



2025:DHC:2257



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

% *Judgment reserved on: 26.03.2025*
Judgment pronounced on: 02.04.2025

+ BAIL APPLN. 672/2024

MONU @ SANDEEP

.....Petitioner

Through: Mr. Kundan Kumar, Adv.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Raghuinder Verma, APP
for State with SI Vishan
Kumar, ANTF, Crime Branch.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking the grant of Regular Bail in FIR No. 14/2022 (subject FIR) dated 17.02.2022, for the offences punishable under Sections 21, 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered at the Police Station Crime Branch (North-West), Delhi.

Case of the Prosecution:

2. On 15.02.2022, Constable Ravi Kumar received secret information regarding the petitioner, namely, Monu @ Rickey @ Sandeep, a resident of C-348, Balbir Nagar, Aman Vihar, Delhi, aged



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approximately 40 years, to be engaged in the supply of *Heroin* from his residence, where a significant quantity of the same was allegedly stored. Acting upon this intelligence, Constable Ravi Kumar relayed the information to the Sub-Inspector (SI) Vishan, who recorded it under Section 42 of the NDPS Act *vide* DD No. 0052A dated 15.02.2022. Subsequently, Inspector (Insp.) Rakesh Duhan was informed, who further apprised Mayank Bansal, Assistant Commissioner of Police (ACP)/Narcotics Cell.

3. Upon being satisfied with the information, ACP Mayank Bansal issued a search warrant under Section 41(2) of the NDPS Act, authorizing SI Vishan to conduct a search of the petitioner's premises. A raiding team was constituted, but upon reaching the location, they found the house locked, rendering the execution of the search warrant unfeasible. Consequently, the team returned without conducting the search.

4. Subsequently, on 16.02.2022, a fresh secret tip-off was received by the Constable Ravi Kumar indicated that the petitioner was present at his residence and was actively supplying *Heroin*. This information was again conveyed to the SI Vishan, who after personally enquiring from the secret informant, notified the Insp. Rakesh Duhan, who, on being satisfied with the information received personally from the secret informant, subsequently informed ACP Mayank Bansal. Following the requisite procedures under the NDPS Act, ACP Mayank Bansal, thereafter, issued a fresh authorization under Section 41(2) of the NDPS Act, while SI Vishan recorded the fresh



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intelligence under Section 42 of the NDPS Act *vide* DD No. 24A dated 16.02.2022. A raiding party, led by SI Vishan and comprising Insp. Rakesh Duhan and others, was assembled. Acting upon the informant's guidance, the team raided the petitioner's house and apprehended him.

5. The petitioner was informed of the secret information received against him and duly apprised of his legal rights under Section 50 of the NDPS Act. Thereafter, the petitioner declined the option to be searched before a Magistrate or a Gazetted Officer and further, upon being offered, refused to search the raiding party and their vehicles. The petitioner claimed himself to be an illiterate but confirmed his ability to understand and speak Hindi. His bodily search, conducted by the SI Vishan, yielded no contraband, leading to the preparation of a '*nil*' recovery memo.

6. Subsequently, after being questioned, the petitioner led the police team to the first floor of his house, where he retrieved a bag from an iron Almirah, which contained three polythene packets of *Heroin*; two packets of 200 grams each and one packet of 100 grams, totalling 500 grams. Additionally, an electronic weighing machine was recovered from the same bag. The contraband and weighing machine were duly seized through a seizure memo. The search concluded at 12:40 a.m. on 17.02.2022, following which the seized items were deposited in the Malkhana of the P.S. Crime Branch in compliance with Section 55 of the NDPS Act. Consequently, the subject FIR was registered under Sections 21 and 25 of the NDPS Act,



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and further investigation was entrusted to SI Naveen Kumar. Thereafter, the petitioner was formally arrested on 17.02.2022.

7. Whereafter, the petitioner made a disclosure statement before the Police which led to the arrest of the other co-accused person which led to further recovery of *Heroin*. Subsequently, two more accused persons were arrested following the recovery of 100 gms. of *Heroin*.

8. In August 2022, a Chargesheet was filed against the petitioner under Sections 21, 25, and 29 of the NDPS Act. The application, under Section 167(2) of the Cr.P.C. preferred by the petitioner seeking default bail was dismissed by this Court *vide* Order dated 13.09.2023. However, his interim bail application was allowed by the learned Special Judge (NDPS), Rohini Court, Delhi, *vide* Order dated 14.02.2024.

9. Aggrieved by the alleged procedural irregularities in the search and investigation, the petitioner has preferred the present petition seeking the grant of Regular Bail.

Submissions on behalf of the Parties:

10. The learned counsel for the petitioner submitted that Constable Ravi was the first recipient of the secret information regarding the petitioner. However, he failed to reduce the same into writing as per the mandated provision under the NDPS Act. It was contended that as per the provisions, any such information received must be documented in writing, following which an empowered officer should undertake the investigation. The omission to do so constitutes a violation of Section 42 of the NDPS Act, rendering the proceedings defective.



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Moreso, the ACP Narcotics who issued the search warrant was not legally authorised to do so in favour of the SI Vishan Kumar.

11. The learned counsel in support of the contentions relied upon the following judgments:

- i. *State of Rajasthan vs. Chhagan Lal: 2014(4) JCC (Narcotics) 213;*
- ii. *Gulab Rai @ Chetan vs. State (NCT of Delhi) in Bail Appln.3840/2023;*
- iii. *State of Punjab vs. Balbir Singh & Ors. 1994 SCC (3) 299;*

12. The learned counsel further submitted that the warrants of search were issued on 15.02.2022 and 16.02.2022 whereas the secret information was received at the office of the ACP on 17.02.2022, thus the warrants of authorization issued by the ACP were in contravention of Section 41 (2) of NDPS Act. He submitted that the investigation thus, stands vitiated and the evidence has been fabricated to falsely implicate the petitioner. He submitted that the recovery proceedings were conducted from the house of the petitioner after sunset and in the absence of any search warrants, it is *per se* bad in law.

13. He submitted that the petitioner is in custody since last 3 years and in the other cases, he has been enlarged on bail. Even though, the Charges were framed on 09.11.2023, however, till 12.02.2024 only two DD writers out of the 16 cited witnesses have been examined. He submitted that in this manner, the liberty of the petitioner is being curtailed; therefore, he is entitled to be granted benefit of bail.



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14. *Per contra*, the learned Additional Public Prosecutor (APP) appearing on behalf of the State vehemently opposed the bail application contending that 500 grams of *Heroin/smack* was recovered from the petitioner's residence, which falls well within the category of commercial quantity under the NDPS Act. He submitted that there is no violation of Section 41 NDPS Act as alleged by the petitioner.

15. He further submitted that the petitioner is involved in 108 other cases under Arms Act, Excise Act, Snatching, Robbery wherein, two cases are under NDPS Act. Moreover, his wife is also involved in a case under the Excise Act. In light of the Section 37 of the NDPS Act, which imposes stringent conditions for the grant of bail in cases involving commercial quantities of contraband, the petitioner cannot be enlarged on bail and the bail application be dismissed.

Analysis and Conclusion:

16. Having heard the learned counsel for the parties and perused the material available on record.

17. It is not the case of the prosecution that Constable Ravi after receiving some secret information from an informant had passed on the information to SI Vishan Kumar who then conveyed the information to Insp. Rakesh Duhan. However, upon receiving information from the secret informant, he was produced before the SI Vishan Kumar who himself made inquiries from the secret informant and, thereupon, while relaying the information to the Insp. Rakesh Duhan, he produced the informant before him. Thereafter, the Insp. Rakesh Duhan, himself spoke with the informant who conveyed the



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secret information to him as well. Whereafter, the ACP Mayank Bansal ordered for formation of the raiding team and the SI Vishan Kumar, on receiving the said direction, initiated the proceedings under Section 42 NDPS Act, DD No.24A dated 16.02.2022 was recorded by SI Vishan Kumar under Crime and Criminal Tracking Network & Systems (CCTNS). Thus, there is no violation of Section 42(1) NDPS Act as the statutory requirement had been duly complied with as the SI Vishan Kumar had himself received the first hand information from the secret informant while personally making inquiries from him and reduced the same into writing. It is not the case of the prosecution that the information as received by the Constable Ravi from the secret informant was conveyed to the SI Vishan Kumar who then reduced it in writing. However, on 15.02.2022, as the premises of the appellant was found to be locked and the raid could not be materialized, and could only be effectively conducted on 16.02.2022 after adhering to the prescribed procedure.

18. In this regard, it is appropriate to note the provision of Section 42(1) of the NDPS Act and the relevant extract is reproduced as under:

“(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any



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other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,--

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be



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exercised by an officer not below the rank of sub-inspector:

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief."

19. From the above, it emerges that government officers, be higher in rank than a peon, sepoy, or constable, has the power to carry out searches and make arrests without a warrant, between sunrise and sunset, if the officer has good reason to think that illegal drugs, substances, or property obtained through illegal means are hidden somewhere. The officer is also empowered to enter and search such buildings/premises, between sunset and sunrise, without a warrant or authorization, if he has apprehension of concealment of evidence or facility for the escape of an offender, after recordings reasons of such belief.

20. In the present case, on behalf of the petitioner, it is also submitted that there is clear violation of Section 41(2) of the NDPS Act as the raid was conducted after sunset without search warrants. Evidently, the secret information was received before sunset and the raiding team had proceeded to conduct the raid before sunset. On 16.02.2022, the raiding party had departed for the spot, at around 12:00 noon as recorded in DD No.24A dated 16.02.2022, and the raid continued until 12.40 AM in the morning of 17.02.2022, therefore, the authorisation was not required. Accordingly, the raid conducted with



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or without authorisation of search on 16.02.2022 was not illegal even though the ACP had taken the information in writing. The authorization of search under 41(2) NDPS Act was already made in the name of SI Vishan Kumar by the ACP Mayank Bansal.

21. The petitioner was arrested on 17.02.2022, after raiding party concluded the proceedings. The Charge Sheet has been filed, the Charges have been framed and the trial is already underway. Undisputedly, the petitioner is involved in 108 criminal cases of snatching, robbery, Arms Act etc. (though, have been acquitted in some) and two cases are under the NDPS Act; FIR No. 111/2003 for the offences under Sections 21, 61 and 85 of the NDPS Act registered at the Police Station Janakpuri & another FIR No.369/2020 for the offences under Sections 21, 29, 61 and 85 of the NDPS Act, registered at the Police Station Aman Vihar. Thus, the petitioner has a long list of involvement in various criminal cases under different statutes. This in itself shows that the petitioner has serious tendency to commit offences.

22. The coordinate Bench of this Court in the case of ***Neeraj Sehrawat vs. State NCT of Delhi***, 2025 SCC OnLine Del 107 while dealing with the issue, that the rights of the accused to be balanced against the interest of the society and prolonged incarceration cannot be permitted to become punishment without trial, held as under:-

“19.2. The petitioner’s argument that the Supreme Court has set-down the judicial trend that prolonged incarceration cannot be permitted to become punishment without trial; and that ‘bail is the rule and jail is the



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exception' regardless of the seriousness of the crime alleged, is also facetious, since in applying those principles the court must bear in mind the fate of the family of the victims and the faith of the community in the process of justice. Though it is true that a court must lean towards constitutionalism, and the right of an accused to a speedy trial as derived from Article 21 of the Constitution, is an overarching and sacrosanct consideration, mere delay in trial is not sufficient to warrant a finding that the petitioner has been deprived of his right to speedy trial; and delay is only one of the factors to be considered before deciding to enlarge the petitioner on bail, and that factor is to be weighed against several other factors.....

X

X

19.4. There is also no doubt that the well-worn principles for grant of bail are not to be applied blindly or mindlessly, and the court must use its discretion to grant or deny bail in a judicious manner and not as a matter of course; and the petitioner's fundamental right to liberty must be balanced against the interests of the society, since even constitutional rights are not absolute.

X

X

21. It is also settled law, that bail can justifiably be denied when there is real risk of repeat offences being committed. Sections 437 and 439 of the Cr.P.C. contemplate that contingency."

23. In view of the above, it is evident that where the past conduct of the petitioner demonstrates that even conditions imposed while granting bail would not dissuade the accused from indulging in criminality, the discretion to grant bail may not be exercised in favour of the accused.



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24. In the present case, taking into consideration the petitioner's antecedents; his involvement in a large number of cases, which two are under the NDPS Act, the stringent twin conditions under Section 37 of the NDPS Act are not met with as there is nothing to show that the offence has not been committed by the petitioner in light of the overwhelming evidence collected against by the investigating team and, thus, there is likelihood of the petitioner's committing the same offence and also the circumstances do not justify any conclusion that petitioner would not commit the offence again if admitted to bail. Needless to say, the recovery made from the petitioner's residence is of commercial quantity of Heroin.

25. In view of above, no ground to grant bail to the petitioner has been made out. The present bail application is, accordingly, dismissed.

SHALINDER KAUR, J

APRIL 02, 2025/ab/kp

Click here to check corrigendum, if any