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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 174/2025**
RAHULPetitioner

Through: Ms. Pragya Barsaiyan, Advocate.

versus

STATE (NCT OF DELHI)Respondent

Through: Mr. Amit Ahlawat, APP.
ASI Dinesh Kumar, P.S. Mukherjee
Nagar, Delhi.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
20.03.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (earlier Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 137/2024 under Sections 20, 25, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985³, registered at P.S. Mukherjee Nagar, Delhi. A chargesheet has since been filed, *qua* the Petitioner under Sections 20, 25, 61 and 85 of the NDPS Act.

2. The case of the prosecution, as briefly summarised in the status report

¹ "BNSS"

² "Cr.P.C."

³ "NDPS Act"



is as follows:

2.1. On 12th February, 2024, ASI Sukhbir Singh of the Narcotics Squad, North West District, Delhi received secret information regarding movement of a vehicle near Nirankari Ground, Mukherjee Nagar, suspected to be involved in transporting Ganja. The informer indicated that a well-planned raid could lead to the apprehension of both supplier and recipient, along with the seizure of a substantial quantity of contraband.

2.2. The ASI conveyed the input to the concerned Inspector and the ACP, following which a DD entry was made in compliance with Section 42 of the NDPS Act. A raiding team was constituted and dispatched to the location, accompanied by the informer.

2.3 Upon reaching the spot, the raising team waited at a safe distance so as to not alert the accused persons. At around 10:15 AM, a light-grey coloured Maruti Swift Dzire car stopped a few meters away from the spot and upon the positive identification, at the instance of the secret informer, the driver of the subject car was apprehended. Upon enquiry, he identified himself as Dhiraj, resident of Burari, Delhi.

2.4 A notice under Section 50 of the NDPS Act was prepared and served on the accused – Dhiraj, who refused the physical search on a carbon copy of the said notice and signed the same.

2.5 Thereafter, the seized car was searched, and from the boot of the car, a plastic sack full of some leafy substances was found which smelt like Ganja. The bag was then weighed using an electronic weighing machine, and the total weight of plastic sack was found to be 21.5 Kilograms. The said bag was then marked as Mark “A” and seized through a seizure memo.

2.6 Since Dhiraj had refused the physical search, the ACP, Model Town,



a gazetted officer, was called for the search to be conducted in his presence. The ACP arrived at around 02:40 P.M. and a search of the body and clothes of Dhiraj was conducted, however, no contraband or malicious material was found. Accordingly, a nil recovery memo was prepared and was duly signed by the accused person as well as the witnesses.

2.7 Thereafter, the FIR No. 137/24 was registered under Sections 20, 25, 61 and 85 of the NDPS Act at P.S. Mukherjee Nagar and further proceedings under Section 55 were initiated. A copy of the seizure memo and the Pulanda marked “A” was handed over to the SHO, P.S. Mukherjee Nagar and the seized articles were deposited in the Malkhana. The accused Dhiraj was also arrested.

2.8 During interrogation, Dhiraj disclosed that he procured the recovered contraband from his associate named Munna, resident of Noida, U.P. and that he had been using a vehicle registered in the name of one Rahul (the Applicant herein) for transporting the contraband.

2.9 According to Dhiraj, Rahul was aware of the illicit activity and was being paid INR 3,000–4,000 per trip for the use of his car. Investigation confirmed that the recovered vehicle was registered in the name of Rahul.

2.10 On 14th March, 2024, the Applicant Rahul was interrogated by the police in terms of the discovery of evidence against him and during the course of investigation, he was arrested. Section 29 of the NDPS Act was also added.

2.11 As of now, the chargesheet in the case has been submitted and the matter is before the Trial Court.

2.12 The Applicant had earlier moved two regular bail applications before the Trial Court, both of which were dismissed. The prosecution contends



that the Applicant was a knowing participant in the alleged conspiracy to transport a commercial quantity of Ganja and, therefore, the rigours of Section 37 of the NDPS Act would apply to the present case.

3. Counsel for Applicant raises the following grounds for seeking bail:

3.1 The Applicant has been in custody since 14th March, 2024. The investigation *qua* the Applicant is complete and the chargesheet stands filed. Therefore, the Applicant's continued incarceration serves no purpose.

3.2 There has been no recovery from the Applicant and he was not present at the spot when the recovery of narcotic substances was made by the raiding team from the possession of the co-accused. The only allegation against the Applicant in the present case, is that the car from which the recovery was done, was registered under the Applicant's name. However, it was being driven by the co-accused.

3.3 The Applicant was not aware of the car being used by the co-accused for the purpose of transportation of the contraband. In fact, the Applicant had sold the said car to the co-accused Dhiraj and the possession of the vehicle was given to him. In this regard, even though no formal agreement to sell was executed, some forms were signed regarding the sale of the vehicle. Owing to the informal nature of the transaction, the transfer of ownership before the registering authority could not be completed.

3.4 The only material relied upon by the prosecution to establish the Applicant's alleged involvement is the disclosure statement of co-accused Dhiraj. It is urged that such a statement, in the absence of any corroborative evidence or recovery from the Applicant, is inadmissible in evidence and cannot form the sole basis for prosecution. Reliance is placed on the



judgment of the Supreme Court in *Tofan Singh v. State of Tamil Nadu*⁴ wherein it was held that a confessional statement made under Section 67 of the NDPS Act is not admissible in evidence against a co-accused unless duly supported by independent material. It is thus submitted that there is no credible material to demonstrate that the Applicant was in conscious possession of the contraband or had any knowledge of its transportation. As such, the rigours of Section 37 of the NDPS Act, which apply only to offences involving conscious possession and active involvement, would not be attracted in the present case.

3.5 The Applicant belongs to a modest financial background and is the sole earning member of his family. He has two minor children, aged 5 years and 3 months, respectively, who are entirely dependent upon him. His prolonged incarceration has resulted in severe financial hardship to the family, warranting sympathetic consideration of his bail application.

4. On the other hand, Mr. Amit Ahlawat, APP for State, strongly opposes the bail application on the following grounds:

4.1 The recovery in the present case has been made from a car which is currently registered in the name of the Applicant and therefore the Applicant was in conscious possession of the contraband. As per the clear disclosure statement of the co-accused Dhiraj, the Applicant is liable to be implicated under Section 29 of the NDPS Act as he was aware that the car, which was under his name and was being leased by him, was being used for the transportation of narcotic substance – Ganja. For this purpose, he also used to receive INR 3000-4000/- for every ferry.

4.2 The recovered quantity in the present case meets the threshold of the

⁴ (2021) 4 SCC 1



commercial quantity and therefore the Applicant must meet the stringent requirement under Section 37 of the NDPS Act.

5. The Court has considered the aforementioned contentions. As per the nominal roll, as on 25th February, 2025, the Applicant has been in custody for 9 months and 9 days. The investigation in the case is complete and the chargesheet has been filed. Therefore, at this stage, the continued detention of the Applicant is not necessary for the purpose of further investigation.

6. Since the contraband recovered in the present case falls within the category of *commercial quantity*, the rigours of Section 37 of the NDPS Act are attracted. In terms of the said provision, before bail can be granted, the Applicant must meet the twin conditions of Section 37 of the NDPS Act, i.e., (i) that there are reasonable grounds to believe that he is not guilty of the alleged offence, and (ii) that he is not likely to commit any offence if released on bail.

7. In the instant case, the allegations *qua* the Applicant pertain to an offence under Section 25 of the NDPS Act, which reads as follows:

“25. Punishment for allowing premises, etc., to be used for commission of an offence:—

*Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, **knowingly** permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.”*

8. As evident from a plain reading of the provision, *knowledge* is a key ingredient under Section 25. The statute requires the prosecution to demonstrate that the owner of the vehicle had consciously permitted its use for the commission of an offence under the Act. In the present case, the prosecution has not produced any independent or corroborative material,



apart from the disclosure statement of the co-accused, to establish that the Applicant had knowledge that his vehicle was being used for transportation of narcotic substances. On the contrary, the Applicant has taken a consistent stand that he had already handed over possession of the vehicle to the co-accused, and that he had no knowledge of its illicit use. At this stage, and in the absence of any further material, the Applicant's contention that he did not have had any knowledge of the contraband transportation cannot be entirely disregarded.

9. The allegation of conspiracy under Section 29 of the NDPS Act also hinges solely on the disclosure statement of the co-accused. The Supreme Court in the judgement of **Tofan Singh**, has held that a confessional statement made to a police officer under Section 67 of the NDPS Act is not admissible as substantive evidence against a co-accused, except to the extent found relevant under Section 53-A and when corroborated in accordance with law. The question whether there exists any legally admissible and credible material to connect the Applicant to the alleged conspiracy is one that must be examined at the stage of trial. At this juncture, no such corroborative evidence has been brought to the fore.

10. In view of the above, this Court is of the *prima facie* view that the Applicant has been able to demonstrate reasonable grounds to believe that he may not be guilty of the offences alleged against him, satisfying the first limb of Section 37(1)(b) of the NDPS Act. As regards the second requirement, it is relevant to note that the Applicant has no prior criminal antecedents. Furthermore, on a previous occasion, when the Applicant was granted interim bail on account of the birth of his child, he complied with all bail conditions and did not misuse the liberty extended to him. These factors



cumulatively weigh in favour of the Applicant and indicate that he is not likely to commit any offence while on bail.

11. Considering the above, the Court is inclined to accept the Applicant's request in the present application. Therefore, the Applicant directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty Metropolitan Magistrate/Jail Superintendent, subject to the following conditions:

- a. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- c. The Applicant shall appear before the Trial Court as and when directed;
- d. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

12. In the event of there being any FIR/DD entry/complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

13. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial or be taken as an expression of opinion on the merits



of the case.

14. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

MARCH 20, 2025/as