



\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 538/2025
GUNGUN

.....Applicant

Through: Mr. Rahul Sharma, Mr.
Deepak Ghai, Ms. Drishti
Juneja, Mr. Utkarsh
Jaiswal, Mr. Sanjay Jain,
Mr. Sachin, Mr. Gaurav
Gogia, Mr. Rahul, Ms.
Rama Jaiswal, Advocates.

versus

STATE GOV.T OF NCT OF DELHIRespondent

Through: Mr. Ritesh Kumar Bahri,
APP for the State with Ms.
Divya Yadav and Mr.
Lalit Luthra, Advocates.
SI Nitin Sharma, PS Civil
Lines.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

29.04.2025

%

1. The present application is filed by the applicant for grant of regular bail in FIR No.172/2024 dated 05.04.2024, registered at Police Station Civil Lines, for offences under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. It is alleged that on 05.04.2024, on the basis of a secret information that the co-accused Mamta would be coming to deliver the contraband, a raid was conducted and the co-accused Mamta was apprehended alongwith the applicant. It is alleged that a recovery of 280g of Heroin was effected from co-accused Mamta and 40g of Heroin was recovered from the applicant.

3. The learned counsel for the applicant submits that the

BAIL APPLN. 538/2025

Page 1 of 4



recovery effectuated from the applicant is of only intermediate quantity and in such circumstances, the bar under Section 37 of NDPS Act does not apply.

4. He submits that the applicant was arrested on 06.04.2024 and the charges are yet to be framed in the present case. He submits that no purpose will be served by subjecting the applicant to further incarceration.

5. *Per contra*, the learned Additional Public Prosecutor for the State opposes the grant of any relief to the applicant. He submits that the applicant cannot claim to be unaware that the co-accused Mamta, who is her mother, was carrying a large quantity of Heroin. He states that the applicant has also been charge sheeted for the offence under Section 29 of the NDPS Act and the recovery made from the applicant cannot be seen in isolation.

6. I have heard the learned counsels and perused the record.

7. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, the period of incarceration is also a relevant factor that is to be considered.

8. It is argued on behalf of the applicant that the bar under Section 37 of the NDPS Act would not be attracted in the present case as only intermediate quantity of the contraband has allegedly been recovered from the applicant. The learned



Additional Public Prosecutor has contested that the rigours of Section 37 of the NDPS Act will be attracted as the total amount of the recovered contraband is more than the threshold of commercial quantity.

9. It is not disputed that only 40 grams of Heroin was recovered from the present applicant. There is no cavil that only because the recovery of the contraband is of intermediate quantity, the accused would *ipso facto* be not entitled for grant of bail. The application would still have to be considered on its own merits, *albeit* without the bar of Section 37 of the NDPS Act.

10. The applicant was arrested way back on 06.04.2024, and has spent more than one year in custody. The chargesheet has already been filed, and the applicant is no longer required for custodial interrogation. It is pertinent to note that the charges are yet to be framed in the present case. It cannot be denied that the applicant has spent substantial period in custody, and the investigation is complete. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive not preventive and the deprivation of liberty has been considered as a punishment.

11. On being pointedly asked, it is also informed that even though the co-accused Mamta has been involved in multiple cases, the present applicant has clean antecedents.

12. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person



acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;

c. The applicant shall appear before the learned Trial Court on every date of hearing, unless her appearance is exempted;

d. The applicant shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;

e. The applicant shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.

13. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

14. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

15. The present bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

APRIL 29, 2025

DU