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

+ **BAIL APPLN. 239/2025 & CRL.M.A. 4041/2025**

SAFIULLA

.....Petitioner

Through: Mr.. Shivam Gaur, Mr.. Shikhar Goel
and Mr. Mayank Tomar, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **17.02.2025**

CRL.M.A. 4042/2025 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 239/2025

3. The present bail application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter '*BNSS*') has been filed on behalf of the applicant, seeking grant of regular bail in case arising out of FIR bearing no. 116/2023, registered at Police Station Maurice Nagar, Delhi, for offences punishable under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter '*NDPS Act*').

4. Briefly stated, the facts of the present case are that on 24.07.2023, a secret information was received through an informer that a person named Safiulla (applicant), was involved in the supply of narcotic substance in



collaboration with two other persons, and would come to supply Heroin to one of his associate, near the 'Overhead Tank' on Delhi University Road, Delhi. Based on this information, a raiding team was constituted, which reached the said location. At around 12:55 PM, one person, carrying a yellow cloth bag had reached the spot and shortly afterwards, another person had arrived and stopped next to him. Then, the first person had taken out a red cloth bag from the yellow bag and had handed it over to the second person. The police officials had immediately surrounded them and apprehended both the individuals. During questioning, the individuals revealed their identities as Safiulla and Ranjan Singh, respectively. A notice under Section 50 of the NDPS Act was served to them and thereafter, a search was conducted. On conducting search a yellow cloth bag was recovered from the possession of Safiulla. Inside that, a white polythene bag tied with the same material was found. Total 320 gram of Heroin was found in the said bag which was marked as "A". Then, a red cloth bag was recovered from the possession of Ranjan. Inside that, a yellow polythene bag, also tied with the same material, was found. Total 280 grams of Heroin was found in the said bag which was marked as "B". Therefore, a total of 600 grams of Heroin was recovered from both the individuals. Accordingly, the present FIR came to be registered. During the investigation, one mobile phone was recovered from the possession of the applicant and upon verification, the said number was found registered in his name.

5. The learned counsel appearing for the applicant states that the mobile phone belonging to the present applicant has been used by the Police to manipulate record. The learned counsel further submits that after the arrest of the applicant, calls were made and received from the co-accused persons.



The learned counsel further submits that the recovery is manipulated, since in this case the applicant/accused was living with the co-accused for entire one day, and there was no occasion for them to go to another place for supply of the contraband and thus the applicant has been falsely implicated in the present case. It is also stated that the other co-accused Anil, has been granted bail by this Court *vide* order dated 20.11.2024. Therefore, it is prayed that the applicant be granted bail in the present case.

6. On the other hand, the learned APP for the State submits that the Call Details Record (CDR) and the call recording transcripts thereof have been placed before this Court. The learned APP argues that the transcripts of the call recording will clearly show the nexus between the accused persons. He also states that the CDR proves that the accused persons were in constant touch with other accused persons. He further states that as many as 39 calls, 152 calls and 200 calls were made to Dharmender, Ranjan Singh and Anil Kumar Singh from 03.07.2023 till the time of incident from the mobile phone of present applicant.

7. This Court has heard arguments addressed on behalf of both the parties and has perused the material available on record.

8. This Court's attention has been drawn to the fact that the applicant was apprehended with commercial quantity of contraband i.e 320 grams of Heroin at the spot by the raiding team. Concededly, the alleged recovery made from the applicant is commercial quantity and therefore, bar under Section 37 of the NDPS Act would be attracted. Therefore, the twin conditions under Section 37 of the NDPS Act will have to be satisfied by the applicant so as to entitle him 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 9 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."

9. The Hon'ble Supreme 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.

10. In the case of ***Union of India v. Prateek Shukla: (2021) 5 SCC 430*** as well as ***State v. Lokesh Chadha: (2021) 5 SCC 724***, it was held by the Hon'ble Supreme Court that the provisions of Section 37 of NDPS Act have to be applied strictly at the time of deciding bail application of an accused.

11. With regard to Section 37 of NDPS Act, this Court is of the view that the respondent has been successful in showing that there are reasonable grounds to believe that the applicant herein is guilty of the alleged offence.



12. It is also noted that the Call Detail Records (CDRs) evidently depict that he was in constant touch with the other co-accused person(s) and about 391 calls were made from his mobile phone to them.

13. The learned counsel for the applicant has relied upon the order dated 20.11.2024 as per which the other co-accused was granted bail, however the same in my view is not relevant to the present case as the role of the present applicant and the other co-accused, who has been granted bail is different from each. Therefore, at this stage, no ground for granting regular bail is made out.

14. The bail application is accordingly dismissed.

15. Nothing contained herein shall tantamount to an expression of opinion on merits of the case.

16. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 17, 2025/A

Click here to check corrigendum, if any