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

+ **BAIL APPLN. 505/2025**

AFAAQ KHAN

.....Petitioner

Through: Mr. Karan Verma, Ms. Nayan Maggo
and Ms. Khushi Mangla, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the State
with SI Shailendra Tiwari, ER II
Crime Branch

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

25.02.2025

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1. The present bail application has been filed on behalf of applicant seeking regular bail in case arising out FIR No. 121/2020, registered at Police Station Crime Branch, Delhi, for the offences punishable under Sections 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter 'NDPS Act').

2. Briefly stated, the facts of the present case are that on 20.08.2023, a secret information was received through an informer that a person named Guddu Khan who lives in the vicinity of Nandnagari, Delhi would come to supply heroin to someone near SDM office, Nandnagari, and if a raid is conducted, he can be apprehended. Based on the said information, a raiding team was constituted, and a trap was laid near the said place on the intervening night of 20-21.08.2020. At around 12:50 AM, one person identified as Guddu Khan had reached the spot, and at around 12:55 AM,



the present applicant had also reached there, and they both had started having conversation with each other. Thereafter, Guddu had given a black colored polythene bag to the applicant, who had opened the same and started looking inside it. In the meanwhile, the raiding team had apprehended both the individuals. Thereafter, a notice under Section 50 of the NDPS Act was served upon them. During search, the black coloured polythene was taken from the applicant and heroine, weighing about 300 grams was recovered from the possession of the applicant, which was delivered to him by co-accused Guddu Khan. Accordingly, the present FIR was registered. After conclusion of investigation, chargesheet was filed, and charges were framed against the accused persons.

3. The learned counsel appearing on behalf of the applicant argues that the applicant has been falsely implicated in the present case, and he has been in judicial custody for about 4 years and 6 months. It is contended that Guddu Khan happens to be the real brother of the applicant, and it is unbelievable that Guddu will choose to hand over contraband to his brother in a public place. Thus, it is prayed that the applicant be granted bail in the present case.

4. Per contra, the learned APP appearing on behalf of the State, vehemently opposes the present bail application. It is argued that about 300 grams of heroin was recovered from the applicant, and the FSL report supports the case of prosecution. It is also stated that the applicant and his brother are a part of an organized drugs syndicate. Therefore, it is prayed that the present bail application be dismissed.

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



6. In the case at hand, the applicant and co-accused Guddu Khan were apprehended on 21.08.2023, pursuant to receipt of a secret information that Guddu, who used to indulge in supply of narcotic substances would visit the spot to supply heroin to someone. During their search, a black coloured polythene was recovered from the present applicant. From that said polythene, 300 grams of heroin was recovered. The said quantity of narcotic substance is commercial quantity. This Court's attention was also drawn to the fact that as per the FSL report received in this case, upon a chemical, TLC, and GC-MS examination, the exhibits were found to contain Diacetylmorphine.

7. Charges against the accused persons stand framed, and nine prosecution witnesses have already been examined before the learned Trial Court, and as informed to this Court by the learned APP for the State, the said witnesses have supported the prosecution's case. As noted above, the FSL Report in this case concludes that the contraband recovered from the present applicant is heroin; and the recovery is of commercial quantity. Therefore, embargo under Section 37 of the NDPS Act will be attracted in the present case.

8. As regards the application of Section 37 of NDPS Act is concerned, it will be relevant to refer to the observations of the Hon'ble Apex Court in case of *Narcotics Control Bureau v. Mohit Aggarwal*: 2022 SCC OnLine SC 891, which read as under:

“10. The provisions of Section 37 of the NDPS Act read as follows:

“37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Criminal Procedure Code, 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 19 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 subsection (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

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..."

9. While dismissing the previous bail application preferred by the present applicant also, i.e. *BAIL APPLN. 774/2024*, this Court had observed as under:

"9. The recovery in this case is of 300 grams of heroin, which is a commercial quantity and embargo under Section 37 of NDPS Act is attracted in this case. At this stage, when the applicant has been arrested at the spot receiving the narcotic substance from the co-accused and both of them were apprehended together from the spot itself, and further that the FSL report has supported the prosecution case, the twin conditions under Section 37 of NDPS Act are not satisfied.

10. Considering the overall facts and circumstances of the case, and that the recovery of commercial quantity of narcotics substance was affected from the present applicant/accused from the spot, this Court cannot persuade itself to believe that there are reasonable grounds to



believe that he is not prima facie guilty of the alleged offence under NPDS Act. Therefore, in view of the above discussion, no ground for bail is made out.”

10. Thus, in view of the foregoing discussion, and considering that recovery of commercial quantity of narcotic substance was affected from the present applicant from the spot, and that trial is at a crucial stage, this Court finds no ground to grant regular bail to the applicant.

11. Accordingly, the present bail application stands dismissed.

12. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

13. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 25, 2025/VC

Click here to check corrigendum, if any