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

+ **BAIL APPLN. 557/2025**

MOHD RAFIQ @IBRAHIM @PEERJI

.....Petitioner

Through: Ms. Sushma Sharma, Mr. Girish Kumar, Sharma, Mr. Dhruv Kumar Sharma, Mr. R. Sahil, Ms. Stuti Aggarwal, Ms. Aayushi Gaur, Advocates.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State with ASI Mahesh Kumar and ASI Vinod Kumar, WR-1 Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ORDER

29.07.2025

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1. Applicant is an under-trial/accused in case FIR No. 96/2020 dated 23.07.2020 registered under Sections 21/25/29 NDPS Act at Police Station Crime Branch. He seeks bail having already remained in custody for more than four years.

2. Per FIR, the prosecution case is that on the basis of a secret information raid was conducted and accused Rafiq and Nasir were apprehended, and a large quantity of heroin can be seized from them. They were travelling in a white Ertiga vehicle while coming from the direction of Gurugram. When the raiding party signaled to stop, the driver, upon noticing the police, accelerated the car. However, approximately 50-60 meters ahead



the vehicle was eventually intercepted and stopped. As the car came to a halt, a person sitting on the passenger seat immediately stepped out with a black bag and began running towards the front. Further, ASI Mahesh pursued the person who threw the bag into the bushes and continued to run. During this time, the other staff apprehended the driver of the car. Upon inquiry, the person driving the car was identified as Nasir Hussain. The person sitting on the passenger seat, who had run away with the bag, was identified as Rafiq @ Peerji. The bag thrown by Rafiq was opened and searched, revealing two transparent waxy polythene packets tied with green rubber bands. Upon checking the contents of these packets, brown powder was found. Using a field testing kit, it was confirmed that the powder in both packets was heroin. The first packet weighed 1 kg and the second packet weighed.

3. Applicant (Rafiq) was taken in custody on the same day i.e. 23.07.2020 and has been in custody ever since.

4. In the aforesaid backdrop, I have heard the rival contentions and perused the case file.

5. Learned APP, at the very outset, opposes the bail plea, *inter alia*, on the ground that past conduct of the applicant disentitles him to seek the discretionary relief from this Court. She would point out that as per the status report, the applicant was convicted in a similar offence under NDPS Act and has already under the awarded of sentence for four years and Eight months in the said case. However, after having been released from jail, he has committed the repeat offence.

6. While on the other hand, counsel for the applicant would point out that co-accused of the applicant, namely, Nasir who was travelling with him



in the car at the time of the incident when the alleged recovery of the contraband (4 kg heroin) was made, has already been granted bail vide order dated 13.05.2025 as Annexure 'C' by the Co-ordinate Bench of this Court, primarily on the ground that he had already remained under preventive custody for about three years. She would further submit that based on the disclosure statement of the applicant, Sherafat Sheikh, Waseem Sheikh, Md Faizal were also arrested but subsequently, they have also been enlarged on bail.

7. As regards the applicant being convict in the past, she would point out that the co-accused/ Sherafat Sheikh is also similarly situated. He was also convicted in past in an NDPS matter and yet granted concession of bail in the FIR in question. She would thus contend that the applicant is also equally entitled to bail on the ground of parity alone. Moreover, as on today, he has already been in custody for almost five years punctuated with intermittent interim bail, she points out, and that alone suffices to seek bail at this stage, is the argument.

8. Having heard the rival contentions as above and after perusal of the case file, I am of the view that it is a fit case for bail. Let us see how.

9. As regards the applicant being singled out on the ground that there was no recovery made from the other co-accused, I am of the view that even qua the applicant, it cannot be possibly be conclusively said that the recovery was made from his sole physical possession.

10. Prosecution's own version in the FIR is that at the time of the incident, there were two occupants in the car and upon seeing the police officials approaching them, the contraband was thrown outside the car, from where it was recovered. Thus the co-occupant i.e. Nasir of the car is equally



culpable, and he is on bail.

11. I am thus of the view that, on the count, that the applicant alone cannot be held responsible qua the recovery, as it seems to be rather inequitable approach at this stage.

12. It is also borne out that during the past five years, the applicant was enlarged on interim bail on multiple occasions and there is no reported misconduct of any kind or having misused the concession of interim bail and each time, he surrendered as per the terms imposed on him.

13. Over the years, the trial is though taking place but proceeding at a snail's pace. Out of total 31, only 7 witnesses have been examined so far.

15. Qua the apprehension of applicant tampering with the evidence, that also seems to be unfounded. Evidence has been seized by the prosecution and is beyond the reach of the applicant. There is no likelihood of his influencing the witnesses they are all officials of the prosecution, as there was no other independent witness.

14. In totality of the circumstance, to continue to keep the applicant under prevented custody as a suspect any further would be of no use as he has already been in custody for close to five years after deducting the periods of interim bail.

15. The applicant is stated to be the sole bread earner of the family constituting of two marriageable daughters, ailing old-aged parents and wife to support, who have been driven to starvation and are living under sheer penury during his incarceration. In his absence, there is no one to attend to their financial needs.

16. Taking wholesome view of the matter, but without expressing any opinion on the merits of the case, the applicant is admitted to bail on his



furnishing bail bonds and surety bonds to the satisfaction of the concerned Trial court /Duty Magistrate, as the case may be, subject to the other usual conditions which the Trial deems fit.

17. Any observation made herein above is only for the purpose of disposing of the instant bail application and not to be construed, in any manner, as any expression on the merits of the pending case and the trial shall proceed without being influenced either way by the same.

18. Bail Application is disposed of accordingly.

ARUN MONGA, J

JULY 29, 2025

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