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

+ **BAIL APPLN. 624/2025**

YUNISH

.....Petitioner

Through: **Mr. U.M. Tripathi & Ms. Utsa
Srivastav, Advocates**

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: **Mr. Sanjeev Bhandari, ASC for the
State with SI S.K. Ojha**

+ **BAIL APPLN. 1203/2025**

TALIB

.....Petitioner

Through: **Mr. U.M. Tripathi & Ms. Utsa
Srivastav, Advocates**

Versus

STATE NCT OF DELHI

.....Respondent

Through: **Mr. Utkarsh, APP for the State with SI
S.K. Ojha**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

16.05.2025

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1. The aforesaid two Bail Applications has been filed on behalf of the Applicant-Yunish and Applicant-Talib seeking Regular Bail under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"*) read with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS"*) in FIR No. 0603/2024 dated



16.09.2024, under Sections 20/29 of NDPS registered at P.S. Burari, North Delhi.

2. The First Bail Applications were filed by both the Applicants separately before the Ld. ASJ, Special Judge, NDPS, which were dismissed *vide* Order dated 06.12.2024. Thereafter, separate Bail Application was filed before the Ld. ASJ, Special Judge, NDPS, by the Applicants-Yunish and Talib, which has been dismissed *vide* separate Orders dated 17.01.2025 and 21.03.2025, respectively.

3. **Brief facts** are that on 16.09.2024 on the basis of secret information, the Raiding party apprehended one person named Deepak @ Pradeep along with one auto rickshaw bearing registration No. DL-RV 6740, near Burari Flyover going towards Mukundpur side. Upon search, 3.100 kg of *Ganja*, kept in the Auto rickshaw, was recovered. An FIR No. 0603/2024 dated 16.09.2024 under Sections 20/29 NDPS Act was registered.

4. Deepak @ Pradeep was interrogated at length, who confessed his involvement in the commission of the offence. It is submitted that on the basis of the disclosure statement of Deepak @ Pradeep and the CDR connectivity between him and the Applicants, Yunish and Talib were arrested on 28.10.2024.

5. During the investigation, CCTV footage of Gujjar Chowk, Bhalswa Dairy and Bhalswa Chowk was procured and the same was analysed wherein a person wearing a cap was seen, who had been earlier identified as co-accused Sonu by Deepak @ Pradeep.

6. Sonu had also been seen in the CCTV footage of camera at Rao Mehar Chand Sarwati School, Bhalswa Dairy. He along with the other co-accused was seen stepping down from e-rickshaw, during which the co-accused Md.



Tahir @ Biru came on a Motorcycle Splendor bearing registration No. DL4SDU2053 towards the Kathia Baba Marg and Sonu and others accompanying the co-accused, sat on the bike of the co-accused Md. Tahir @ Biru.

7. Further investigations were done to trace the owner of the Motorcycle bearing No. DL4SDU2053, which was being used for transportation of contraband by Sonu, Tahir @ Biru and others. It was found to be registered in the name of one Nisha D/o Rajkumar R/o Indira Vikas Colony, Dr. Mukherjee Nagar, North-West, Delhi. During the interrogation of Nisha on 27.10.2024, the Police came to know that the Motorcycle was being used by her brother in law Talib S/o Ishrar Baksh.

8. On 28.10.2024, enquiry were made from Applicant-Talib in which it was found that the said Motorcycle was being used by co-accused Applicant-Yunish; he reiterated that Applicant-Yunish is the mastermind of their gang.

9. Applicant-Yunish was apprehended at the instance of Applicant-Talib on 28.10.2024 and was interrogated at large. He confessed his involvement in the commission of the offence. He also confessed about his involvement in supply of contraband which he was procuring it from Orissa alongwith other co-accused, namely, Applicant-Talib, Alim, Irfan and Mohammad Tahir @ Biru.

10. The Applicants Yunish and Talib were arrested on 28.10.2024 and are in judicial custody since then.

11. CDRs of accused Talib and Mohammad Tahir @ Biru had been procured from the concerned Service Provider on 16.11.2024.

12. During the course of investigations, child Farman S/o Idareesh joined investigation and revealed that the Applicants alongwith others, are involved in transportation and supply of *Ganja* in Delhi NCR and adjacent States.



13. The investigations are stated to be still pending against other co-accused Rashid, Alim and Irfan, who are yet to be arrested.

14. The Chargesheet has been filed against the Petitioners and the other co-accused on 14.11.2024. The supplementary Chargesheet alongwith FSL Report and CDR/CAF/Location Analysis Report has been filed before the Ld. Trial Court on 12.03.2025. The FSL Report states that on the scientific analysis, the exhibit was found to be *Ganja*.

15. ***The Status Report further states*** that the analysis of CDR/CAF/Location Analysis Report has revealed that Applicant-Yunish, Applicant-Talib and Tahir were having CDR connectivity.

16. ***The State*** has submitted that location of Applicant-Yunish and Applicant-Talib is shown to be in Vishakhapatnam, Andhra Pradesh since 07.09.2024 to 10.09.2024 and they have been continuously in contact with each-other and Tahir.

17. ***The Bail Applications of the two Applicants are opposed*** on the ground that Applicant-Yunish is the mastermind and king pin of interstate gang involved in supply, transportation, sale and purchase of contraband. The other co-accused- Irfan, Rashid and Alim are yet to be arrested. The Charges are yet to be framed and the Chargesheet stands filed against the Applicants and the other accused. The conspiracy is yet to be unlocked. There might be a syndicate, which needs to be busted. The Applicant-Yunish was involved in the purchase and supply of contraband and was involved in arranging the Motorcycle for supply of contraband.

18. It is submitted that in case the Applicants are released, they may threaten the witnesses and hamper the investigation and are also likely to



commit cognizable offences in future. It is also possible that they may jump the bail.

19. Hence, the Bail Applications of both the Applicants, are opposed.

20. **Submissions heard and record perused.**

21. It is not under challenge that Applicant-Yunish and Applicant-Talib were apprehended on being identified in the CCTV footages by the accused Deepak @ Pradeep. Admittedly, the recovery of *Ganja* of 3.100 kg was made from the auto rickshaw, which the accused Deepak @ Pradeep was carrying in the auto rickshaw that he was driving.

22. Admittedly, no recovery has been affected either from Applicant-Yunish or Applicant-Talib. The only incriminating evidence against these two accused is the disclosure statement of Deepak @ Pradeep and who has identified them from the CCTV footages and their connectivity through CDRs.

23. While it is the claim of the Respondent that Yunish was the mastermind and he alongwith the other co-accused was involved in transportation and sale of contraband but aside from the disclosures, there is no evidence collected against them during the investigation and the Chargesheet already stands filed. Essentially, the evidence against them is their CDR connectivity.

24. Similar facts were considered in Phundreimayum Yas Khan v. State (NCT of Delhi), 2023 SCC OnLine Del 135 wherein, no recovery was affected from or at the instance of the Applicants and there was no material to link him to the recovery of commercial quantity from the co-accused. It was observed that in such circumstances, rigors of Section 37 NDPS Act would not apply.

25. Further, the only incriminating evidence was the CDR connectivity with the co-accused wherein it was held that merely because there was frequent exchange of calls between the accused and co-accused, would not be sufficient



to deny the bail in the absence of any other corroborative evidence. The evidentiary value of the CDRs has to be tested at the stage of trial.

26. Similar observations has been made by the Apex Court in State, Bengaluru v. Pallulabid Ahmad Arimutta and Another, (2022) 12 SCC 633. The reference be also made to the judgment of the Apex Court in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1 wherein the confessional statement recorded under Section 67 NDPS Act was held to be inadmissible in a trial for an offence under NDPS Act. It was further observed that CDR details of some of the accused would have to be examined at the stage of trial.

27. Similar observations have been made by the Coordinate Bench in Deepak Nagiya v. State (NCT of Delhi), 2023 SCC OnLine Del 5641 and in Amit Ranjan v. Narcotics Control Bureau, Delhi, 2022 SCC OnLine Del 1532. Likewise, the Coordinate Bench in Abdul Rab v. Narcotics Control Bureau in Bail Application No. 3023/2024 decided on 20.01.2025 in similar circumstances wherein only a *prima facie* evidence was CDR connectivity; it was observed that the Courts cannot accept the allegations made by the Prosecution to prosper merely because the co-accused was found in possession of contraband. It cannot be treated to be a collective recovery from the other accused persons in the absence of any recovery being affected from them.

28. The objective of Bail is to secure the presence of accused during the trial and to ensure that they do not tamper with the evidence or flee during the trial. It is not intended to be punitive of a pre-conviction sentence. The liberty of such individuals cannot be taken away without the proof. In these circumstances, the Bail must be granted.

29. In the present case, there is only disclosure statement of co-accused, which is inadmissible. The other material evidence is only the CDR



connectivity and there is no recovery. The accused are in judicial custody since 28.10.2024. Though, the Chargesheet has been filed, but the charges are yet to be framed and the trial to be commenced.

30. In the totality of circumstances, both the accused Yunish and Talib are hereby admitted to bail on the following terms and conditions:

- a) The Applicants/Accused shall furnish a personal bond of Rs.35000/- with one surety each of the like amount, subject to the satisfaction of the learned Trial Court.
- b) The Applicants/Accused shall appear before the Court as and when the matter is taken up for hearing;
- c) The Applicants/Accused shall provide their mobile number/changed mobile number to the IO concerned which shall be kept in working condition at all times;
- d) The Applicants/Accused shall not indulge in any criminal activity and shall not communicate or intimidate the witnesses.
- e) In case, the Applicants/Accused changes their residential address, the same shall be intimated to learned Trial Court and to the concerned I.O.

31. The copy of this Order be communicated to the concerned Jail Superintendent as well as to the learned Trial Court.

32. The above two Bail Applications are accordingly, disposed of

NEENA BANSAL KRISHNA, J

MAY 16, 2025

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