



2025:DHC:2560



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

Reserved on: 09.04.2025

Pronounced on: 15.04.2025

+ BAIL APPLN. 390/2025

SONU

.....Petitioner

Through: Mr. Deepak Vuttsya, Mr.
Manorma Sharma & Mr.
Raunak Vuttsya, Advs.

Versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP
for State.
Insp. Amit Solanki, SI Manjo
Kumar A.E.K.C. Crime
Branch

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present Bail Application has been filed under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') on behalf of the Petitioner/Applicant seeking grant of Regular Bail in connection with FIR No. 206/2023 dated 22.08.2023 ('subject FIR') registered at the Police Station Crime Branch, Delhi for offences punishable under Section 15, 18, 25 and 29 of the



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Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

BRIEF FACTS

2. The present case arises from the information received by the Crime Branch, Delhi on 22.08.2023, at about 07.15 AM, wherein an informant disclosed that one individual, namely, Pappu was involved in smuggling of Opium Doda (Poppy Straw) into Delhi. It was alleged that the said contraband was transported through parcel services of the Indian Railways and further distributed to smugglers across different parts of the City. The informant disclosed that on the same day i.e. 22.08.2023, Pappu would be collecting a consignment, containing the said contraband, from the Parcel Branch of Old Delhi Railway Station and would thereafter, transport it through a Tempo *via* Kodia Pul.

3. Acting upon the said intelligence, the Investigating Officer informed the Senior Officers and constituted a Raiding Team. A trap was, subsequently, laid near Kodia Pul, and at around 12:10 PM, on the signal of the informant, two Tempos bearing no. (1) DL-1-LU-9094 and (2) DL-1-LU-9784 were intercepted. Pappu was found seated with one Chand, Driver of the first vehicle, while the Petitioner was driving the other Tempo. Upon search by the Raiding Team, substantial quantity of contraband, Opium Doda, was recovered from both the vehicles and the accused persons, Pappu, Chand and the Petitioner, were apprehended on the spot. The Petitioner is stated to be in judicial custody since his arrest.

4. During the search, two bags containing the contraband, weighing 42.60 kg and 37.650 kg were recovered from Chand's



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Tempo and two bags of the same weighing 43.35 kg and 37.20 kg were recovered from the Petitioner's Tempo. All the recovered contraband was deposited in the Malkhana of the Police Station Crime Branch, Delhi. Accordingly, the Subject FIR came to be registered and the investigation was handed over to Sub-Inspector Naresh Kumar.

5. On the basis of disclosure statement of the co-accused Pappu Kumar, the Police further arrested Farukh Ansari and Shahjada Hussain @ Birju, the other co-accused persons.

6. It is the case of the Petitioner that he was employed as a driver on a daily-wage basis by Hemant Kumar, owner of the Tempo bearing no. DL-1-LU-9784, who had instructed the Petitioner on the day of the incident, to proceed to the Railway Parcel Branch of Old Delhi Railway Station, where a consignment was to be picked up as one person had booked the vehicle for delivery of goods. Upon reaching the said location, Pappu directed the loading of two white sacks into the two Tempos, one driven by the Petitioner and the other by Chand, with the help of Railway Labours, to be delivered at the given address. While they were on their way, the Raiding Team apprehended them at the Kodia Pul and searched their vehicles and upon finding the contraband, arrested them on the spot.

7. During the course of Trial before the learned Special Judge, NDPS, Central, Tiz Hazari Court, Delhi, the Petitioner moved an application under Section 439 Code of Criminal Procedure, 1973 which was dismissed *vide* order dated 20.11.2023.

8. The Chargesheet was filed by the Investigating Officer on



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16.02.2024, whereafter, the Petitioner moved a second Bail application under Section 483 of the BNSS which was *vide* order dated 11.09.2024 dismissed as withdrawn. The Petitioner moved another application seeking Regular Bail which was dismissed *vide* Order dated 19.10.2024. Thus, leading to the filing of the present Bail Application before this Court praying for grant of Regular Bail.

SUBMISSIONS BY THE PARTIES.

9. Mr. Deepak Vuttsya, the learned Counsel for the Petitioner submitted that the Petitioner had no role in the commission of the alleged offence as he was merely a driver of the vehicle who was acting under the *bona fide* instructions of Hemant Kumar, the Owner of the said vehicle, through whom Pappu had booked the vehicle and the Petitioner was simply discharging his duties as a driver and thus, the Petitioner cannot be held liable for the offences levelled against him.

10. Learned Counsel submitted that the Petitioner had no knowledge of the nature or content of the goods loaded in the vehicle and he cannot be said to be in conscious possession of the contraband. Moreover, no incriminating material/evidence has been presented by the Prosecution so as to implicate him. Furthermore, the Petitioner has no links with the co-accused persons and is not even named by any of the co-accused persons in their disclosure statements.

11. He submitted that the Call Detail Record (CDR) details of other accused do not match with the CDR details of the Petitioner. Learned Counsel submitted that the Chargesheet notes as per the CDR details



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of three phone numbers belonging to three co-accused Pappu, Farukh and Shahjada Hussain @ Birju were in regular touch with each other through telephonic calls, with no mention of the Petitioner.

12. Moreover, he submitted, the said contraband passed through various scanners installed at the Railway Station, the material was transported *via* Indian Railways, a Government Department, thus, neither there was any occasion for the Petitioner to believe that the other co-accused persons were involved in transportation of an illegal substance nor any reason for him to believe that the cartoon and white sacks would contain contrabands.

13. Learned Counsel submitted that the Petitioner has no criminal antecedents and is a 35 year old young man with two minor children, aged 10 and 6 years old and he has suffered incarceration for almost 20 months. Therefore, in these circumstances, the Petitioner be enlarged on Regular Bail, who undertakes to abide by Bail conditions imposed on him as deemed fit by this Court.

14. Learned Counsel in support of his contentions drew sustenance from the following decisions:

- ***Dilbagh Singh vs D.R.I.***, passed in CrI. B.A. No. 1777/2008, 2008:DHC:4245
- ***Dilbagh Singh vs D.R.I.***, passed in CrI. Rev. P. No. 571/2008, 2009:DHC:2087
- ***Najir Hussain vs State Through SHO Special Cell***, passed in Bail Appln. 3810/2024, 2025:DHC:1943.
- ***Gulshan Kumar vs State of NCT of Delhi***, passed in Bail Appln. 2822/2022, Order dated 28.11.2022.



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- *Lorik ram vs State of Assam* (2022) SCC Online Gau 975

15. *Per contra*, Mr. Tarang Srivastava, learned APP for the State, while vehemently opposing the Bail application, submitted that a huge quantity of the contraband, totalling 160.80 Kgs of contraband Opium Doda (Poppy Straw), out of which 80 kgs was recovered from the Tempo driven by the Petitioner, following the due compliances under the NDPS Act.

16. It was contended that the seized contraband falls within the category of '*commercial quantity*', thereby, attracting the embargo under Section 37 of the NDPS Act, which places a Statutory bar on the grant of Bail unless twin conditions are satisfied and if the Petitioner is enlarged on Bail, there is likelihood that he may be involved in similar criminal activities.

17. Learned APP further submitted that the given the recovery of huge quantity of the Narcotic substance, the Petitioner cannot claim ignorance or deny conscious possession thereof. He submitted that the contraband was not packaged in a manner that would escape the attention of the driver, and the onus lies on the Petitioner that he was not in a conscious possession of the same.

18. Learned APP further submitted that the Bail application of the co-accused Shahjada Hussain @ Birju was dismissed as withdrawn *vide* Order dated 24.03.2025 passed by this Court, as the arguments on Charge were being heard by the learned Trial Court.

19. Moreover, he submitted, the judgements relied upon by the Petitioner are distinguishable on facts inasmuch as the quantity seized



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in the said cases were lesser when compared to the present case, and the Charges were yet to be framed in the said cases.

20. Learned APP contended that keeping in view that the rigours of Section 37 of NDPS Act are applicable and the twin conditions stipulated are not satisfied in the present case coupled with the gravity and severity of the punishment prescribed and the potential of the Petitioner to engage in similar activities, if released, weigh against the grant of Bail. Therefore, the Petitioner is not entitled to the grant of Bail at this stage.

FINDINGS AND ANALYSIS

21. This Court has heard the submissions advanced by the learned Counsel for the Petitioner and by the learned APP on behalf of the State and perused the Record.

22. At this stage, the question that arises for consideration pertains to whether the Petitioner was in a conscious possession of the alleged contraband i.e. Opium Doda, recovered from the Tempo driven by him.

23. The plea raised on behalf of the Petitioner is that he was not a regular employee but was a daily wage worker, engaged as a driver by one Hemant Kumar who owned the Tempo bearing no. DL-1-LU-9784, and the Petitioner had, upon instructions from him on the date of the incident, proceeded to the Railway Parcel Branch of Old Delhi Railway Station in the said Tempo to collect the consignment.

24. It is not disputed that the consignment in question had arrived through the Old Delhi Railway Station. The Petitioner was neither the



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consignor nor the consignee of the consignment alleged to contain the said contraband. Rather, the consignment was received at the Old Delhi Railway Station by Pappu, who had received it against a Parcel Booking Receipt and thereafter, the consignment was loaded in two separate Tempos, one of which the Petitioner had driven for delivering it to the given destination. Moreover, the loading of the consignment was carried out by the Railway workers/labourers.

25. Learned counsel for the Petitioner had contended that the prosecution has failed to present any evidence to show that the Petitioner had any knowledge of the consignment containing any contraband and as the goods were received through the services of Indian Railways having undergone various security checks, there was no occasion for the Petitioner to reasonably believe that the same would contain any illegal substance/contraband.

26. This Court does not find merit in the submission of the learned APP that since a large quantity of the contraband was seized from the vehicle driven by the Petitioner, the said contraband was in the conscious possession of the Petitioner.

27. It is not the case of the prosecution that the Petitioner had at any time opened/inspected the consignment to check the goods inside it, his role appears to be merely of a delivery person, to collect the consignment from the said Railway Station and to deliver it to the intended destination.

28. Needless to say, the question of the fact regarding the possession of the contraband with the Petitioner being conscious or



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not, is a matter of Trial to be decided by the learned Trial Court at an appropriate stage, based on the evidence led during the proceedings.

29. As per the Nominal Roll, the Petitioner has undergone custody period of 1 year, 7 months and 10 days as on 01.04.2025 and his overall Jail Conduct is stated to be 'Satisfactory' and he has no criminal antecedents.

30. Having noted the above, it would be apposite to note the observations of the Coordinate Bench in the case of *Najir Hussain vs State Through SHO Special Cell* in Bail Appln. 3810/2024, decided on 25.03.2025, relevant extracts whereof read as under:

"11. Likewise, in Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi, 2024 SCC OnLine SC 220, the Hon'ble Supreme Court granted Bail to the accused from whom commercial quantity of contraband was recovered, having regard to his custody of 01 year and 11 months, the fact that the accused had no criminal antecedents and that the conclusion of Trial would take time. The relevant paras of the decision reads as under:

"8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing of the charges is yet to be done. The conclusion of Trial will thus take time. There are no criminal antecedents.

9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband (smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.

10. Taking into consideration the totality of the circumstances, especially the period of



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custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on Bail subject to his furnishing the Bail bonds to the satisfaction of the Trial Court."

(emphasis supplied)"

31. In view of the foregoing discussion, facts and circumstances, coupled with the facts that the Trial is likely to take time in its conclusion as the Charges in the present case have not been framed and the Petitioner has undergone incarceration for a period of roughly 20 months, the Petitioner is admitted to Regular Bail pending Trial in the subject FIR, on his furnishing a personal bond in the sum of ₹50,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court / CMM / Duty Magistrate and further subject to the following conditions:

- i. The Petitioner shall not leave NCT of Delhi without prior permission of the Learned Trial Court.
- ii. The Petitioner shall report at P.S. Crime Branch, Delhi every Saturday at 4:00 P.M. The concerned officer shall release the Petitioner after recording his presence and after completion of all the necessary formalities.
- iii. The Petitioner shall immediately intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change of residential address.
- iv. The Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- v. The Petitioner is directed to give his mobile number to the



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Investigating Officer and keep it operational at all times.

- vi. The Petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the Prosecution witnesses or other persons acquainted with the facts of case.
- vii. The Petitioner shall also not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending Trial.

32. A copy of this Order be sent to the Jail Superintendent concerned for information and necessary compliance.

33. It is made clear that observations made hereinabove shall not tantamount to be an expression on the merits of the Petitioner's case and have been made for the consideration of the Bail alone.

34. Accordingly, the present Bail Application is disposed of.

SHALINDER KAUR, J.

APRIL 15, 2025
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