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

+ **BAIL APPLN. 690/2025**

VIRENDER

.....Petitioner

Through: Ms. Pallavi Vashist and Mr. Manoj
Kumar, Advocates

versus

STATE (GNCT OF DELHI) THROUGH SHORespondent

Through: Mr. Manoj Pant, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

12.03.2025

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1. By way of present application, the applicant seeks grant of regular bail in case arising out of FIR bearing no. 26/2024, registered at Police Station Crime Branch, Delhi, for the offences punishable under Section 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereafter '*NDPS Act*'].

2. Briefly stated, the facts of the present case are that on 04.02.2024 a secret information was received that a women, named Chandrakala (co-accused), aged 68 years, was indulged in sale and supply of Heroin, in bulk, and that she brings large quantity of Heroin/smack from Bareilly to supply it to different areas in Delhi. It was further revealed that Chandrakala along with her son Virender (the applicant herein) will bring a large quantity of Heroin/smack in a white color Swift Dzire car, bearing registration number



UP16GT5132, from Bareilly. Eventually, a raiding team was constituted to apprehend the accused persons. During the monitoring of vehicles, the aforementioned car was stopped and three persons namely, Chandrakala, Virender (the applicant herein) and the driver Bhupender, came out of the car. They were apprehended and notice under Section 50 of the NDPS Act was served upon them. Thereafter, a red and white colored cloth bag was recovered from Chandrakala's hand and upon testing the same with the Narcotics Drugs Detection kit, it was confirmed that the substance was Heroin, weighing about 400 grams. However, no contraband was specifically recovered from the present applicant Virender, and from the driver Bhupender, or from the car. Thereafter, the accused persons were arrested in the present case.

3. The learned counsel appearing for the applicant argues that the applicant herein is not a flight risk. It is further argued that despite the case of the prosecution being that public persons were present at the spot, no public witness has joined in the recovery proceedings. The learned counsel also argues that the rigors of Section 37 of NDPS Act are not applicable in the present case, since recovery of commercial quantity was affected from co-accused, and not from him, and the applicant was only accompanying her mother in the car. It is also argued that there are some discrepancies in the seal handling memo. It is stated that the trial will take some time to conclude, and the applicant herein has been in judicial custody for about one year; and therefore, it is prayed that the applicant be released on bail.

4. The learned APP for the State, on the other hand, argues that the co-accused Chandrakala, who is the mother of the applicant, is a habitual



offender and was also involved in another case under NDPS Act. It is also argued that the CDR between the applicant and co-accused Chandrkala reveals that they were in constant touch with each other and they were also together in Bareilly and had transferred narcotic substances together to Delhi. It is also stated that the main source from where they had obtained the narcotic substances is also located in Bareilly, but the accused persons did not cooperate with the investigation. It is contended that applicant was in a conscious possession of 400 grams of Heroin, which is commercial quantity, and therefore, bar under Section 37 of NDPS Act would be attracted in the present case. It is thus prayed that the 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 present case, the police officials had apprehended three individuals – Chandrakala, her son Virender, and car driver Bhupender. During the search, a red and white cloth bag in Chandrakala's possession was found to contain 400 grams of heroin, which was confirmed using a Narcotics Drugs Detection kit.

7. Further, in the present case, there is recovery of commercial quantity of 400 grams of Heroin from co-accused Chandrakala (mother of the applicant). It is evident from the records and the material collected during the investigation that the present applicant and co-accused Chandrakala, reside in the same house, and they had travelled from Bareilly to Delhi in a Taxi, after procuring the Heroin from Bareilly. The CDR also supports the case of the prosecution that the applicant and co-accused Chandrakala had travelled together from Bareilly to Delhi. Concededly, 400 grams of Heroin



was recovered from a bag carried by the co-accused Chandrkala, while she was travelling with the present applicant in a car. The FSL report also supports the case of prosecution. Therefore, at this stage, *prima facie*, the rigors of Section 37 of NDPS Act would be attracted in the present case. Therefore, the twin conditions under Section 37 of the NDPS Act will have to be satisfied by the applicant so as to entitle him to grant of bail. The said twin conditions are : *first*, that the accused is not guilty of the offence, and *second*, that he is unlikely to commit a similar offence if released on bail. For reference, Section 37 of the NDPS Act is set out below:

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

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 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 9 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 sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

8. The Hon'ble Supreme Court in *Narcotics Control Bureau v. Mohit Aggarwal*: 2022 SCC Online SC 891, while explaining the meaning of 'reasonable grounds' under Section 37(1)(b) of NDPS Act, has held as under:

“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. In the case of *Union of India v. Prateek Shukla: (2021) 5 SCC 430* as well as *State v. Lokesh Chadha: (2021) 5 SCC 724*, it was held by the Hon'ble Supreme Court that the provisions of Section 37 of NDPS Act have to be applied strictly at the time of deciding bail application of an accused.
10. Though the learned counsel for the applicant has argued that there is some discrepancy in the seal description in the seal handling memo, however, as rightly held by the learned Trial Court, the same is a matter of trial.
11. This Court's attention was also drawn to the fact that co-accused Chandrkala is already involved in a similar case under NDPS Act i.e. FIR No. 200/2016, under Section 21 of NDPS Act, P.S. Crime Branch.
12. In view of the above discussion, and considering that commercial quantity of 400 grams of Heroin was recovered in this case, and the fact that charges are yet to be framed in this case, no ground for grant of regular bail is made out.
13. Accordingly, the present application stands dismissed.
14. However, the learned Trial Court is requested to expedite the hearing of arguments on charge in the present case.
15. It is, however, clarified that nothing expressed herein above shall



tantamount to an expression of opinion on merits of the case.

16. The order be uploaded on the website forthwith.

MARCH 12, 2025/vc

SWARANA KANTA SHARMA, J

Click here to check corrigendum, if any