDPS, Dwarka Courts, has erred in mechanically applying the embargo under Section 37 of the NDPS Act to the case at hand, in complete disregard of the settled legal position that the said provision is not attracted where the recovery pertains to *intermediate quantity*. It is submitted that the learned Special Judge has failed to appreciate that, in the absence of demonstrable evidence of criminal conspiracy, the recoveries effected from different individuals cannot be clubbed together merely to give the appearance of a *commercial quantity*.

10. The learned counsel submitted that the invocation of Section 29 of the NDPS Act in the present matter is equally misconceived. It is submitted that the prosecution has not placed on record any credible material to substantiate the existence of a conspiracy or any meeting of minds between the petitioner and the co-accused persons. The statement of co-accused persons under custody cannot, in the absence of corroborative material, form the sole basis to invoke Section 29 of the NDPS Act.

11. The learned counsel further placed reliance on the judgment of this Court in ***Challimuddin v. State of NCT of Delhi***, BAIL APPLN. 3017/2024, and contended that in the absence of evidence of joint possession, custody, or conspiracy, the recoveries must be treated as distinct and individual. The mere fact that five persons were



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apprehended together, in the absence of any tangible evidence linking them together cannot be a basis for invoking the more stringent conditions under Section 37 of the NDPS Act.

12. The learned counsel submitted that the matter is presently at the stage of arguments on Charge, and a total of 19 prosecution witnesses are to be examined. Thus, the continued incarceration of the petitioner at this stage of the trial would serve no meaningful purpose, especially when there is no allegation that the applicant would tamper with evidence or influence witnesses in any manner. Further, the learned counsel submitted that the petitioner has clean antecedents and has been incarcerated for a period of about 10 months.

13. While seeking a dismissal of the bail application, the learned APP for the State submitted that all of the accused in conspiracy with each other had participated in commission of the offence and a chance recovery was made on routine checking. He submitted that the CDR analysis of the accused persons reveals that location of the mobile phone of all of the accused on 05.07.2024 was at station road Cooch Behar and as per their location, they all travelled by the same train to Delhi. Moreover, the location of their mobile phones was also found in the Mahipalpur area in the morning of 07.07.2024

14. He, thus, submitted that in view of the aforesaid circumstances, Section 29 of the NDPS Act is rightly invoked in this case and the petitioner along with other co-accused were found in possession of a



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commercial quantity of Ganja. Therefore, embargo of Section 37 of the NDPS Act would apply and the petitioner is not entitled to Bail.

15. The learned APP submitted that where there is material to show a criminal conspiracy between the petitioner and the co-accused, the quantity recovered from all the accused can be combined. He placed reliance on the decision of this Court in **Awadesh Yadav vs State Govt. of NCT of Delhi** 2023 SCC OnLine Del 7732 and **Ridhm Rana vs. State (NCT of Delhi)** 2022 SCC OnLine Del 771

16. Having heard the learned counsel for the petitioner, the learned APP for the State and perused the record, the primary question that comes up for the consideration of this Court is, whether the contraband recovered from the accused person, including the petitioner, can be clubbed in order to make it a *commercial quantity*.

17. The quantity of *Ganja* stated to have been recovered from the petitioner is 3.944 Kgs, which is undisputedly below the threshold of *commercial quantity*, which, for *Ganja*, stands at 20 kg as per the NDPS Act. Ordinarily, therefore, the statutory bar to bail under Section 37(1)(b) of the NDPS Act would not stand attracted.

18. However, where Section 29 of the NDPS Act is invoked, and the allegation pertains to a conspiracy to commit an offence involving a *commercial quantity*, the statutory rigor under Section 37 of the NDPS Act becomes applicable, notwithstanding the fact that the quantity individually recovered from the petitioner falls short of the *commercial* threshold.



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19. The principal submission of learned Counsel for the petitioner is that the allegation of conspiracy is unsubstantiated, and that mere acquaintance or association among co-accused, unsupported by credible evidence of a common intention, cannot justify the invocation of Section 29 of the NDPS Act.

20. The location data retrieved from the mobile phones of the accused shows that all five accused were present at Station Road, Cooch Behar on 05.07.2024, and travelled to Delhi by the same train, with their mobile phones subsequently being traced to the Mahipalpur area on 07.07.2024, which is the very day and location of recovery. This synchronized movement of multiple individuals, from a common point of origin to a common destination, followed by the recovery of similar contraband from each, speaks to a concerted act rather than an isolated or independent instance of possession.

21. The reliance placed by the learned counsel for the petitioner on the decision of this Court in **Challimuddin** (supra) is misplaced as in that case, there was no substantial material on record to show the conspiracy amongst the accused.

22. The investigation has culminated in the filing of the Charge Sheet and a supplementary Charge Sheet incorporating the FSL report. The case is now at the stage of arguments on charge. However, mere completion of investigation or pendency of trial is not a ground for bypassing the mandate of Section 37.



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23. In view of the foregoing discussion, this Court finds no infirmity in the view adopted by the learned Special Judge. The material on record, at this stage, furnishes sufficient basis to sustain a *prima facie* inference of conspiracy involving commercial quantity, thereby attracting the rigors of Section 37 NDPS Act.

24. Accordingly, the present bail application is dismissed.

SHALINDER KAUR, J

MAY 05, 2025/FRK

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