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

Date of decision: 06.02.2025

+ **BAIL APPLN. 236/2025**

MRS. ANSARI ASMABANU IMDADALIPetitioner

Through: **Mr. Narendra Kumar and Mr. Mukesh
Kr. Singh, Advocates**

versus

STATE OF NCT OF DELHIRespondent

Through: **Mr. Laksh Khanna, APP for the State
for Ms. Richa Dhawan, APP for the
State**

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present matter has been listed for hearing today on account of 05.02.2025 being declared as a holiday of the Court, pursuant to Office Order dated 31.01.2025 bearing No. 04/IG-4/Gen.-I/DHC.
2. The present application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of regular bail in FIR 200/2024 dated 07.10.2024 registered under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) at Police Station (PS) Crime Branch, Delhi.
3. The Applicant herein was arrested on 09.10.2024 and has since been in judicial custody. In the captioned FIR the Applicant had moved two (2)

bail applications before the Trial Court and the same were dismissed vide orders dated 21.11.2024 and 04.01.2025.

Brief Facts

4. As per the case of the prosecution a secret information was received on 07.10.2024 at 2 PM by ASI Sanjeev Kumar that one Fuzail who works in a café in Kasol, Himachal Pradesh, deals in supply of *Charas* in Surat and Maharashtra. It is stated that as per the said secret information Fuzail had reached Delhi with *Charas* and was to travel to Surat for supply of *Charas*.

4.1. It is stated that compliance of Section 42 of the NDPS Act was done and on 07.10.2024 at 4:20 PM Fuzail was apprehended at Platform No.7, Hazrat Nizamuddin Railway Station, Delhi. It is stated that Section 50 NDPS Act compliance was done and 807.5 grams were recovered from Fuzail from three (3) pockets of a brown bag, which he was carrying. It is stated that thereafter, the captioned FIR was registered.

4.2. It is stated that Fuzail disclosed that he worked for one lady i.e., Asma Ben Ansari (the Applicant herein) who was a resident of Surat, Gujarat. It is stated that Fuzail further disclosed that the recovered *Charas* was purchased from one Rajni Thapa of Village Challal, Kullu, Himachal Pradesh.

4.3. It is stated that application under Section 52A of the NDPS Act was filed on 08.10.2024 and the proceedings were conducted on 16.10.2024.

4.4. It is stated that PC remand of Fuzail was secured and on 09.10.2024, Applicant herein i.e., Asma Bano Ansari was arrested from Surat.

4.5. It is stated that the Applicant's husband i.e., Ansari Imdadali Abdul Rafik was evading arrest and Section 82 Cr.P.C. proceedings were initiated and thereafter, he was arrested on 11.01.2025 by local police of PS Salabatpur (Surat). It is stated that the Applicant's husband was produced on

the production warrant before the concerned Court at Delhi and was formally arrested on 24.01.2025.

4.6. It is stated that from the CDRs it was found that both the accused persons i.e., Fuzail and Asma Bano Ansari were actively in touch with each other for last couple of months and on the day of recovery of *Charas* seven (7) calls were made by accused Fuzail to the accused Asma Bano Ansari; and 15 calls were made by accused Asma Bano Ansari to accused Fuzail.

4.7. It is stated that Applicant/Asma Bano Ansari disclosed that she had sent a sum of Rs. 73,000/- for purchase of *Charas* to accused Fuzail's through UPI¹ of acquaintance/neighbor Hussain Sheikh and also booked railway ticket for travel of accused Fuzail from Nizamuddin, Delhi to Surat on 07.10.2024.

4.8. It is stated that Section 67 notice under the NDPS Act was issued to Husnain Sheikh and Mohd. Ayaz since they had transferred Rs. 73,000/- to accused Fuzail and booked his train ticket to Surat. In their statements Husnain Sheikh and Mohd. Ayaz disclosed that they had sent a sum of Rs. 73,000/- to the account of accused Fuzail at the instance of the Applicant/Asma Bano Ansari and charged her 1% commission. They further stated that the transfer was done by them in normal course of their business. They also stated that booking of the train ticket was also done in their normal course of business.

4.9. It is stated that chargesheet against the Applicant/Asma Bano Ansari and accused Fuzail was filed before the Trial Court on 05.12.2024 and next date for framing of charges against the Applicant is 24.02.2025.

¹ Unified Payment Interface

4.10. It is stated that supplementary charge-sheet against accused Imad Ali Ansari is yet to be filed.

Argument of the Applicant

5. Learned counsel for the Applicant states that there is no recovery/seizure of the contraband from the Applicant.

5.1. He states that the Applicant moved the first bail application before the Trial Court on 14.11.2024 and the same was dismissed vide order dated 21.11.2024. He states that thereafter, the Applicant moved another bail application which was dismissed on 04.01.2025.

5.2. He states that considering the alleged recovery of the contraband from the co-accused Fuzail is 807.5 Gram *Charas*, rigours of Section 37 of the NDPS Act are not applicable. He states that 807.5 grams is an intermediate quantity and considering the fact that investigation qua the Applicant is complete and charge-sheet stands filed she may be enlarged on bail.

5.3. He states that any confessional/disclosure statement of the co-accused or Applicant herself are inadmissible in Trial.

5.4. He states that alleged financial transactions between Fuzail and Husnain Sheikh as well as Mohd. Ayaz are being incorrectly attributed to the Applicant. He states there is no direct financial transaction between the Applicant and the co-accused Fuzail. He states that existence of the alleged financial transactions shall be evaluated at the Trial. He states similarly reliance placed on the CDRs to establish a connection between the Applicant and the co-accused would be evaluated at the Trial.

5.5. He states that Applicant is a sick and infirm woman aged about 47 years old, and hence deserves to be released on bail in view of the proviso to Section 480 BNSS. He states that she has been operated five times. He states

that the Applicant herein has no criminal antecedents except for the captioned FIR. He states that the Applicant has the roots in the society and is thus is not a flight risk.

5.6. He states that since the chargesheet has already been filed and there are 22 prosecution witnesses which are to be examined. He states that charge-sheet qua Imdadali Ansari is also pending for filing. He states that thus trial will take considerable time and therefore the Applicant should be enlarged on bail.

Arguments of the State

6. In reply, Mr. Khanna, learned APP states that allegations against Appellant are serious as the menace of drugs is affecting the entire society and especially the younger generation. He states that the role ascribed to the Appellant is alarming and undesirable for the society at large.

6.1. He states that the Applicant herein was arrested at the instance of the accused Fuzail who was carrying the recovered contraband to be delivered to the Applicant herein in Surat, Gujarat.

6.2. He states that the phone number used by the Applicant to communicate with the accused Fuzail is registered in the name of her husband Imdadali Ansari/co-accused.

6.3. He states that if the Applicant is granted bail there is likelihood that she might jump the bail and may again indulge in the sale and purchase of contraband.

6.4. He states that charges are yet to be framed in this matter. He has handed-over a copy of the status report dated 04.02.2025 across the bar.

He is directed to have the same placed on record.

Analysis and Conclusion

7. This Court has considered the submission of the parties and perused the record.

8. A perusal of the status report dated 04.02.2025 filed by the prosecution shows that the Applicant herein was arrested on the disclosure of the co-accused/Fuzail. Admittedly, no contraband has been recovered from the Applicant. The prosecution has relied upon the CDRs between the co-accused/Fuzail and the mobile number alleged to have been used by the Applicant. It has also relied upon the statement of witnesses i.e., Husnain Sheikh and Mohd. Ayaz to allege their existed financial transactions between the Applicant and co-accused/Fuzail on 03.09.2024. And, the fact that the train ticket for co-accused/Fuzail was also purchased by the Applicant herein.

9. Since, the quantity of contraband recovered in captioned FIR is an intermediate quantity; the rigors of Section 37 of the NDPS Act do not apply to the Applicant's prayer for bail (Re: **Puranmal Jat v. State of Rajasthan**²).

10. As noted above, no recovery of contraband has been made from the Applicant. The Applicant has been arrested on the basis of the disclosure statement of the co-accused. However, Supreme Court has held in **Toofan Singh v. State of Tamil Nadu**³ that disclosure statement made by the co-accused cannot be taken as a sole factor to deny bail.

11. The prosecution has relied upon the financial transactions between Husnain Sheikh and Mohd. Ayaz with co-accused Fuzail. The link of these

² 2023 SCC OnLine 1418.

³ (2021) 4 SCC 1.

financial transactions with the Applicant is based on the oral testimony of Husnain Sheikh and Mohd. Ayaz, which will have to be examined at trial after perusing their testimonies, however at this stage the Applicant's link with the said financial transactions cannot be presumed to have been proved on the basis of their statements recorded under Section 67 of the NDPS Act. Similarly, the reliance placed by the prosecution on CDRs of the co-accused Fuzail and the mobile number allegedly used by the Applicant to prove their connection will be proved at trial and the CDRs in the absence of proof cannot be relied upon at the stage of grant of bail. (Re: **Amit Ranjan v. NCB**⁴)

12. As per the nominal roll the Applicant herein, has no criminal antecedents and her conduct in the jail has been satisfactory. The investigation qua the Applicant is complete. The chargesheet has been filed against the Applicant and the co-accused/Fuzail; and she has been in judicial custody for 3 months and 23 days as on 01.02.2025. This Court is satisfied that the Petitioner satisfies the triple test of bail.

13. In view of the foregoing, without adverting to the merits and commenting thereon and in view of the overall facts and circumstances, this Court deems this to be a suitable case for the Applicant's release on bail. As a result, the Applicant is directed to be released on bail upon providing a personal bond in the sum of Rs. 1,00,000/- with one sound surety of the like amount subject to the satisfaction of the Trial Court, and further subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Court.

⁴ 2022 SCC OnLine Del 1532.

- (ii) Applicant shall provide her permanent address to the Trial Court and the I.O. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- (iii) Applicant shall appear before the Court as and when the matter is taken up for hearing.
- (iv) Applicant shall join investigation as and when called by the IO concerned.
- (v) Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- (vi) Applicant will report to the jurisdictional SHO of P.S. Lal Gate, Surat where the Applicant resides every 1st Thursday of every month, at 4:00 PM, and will not be kept waiting for more than an hour. The I.O. will inform the jurisdictional SHO about this order and its compliance.
- (vii) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

14. It is clarified that in the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

15. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

16. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 6, 2025/mt/sk

Click here to check corrigendum, if any