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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 839/2025

BRIJESH KUMAR

..... Applicant

Through:

Mr. Chandrika Prasad Mishra, AOR with Mr. Bhupendra Singh, Mr. Kartik Chourasiya, Mr. Ankit Panday, Ms. Yashaswini Goel, Ms. Harshita Bhardwaj & Ms. Prashasti Singh, Advs.

versus

**STATE NCT OF DELHI
& ANR.**

..... Respondents

Through:

Ms. Richa Dhawan, APP for the State
Inspector Santosh Kumar,
PS- Kashmere Gate

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

22.07.2025

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1. The present application is filed seeking regular bail in FIR No. 261/2024 dated 09.05.2024, registered at Police Station Kashmeri Gate for the offence punishable under Section 22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. Briefly stated, on 09.05.2024, on the basis of a secret information pertaining to the transport of restricted medicine, a raiding team was constituted and the applicant was apprehended. Thereafter, the auto which the applicant was driving was searched and a recovery of 2.16 kg of restricted medicine, that is, 30 Packets (18000 tablets of Alprazolam) was effected. It is alleged that thereafter, on the instance of the applicant, the co-accused Amar Singh was apprehended and upon his search, a recovery of 2.16 Kg of Alprazolam tablets was made from a



polythene bag being carried by him

3. On 11.05.2024, a raid was conducted at the instance of co-accused Amar Singh, pursuant to which, two persons namely, Faiz Ahmad and Umar, were apprehended. Thereafter, three *gatta peti* containing a total of 180000 tablets of Alprazolam weighing 21.6 Kg was found, and the same were recovered. During interrogation, the co-accused persons– Faiz Ahmad and Umar disclosed that they had stored restricted medicine at a shop situated at Gali No. 05 Loco Colony, Aligarh, Uttar Pradesh.
4. Thereafter, a raid was conducted at the said shop and a recovery of 3,12,000 restricted tablets of Alprazolam, weighing approximately 39.960 Kg was made.
5. Subsequently, during the course of the investigation, several other accused persons were arrested and recoveries of huge quantities of restricted medications such as Alprazolam and Tramadol tablets were effected.
6. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case.
7. He submits that the applicant is merely an auto driver and he had no knowledge as to the contents of the polythene bag from which the recovery was effected and he was merely transporting the same.
8. He submits that the earlier Investigating Officer in the present case has been suspended and the Head Constable who recorded the secret information has been dismissed on the allegation of extortion. He states that the same suggests that the investigation suffers from grave infirmities.
9. He submits that even though the alleged recovery happened in a public place, there are no independent witnesses



and no endeavour was made by the prosecution to photograph or videotape the recovery either.

10. He further submits that there is no money trail that links the applicant to the present offence and rigours of Section 37 of the NDPS Act are not attracted against the applicant.

11. He submits that the applicant was arrested on 09.05.2024 and has been in custody since then, despite which, the matter is still at the stage of arguments on charge.

12. He further submits that co-accused Koshinder, who was apprehended on the basis of disclosure of co-accused Umar and from whom a recovery of 6000 tablets of Tramadol was made, has already been enlarged on bail by this Court.

13. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant and submits that the present case involves recovery of commercial quantity, and therefore, rigours of Section 37 of the NDPS Act are attracted against the applicants.

14. I have heard the learned counsel appearing for the parties and perused the record.

15. 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.

16. It is unequivocally established that, to be granted bail, the



accused charged with offence under the NDPS Act must fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“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 19 or Section 24 or Section 27-A 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 oppose 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.”

17. It is the case of the prosecution that on the basis of secret information, the applicant was apprehended and a recovery of 2.16 Kg of Aprazolam tablets was effected from the auto which was being driven by him. It is alleged that at the instance of the applicant, certain other accused persons were arrested and recoveries of restricted medication was effected from them.

18. It is argued on behalf of the learned counsel for the applicant that the applicant is an auto driver and he had no knowledge about the contents of the polythene bag. It is further argued that doubt is cast on recovery of contraband as no independent witness was joined by the prosecution and no photography or videography was done, even though the applicant was apprehended in a public place on the basis of secret information.



19. Undoubtedly, the case of the prosecution cannot be rejected merely on account of the case being tethered on the testimonies of official witnesses and non-examination of independent witnesses or absence of photography and videography of the recovery. The same would not be fatal to the prosecution's case. Reliance on the testimonies of official witnesses is sufficient to secure conviction once it is established that the police witnesses have no animosity against the accused person so as to falsely implicate him. The testimonies of the official witnesses cannot be disregarded merely on account of them being police officials.

20. However, it cannot be denied that the lack of independent witnesses and photography or videography, in some circumstances, casts a shadow over the case of the prosecution.

21. This Court in the case of ***Bantu v. State Govt of NCT of Delhi***: 2024: DHC: 5006 has observed that while the testimony of independent witness is sufficient to secure conviction if the same inspires confidence during the trial, however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

22. The FIR mentions that although passersby and other auto rikshaw drivers were asked to join investigation, however, they refused due to personal reasons. While the veracity of the explanation of the prosecution for non-joinder of independent witnesses and for absence of photography and videography will be tested during the course of the trial, at this stage, the benefit



cannot be denied to the applicant.

23. Much emphasis has been laid by the prosecution on the fact that since commercial quantity of contraband was recovered from the applicant, therefore, the rigours of Section 37 of the NDPS Act are attracted against him.

24. The Hon'ble Apex Court, in the case of **Union of India v. Shiv Shanker Kesari : (2007) 7 SCC 798**, has observed as under:

“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.”

25. *Prima facie*, considering that the applicant belongs to the poor strata of the society, in the absence of independent corroboration or any financial trail linking the applicant to the crime, at this stage, the possibility of the applicant being engaged to merely transport the polythene bag (from which the recovery was effected) and him not having exact knowledge of the contents of the same cannot be ruled out.

26. Furthermore, insofar as the allegation in relation to certain recoveries having been effected on the basis of the disclosure of the applicant from other co-accused is concerned, the veracity of such allegations will be tested during the course of the trial and cannot be ascertained at this stage.

27. Thus, while the case involves a huge recovery of



contraband, in the opinion of this Court, at this stage, there are reasonable grounds to doubt the credibility of the case of the prosecution against the applicant.

28. Moreover, the manner in which the investigation has been carried out in the present case also casts a doubt on the prosecution's case.

29. It is pointed out that the Investigating Officer assigned to the present case previously has been suspended and the Head Constable, who had recorded the secret information, has been dismissed on the allegations of extortion.

30. It is important to note that one co-accused namely Koshinder has been enlarged on regular bail by this Court by order dated 16.01.2025, in BAIL APPLN. 3541/2024 essentially on account of the conduct of the prosecution, which led this Court to opine that *prima facie* there were reasonable grounds to believe that the accused was not guilty. The said co-accused was sought to be implicated on the allegations that some restricted medication was recovered from a bag being carried by him, however, the CCTV footage of the alleged spot of recovery showed that he was not carrying any bag at all. It was also noted that the prosecution had not taken any prompt steps to preserve the relevant CCTV footage.

31. It is also relevant to note that in the present case, the matter is at the stage of arguments on charge. The prosecution has cited 48 prosecution witnesses and their examination will take a long time. The applicant has been in custody since 09.05.2024.

32. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a



punishment.

33. It is also stated that the applicant has minor children to take care of.

34. The applicant is stated to be of clean antecedents. Thus, in the opinion of this Court, the applicant is not likely to commit any offence whilst on bail.

35. In view of the aforesaid factors, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

36. The applicant is, therefore, directed to be released on bail (if not in custody in any other case) 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 Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and he shall not change the address without informing the concerned IO/SHO;
- e. The applicant shall, upon his release, give his



mobile number to the concerned IO and shall keep his mobile phone switched on at all times.

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

38. 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.

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

40. All pending applications, if any, also stand disposed of.

AMIT MAHAJAN, J

JULY 22, 2025