



\$~59

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

+ **BAIL APPLN. 148/2025**

SACHIN

.....Petitioner

Through: Mr. Kundan Kumar, Advocate.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for State with
SI Dev Kumar, ANTF, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

05.05.2025

%

1. Learned counsel appearing for the petitioner submits that the alleged recovery is shown to have been affected from the co-accused Sumit @ Sunny. No recovery has been affected from the present petitioner. The mere fact that petitioner was driving the vehicle, in which co-accused Sumit @ Sunny was sitting with contraband, is not sufficient to prima facie hold that petitioner was also in possession of contraband or has abetted or conspired with the co-accused Sumit @ Sunny regarding the recovery of contraband and thus, there are reasonable grounds to believe that petitioner is not guilty of offence and if released on bail, would not commit offence again. It is further submitted that petitioner is in judicial custody since 15.04.2024, investigation is complete and charge sheet has also been filed, and therefore, he is not required for further investigation. In support of his arguments, learned counsel has placed reliance on the decisions of the Coordinate



Benches of this Court in the following cases, **Mohd. Zuber vs State** [BAIL APPLN 3821/2006], **Karan Singh vs. State** [BAIL APPLN. 1223/2006], **Keshoo Ram vs. State** [BAIL APPLN. 558/2005], **Dilbagh Singh vs. D.R.I** [BAIL APPLN. 1777/2008], **Rajender Kumar vs. NCB** [BAIL APPLN. 1215/2021].

2. The bail application has been opposed by the learned APP appearing for the State, submitting that there is recovery of commercial quantity of heroin from the possession of co-accused Sumit @ Sunny and at the time of interception and recovery, co-accused Sumit @ Sunny was travelling in Scorpio car, driven by the present petitioner. It is submitted that during investigation, both Sumit @ Sunny and Sachin (present petitioner) disclosed that they had procured the recovered heroin from one Renu Nagiya and they were going to supply it to one Gaurav. They further disclosed that Gaurav's brothers, Vikas and Krishna also used to assist Gaurav in drug trafficking and handle business in the absence of their brother, Gaurav. Co-accused, Gaurav could not be apprehended. However, co-accused Vikas was apprehended and he stated that he is involved in drug trafficking with his brother and used to take delivery from Sumit @ Sunny and Sachin (present petitioner) in the absence of his brother, Gaurav.

3. It is argued that Scorpio car is registered in the name of the present petitioner and was being driven by the petitioner. It is also argued that the entire family of the petitioner is involved in drug trafficking. His wife and sister-in-law are still absconding in the present case and have been declared as proclaimed offenders. Learned APP places reliance on the decision of the Supreme Court of India in **Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan** [Criminal Appeal No.



1043/2021], to argue that the present case is a case of criminal conspiracy and, therefore, bar of Section 37 of NDPS Act would apply in the present case.

4. As per the prosecution version, based on the secret information, Scorpio car was intercepted. The car was being driven by the petitioner while co-accused Sumit @ Sunny, who is the brother of the present petitioner, was sitting on the side seat of the driver. On the search of co-accused Sumit @ Sunny, a polythene pouch was recovered, which on checking was found to contain 1010 grams of heroin.

5. Admittedly, no recovery of contraband has been affected from the possession of the present petitioner. Before granting bail, Court has to consider whether the bar of Section 37 of NDPS Act shall apply to the case of the petitioner. In the case of **Md. Nawaz Khan** (supra), three persons were travelling from Dimapur, Nagaland to Rampur, Uttar Pradesh in Maruti Ritz car. Based on the secret information, they were apprehended and from the car, two packets were recovered, containing 1.740 Kgs and 1.750 Kgs of contraband. The submission of accused before the Court was that he was only a companion in the vehicle and was not in conscious possession of the contraband since it was recovered from the wiper fitted on front bonnet of vehicle, of which he had no knowledge. Dealing with the question of as to what constitutes conscious possession, Hon'ble Apex Court observed as under:-

“22 We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the



Act. In **Madan Lal and Another v. State of Himachal Pradesh** this Court held that

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52] to work out a completely logical and precise definition of “possession” uniform[ly] applicable to all situations in the context of all statutes.

23. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended.

[...]

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also



presumption is available to be drawn from possession of illicit articles.”

What amounts to “conscious possession” was also considered in **Dharampal Singh v. State of Punjab**, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In **Mohan Lal v. State of Rajasthan**, this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

23 We have referred to the above precedents to reiterate the governing principles. At this stage of the proceedings, it needs only to be clarified that the trial is to take place this Court where evidence will be adduced.

24 As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in **Union of India v. Rattan Mallik**, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the ‘possession’ of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

25 In line with the decision of this Court in **Rattan Mallik** (supra), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.”

6. Admittedly, there was specific secret information naming both the accused and present petitioner was driving the Scorpio car and co-accused Sumit @ Sunny was sitting on the side seat of the driver. Both accused are known to each other being brothers. As per the FIR, when the raiding team tried to stop the vehicle, petitioner did not open the gate of the car and in



trying to open the same, driver side glass also got broken. Investigation reveals that car is registered in the name of the petitioner. On analysis of mobile phone of the petitioner, it has been found that the wife of the petitioner is also involved in the drug trafficking and the photographs of contraband were in their whatsapp chats. There is also evidence of CDR and whatsapp connectivity between the petitioner and other co-accused, which prima facie shows his involvement in drug/heroin supply. Prima facie, I find that petitioner is not able to overcome the rigors of Section 37 of the NDPS Act.

7. The trial is still at an initial stage. The allegations *qua* the present petitioner are grave and serious in nature. The judgments cited by learned counsel appearing for the petitioner are distinguishable and are not applicable to the facts and circumstances of the present case. I am, therefore, not inclined to grant bail to the petitioner. The application is, therefore, dismissed.

RAVINDER DUDEJA, J

MAY 5, 2025/vd