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

+ **BAIL APPLN. 255/2025 & CRL.M.A. 1803-1804/2025**

VIVEK JAIN

.....Petitioner

Through: Mr. Rahul Sharma and Mr. Utkarsh
Jaiswal, Alcoates

versus

STATE (GOVT OF NCT DELHI)

.....Respondent

Through: Mr. Laksh Khanna, APP for the State
SI Kuldeep and Insp. Pawan Singh,
P.S. WR-II Crime Branch

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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22.01.2025

1. The present application has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of anticipatory bail in FIR bearing no. 265/2024 under sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') registered at Police Station (P.S.) Crime Branch.

2. The case of prosecution is that on 19.12.2024, on receipt of a secret information, a raid was conducted in the area of Sector 23, Dwarka, Delhi and two persons namely Mohd Akmal and Rohit Kumar were apprehended along with a Maruti Swift vehicle bearing Registration No. DL8CAM4415.

2.1 It is stated that after due compliance of mandatory provisions of NDPS Act, search was conducted and during search 78.540 Kg of *Ganja* was recovered from the said Maruti Swift vehicle. The aforesaid two accused persons were arrested along with the Maruti Swift vehicle as well as



their mobile phones were seized. They were produced before the Court and on the next date i.e., 20.12.2024 wherein 07 days Police Custody ('PC') remand was obtained from the concerned Court.

2.2 It is stated that present FIR was thereafter registered and further investigation was initiated. It is stated that during interrogation it was disclosed by the accused persons that they had procured the recovered *Ganja* from Rajahmundry, Vishakhapatnam, Andhra Pradesh on instruction of present Applicant i.e. Vivek Jain. It is stated that the accused persons i.e. Mohd Akmal and Rohit Kumar disclosed that they acted as driver(s) for earning cash from the vehicles of the present Applicant and another accused Sadab and were involved in transporting the contraband. It is stated that the accused persons i.e. Mohd Akmal and Rohit Kumar disclosed that the Applicant i.e. Vivek Jain was the mastermind who ran this entire operation using multiple vehicles along with accused Sadab in order to bring *Ganja* in Delhi-NCR; and afterwards the Applicant and Sadab would distribute the *Ganja* to local customers in Delhi-NCR.

2.3 It is stated that since the investigation established that the *Ganja* was procured from Rajahmundry, Vishakhapatnam, Andhra Pradesh, therefore, a pointing-out-memo was prepared in Rajahmundry with respect to the rented accommodation taken by Applicant herein in his own name for stay of his associates in Rajahmundry. It is stated that it was from this location *Ganja* was loaded in the cavity of the car by another source named Raghuveer Roy alias Ravi. In this regard, prosecution relies upon the rent agreement dated 04.12.2023 obtained for the said tenanted property which shows the Applicant herein as the co-tenant.



2.4 It is stated that house/residence of the Applicant was also identified by accused persons i.e. Mohd Akmal and Rohit Kumar during the PC remand and a pointing-out-memo was prepared. It is stated that notice under Section 67 of the NDPS Act dated 26.12.2024 was served on the Applicant through his wife i.e. Monika Jain. It is stated that Applicant did not join the investigation and instead Ms. Monika Jain appeared at the office of the I.O. on 31.12.2024; hence another notice dated 31.12.2024 was served on the Applicant through his wife; however, the Applicant has failed to join the investigation.

2.5 It is stated that the Call Detail Records (CDRs) of accused persons i.e. Mohd Akmal and Rohit Kumar for the period between 16.12.2024-18.12.2024 have been obtained, showing location of mobile numbers of both the accused as well as the Applicant in the vicinity the said house in Rajahmundry, taken on rent by the Applicant. It is stated that the photo of the Applicant has been identified by the accused Mohd Akmal and Rohit Kumar during PC remand. It is stated that the CDR record shows that Applicant Vivek Jain was present close to the rented house when the Ganja was loaded.

3. Learned APP for the State opposes the anticipatory bail application of the Applicant. He states that the Applicant herein has been accused of being indulged in the offence of contraband (*Ganja*) supply. He states that the Applicant has not joined the investigation despite issuance of notice twice under section 67 of NDPS Act on 26.12.2024 and 31.12.2024. He states that there is incriminating evidence established against the Applicant.

3.1 He states that the Applicant was previously as well involved in the similar offences for supply of Narcotics. He refers to FIR No. 169/2018



dated 21.06.2018 registered at P.S. Crime Branch, which involved seizure of confiscating 141.50 kg *Ganja* as well as another case registered at PS Bindapur, which involved seizure of commercial quantity of *Ganja* (22.740 kg) under FIR No. 231/2024 dated 30.05.2024. He states that in fact Applicant is on bail in FIR No. 169/2018 and he has committed the present offence and the other offence for which FIR No. 231/2024 has been registered during his bail.

3.2 He states that CDR analysis reveals the direct involvement of Applicant in the operation, therefore, his custodial interrogation is required to analyse the entire syndicate.

3.3 He states that investigation is at the initial stage and if the Anticipatory bail is granted, the Applicant, shall again indulge in the supply of Narcotics and not cooperate in further investigation of the present FIR.

3.4 He states custodial interrogation is required to recover the mobile phone used by the Applicant as well as to establish the chain of procuring, supplying and distributing *Ganja* in Delhi. He states that identifying the source from whom the recovered *Ganja* was purchases by the Applicant is a crucial link. He states that recovery of the mobile is required to recover the WhatsApp data which would prove the communication with the arrested accused.

4. In reply, learned counsel for the applicant states that the applicant is apprehending arrest in a case wherein his name has not been mentioned in the FIR. He states that disclosure statement of the accused persons cannot be used against any person unless it leads to any recovery. In this regard he relies upon the order dated 03.11.2023 passed by the Co-ordinate Bench of this Court in **Bail Appl. 3258/2023** passed in **Babli v. State NCT of Delhi**.



4.1 He states that the Applicant is not part of any conspiracy to sell or receive any drug or psychotropic substance and neither there is any record that corroborates the role of the Applicant in the alleged offence.

4.2 He further states that the applicant undertakes to join investigation as and when directed by this Court or as required by the police officials /IO.

4.3 He states that the applicant has earlier as well filed an anticipatory bail application before the Spl. Judge, (NDPS- 01), Dwarka Court, Delhi [‘Trial Court’] and the same was dismissed by the said Court vide order dated 16.01.2025.

4.4 He states that the Applicant admits that the house at Rajahmundry was taken on rent by the Applicant, however the said agreement was for the period of 11 months w.e.f. 04.12.2023 and thereafter the subsequent rent agreement was executed by the landlord only with Kanishka S.

4.5 He states that there has been no recovery of contraband from the rented house at Rajahmundry. He states that the mobile number attributed to the Applicant has not been issued in the name of the Applicant.

5. This Court has considered the submission of the parties and perused the material on record.

6. In the present case, no recovery of contraband (*Ganja*) has been attributed to the Applicant herein, however, perusal of the record shows that present accused has been booked in the subject FIR No. 265/2024 under Section 20/25/29 of NDPS Act. The recovery of contraband (*Ganja*) effected in the present case falls under the commercial quantity as per the NDPS Act. The seriousness of the allegations, and the role of the Applicant alleged in the present FIR lodge is firstly, on the disclosure statement of the accused



persons that he is the master mind and supplier of the *Ganja*, which was seized by the police.

7. Although the disclosure statement of accused persons under Section 67 NDPS Act is not in itself reliable/admissible in view of observations of the Supreme Court in **Tofan Singh v. State of Tamil Nadu**¹, however, the Supreme Court vide order dated 20th July 2022 passed in Criminal Appeal No. 1005/2002 titled as '**State of Haryana v. Samarth Kumar**' has held that benefit of the aforesaid decision may not be extended to the accused at the stage of anticipatory bail. The Relevant portions of the order reads as under:

“4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.

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8. **In cases of this nature, the respondents may be able to take advantage of the decision in *Tofan Singh v. State of Tamil Nadu* (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.**

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.”

(‘Emphasis Supplied’)

8. Furthermore, it would be relevant to refer to the observations recently made by the Supreme Court with regard to grant of anticipatory bail in cases related to NDPS Act vide order dated 19th September 2024 passed in SLP

¹ (2021) 4 SCC 1



(Crl.) 12621/2024 titled as ‘**Anarul SK v. The State of West Bengal**’. The relevant portion of the same reads as under:

“4. The Grant of anticipatory bail in cases involving Narcotic Drugs and Psychotropic Substances (NDPS) is a very serious issue. We, therefore, direct the State to consider as to whether it proposes to file an application for the cancellation of bail granted to the other co-accused.”

(‘Emphasis Supplied’)

9. In light of the aforesaid pronouncement of Supreme Court, the reliance placed by learned counsel for the Applicant on **Babli** (supra) is misplaced.

10. The Applicant has failed to join the investigation despite receipt of notices twice on 26.12.2024 and 31.12.2024 under Section 67 of NDPS Act by the IO, due to which Non-Bailable Warrants (NBW’s) have also been issued against the Applicant by the Trial Court vide order dated 16.01.2025.

11. The State has placed credible grounds for seeking custodial investigation of the Applicant. The accused persons i.e. Mohd Akmal and Rohit Kumar have identified the house at Rajahmundry where they picked up the contraband. The rent agreement of the house admittedly stands in the name of the Applicant. The CDR records of the mobile numbers of the accused persons i.e., Mohd Akmal and Rohit Kumar as well as the mobile number of the Applicant places all the three in the vicinity of the Applicant’s rented house at Rajahmundry at the relevant time. The accused persons have identified the Applicant which has led to the notice being issued to him. The other FIRs filed against the Applicant for similarly supplying contraband is also a matter of record and such antecedent of the Applicant clearly shows that he is a habitual offender. At this stage, it may not be appropriate for this Court to evaluate whether the said evidence is reliable or not, however, the



quantity of the contraband (*Ganja*) involved is of commercial quantity, hence, rigors of Section 37 of NDPS Act shall apply. In the considered opinion of this Court, the said facts are sufficient for the State to seek custodial interrogation of the Applicant.

12. In addition, considering that the investigation qua the Applicant is still at the initial stage; having regard to the commercial quantity of the *Ganja* seized, previous criminal record of the Applicant as well as present conduct of the Applicant in not joining the investigation despite service of notice, therefore, this Court is of the view that the allegations are serious which warrants custodial interrogation of the Applicant.

13. Hence no ground for anticipatory bail is made out to the Applicant.

14. Accordingly, the present bail application stands dismissed.

15. Pending applications, if any, stands disposed of as infructuous.

16. Needless to state that nothing herein shall be construed as an expression of opinion on the merits of the case, or the investigation that is yet to be concluded.

JANUARY 22, 2025/mt/ms

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any