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

+ **BAIL APPLN. 381/2025**

VISHAL ALIAS PODA ALIAS VIKAS RAIPetitioner

Through: **Mr. Sanchit Sehgal and Mr. Nagendra Singh, Advs.**

versus

THE STATE OF DELHIRespondent

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

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% **28.02.2025**

1. The present petition has been filed under Section 483 read with Section 528 BNSS, 2023 seeking regular bail in connection FIR No.252/2022 under Sections 21/25/29 NDPS Act registered at P.S. Crime Branch.
2. The case of the prosecution is that based on secret information, a trap was laid and co-accused Tushar and Gulzar were apprehended with 550 grams of Heroin near Tilak Marg Metro Station. The present petitioner was arrested on the basis of supplementary disclosure statement of co-accused Gulzar.
3. The learned counsel appearing on behalf of the petitioner submits that there was no recovery from the present petitioner and his name had surfaced only on the basis of the disclosure statement of co-accused Gulzar which is



inadmissible in evidence.

4. He further contends that another incriminating circumstance against the present petitioner is that there is call connectivity between the present petitioner and co-accused Gulzar.

5. He submits that as per the chargesheet itself, the CDR shows that there were only two calls between the present petitioner and co-accused Gulzar. He submits that the petitioner is in custody since 23.08.2024 and the trial has not yet commenced.

6. He further submits that insofar as the other cases against the present petitioner are concerned, there is no case registered under the NDPS Act. The said offences are under other provisions of the IPC in which the petitioner has already been enlarged on bail. He, therefore, urges the court that the petitioner may be enlarged on bail.

7. *Per contra*, the learned APP appearing on behalf of the State has argued on the lines of status report. The status report has been handed over in court, which is taken on record.

8. I have heard learned counsel for the petitioner, as well as, the learned APP for the State and have also perused the record.

9. It is not in dispute that the recovery of commercial quantity of contraband has been made from co-accused Tushar and Gulzar and that no recovery, whatsoever, has been made from the present petitioner.

10. One of the incriminating circumstance against the present petitioner is that his name has been disclosed by the co-accused Gulzar in his statement recorded under Section 67 of the NDPS Act. At this stage suffice it to say that in view of the decision of the Hon'ble Supreme Court in ***Tofan Singh v. State of T.N., (2021) 4 SCC 1***, the statement under Section 67 of NDPS Act



is inadmissible in evidence.

11. Insofar as another incriminating circumstance that the petitioner was found to be in touch with the co-accused Gulzar is concerned, to be noted that in the supplementary chargesheet, there is a mention of only two calls having been exchanged between the present petitioner and co-accused Gulzar, which by itself cannot establish petitioner's complicity with co-accused Gulzar in the alleged offence.

12. On a query posed by the court, the learned APP, on instructions from the IO, who is present in court, fairly states that none of the cases in which the present petitioner is stated to be involved, are under the NDPS Act.

13. In view of the aforesaid circumstances, this court is of the view that there are reasonable grounds for believing that the petitioner is not guilty of the offence and he is not likely to commit any offence while on bail. Thus, the twin conditions as mentioned in Section 37 of the NDPS Act are satisfied.

14. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/JMFC/Duty JM, further subject to the following conditions:

- (a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- (b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.



(c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses or any family members of the witnesses.

15. It is clarified nothing mentioned above shall be construed as expression of opinion on the merits of the case.

16. The petition is disposed of.

17. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

18. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

FEBRUARY 28, 2025

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