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

+ **BAIL APPLN. 843/2025**

SONU

.....Petitioner

Through: Mr. Deepanshu Mahajan, Mr. Jovi Kumar Sharma, Mr. Amit Dhankhan, Mr. Neeraj Dhall, Ms. Baljinder Kaur and Mr. Happy, Advocates.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP for the State.
SI Kartar Singh Rawat and SI Raj Kumar, Anti-Narcotics Cell.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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28.05.2025

1. The present application, filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²), seeks regular bail in proceedings arising from FIR No. 444/2024 dated 4th June, 2024, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985³, at P.S. Bhalswa Dairy, Delhi. Subsequently, charge sheet *qua* the Applicant was filed, and Sections 25 and 29 of the NDPS Act were added.

2. Briefly stated, the case of the prosecution is as follows:

¹ "BNSS"

² "CrPC"

³ "NDPS Act"



2.1. On 4th June, 2024, at about 5:00 AM, SI Sandeep Mathur received secret information that one Taslima @ Putti, aged about 43 years, was involved in large-scale heroin supply. It was further revealed that between 7:00 to 8:00 AM the same day, she would be delivering a consignment of heroin to a customer. Accordingly, it was suggested that a trap could be laid near her residence to intercept the delivery.

2.2. At about 5:10 AM, the secret informer was produced before Inspector Ashok Kumar of the Narcotics Cell/OND, who then informed ACP Yash Pal Singh, ACP/OPS/OND, regarding the input. The ACP directed Inspector Ashok Kumar to conduct a raid based on the received information. A raiding party was formed, and they reached the vicinity of Nigam Prathmik School, Bhalswa Dairy, Delhi, by around 6:40 AM.

2.3. At approximately 7:00 AM, a woman carrying a black polythene packet in her left hand was seen approaching the school. She was identified by the informer as Taslima @ Putti. Upon noticing the police team, she attempted to retreat into her residence but was apprehended. She was informed of the secret input and apprised of her legal rights under the NDPS Act. Her written response to the notice under Section 50 of the Act was recorded by SI Sandeep Mathur.

2.4 ACP Arvind Sagar Negi, Swaroop Nagar Sub-Division, was called to the spot, and in his presence, a search was conducted by Head Constable Jyoti inside her residence. From the black polythene bag carried by her, a transparent packet containing a light brown powdery substance was recovered. Field testing confirmed the substance to be heroin, and it was thereafter sealed and seized in accordance with the prescribed procedure. A further search of her premises yielded no additional contraband. She was



arrested, and the FIR was accordingly registered.

2.5. During interrogation, Taslima disclosed that she had procured the recovered heroin from the present Applicant, Sonu, and further claimed that additional heroin could be recovered from his hideout.

2.6. Acting on her disclosure, the Applicant was apprehended, and 100 grams of heroin was allegedly recovered from his residence. Upon questioning, he revealed that the contraband had been sourced from one Vijender @ Harender. On 29th June, 2024, a further quantity of 60 grams of heroin was allegedly recovered from Vijender, who was also arrested.

3. Counsel for the Applicant advances the following submissions in support of the prayer for regular bail:

3.1. The Applicant has been in judicial custody since 5th June, 2024. His implication, premised solely on the disclosure statement of co-accused Taslima @ Putti, in the absence of any independent or corroborative evidence linking him to the offence is unsustainable.

3.2. Moreover, the charge sheet does not attribute conscious possession of any commercial quantity of contraband to the Applicant. The only recovery alleged from his premises is of 100 grams of heroin, which falls within the 'intermediate' quantity as defined under the NDPS Act. The remaining seizure of 400 grams is stated to have been recovered from co-accused Taslima @ Jatti. As such, the embargo under Section 37 of the NDPS Act, which applies only in cases involving commercial quantity, would not operate in the present case.

3.3. Reliance is placed on the principle of parity. It is submitted that co-accused Vijender @ Harinder, from whom a lesser quantity of 60 grams of heroin was recovered, has already been granted regular bail by this Court



vide order dated 10th December, 2024 in BAIL APPLN. 4056/2024. The Applicant, therefore, is similarly entitled to the benefit of bail.

3.4. The Applicant has clean antecedents and deep roots in the community. The trial is nowhere near conclusion and, further incarceration of the Applicant would serve no useful purpose, particularly when the investigation is complete, and the charge sheet has been filed.

4. On the other hand, Mr. Mukesh Kumar, APP for the State, opposes the present bail application advancing the following submissions:

4.1. The allegations levelled against the Applicant are of a grave and serious nature. In view of the quantity of contraband recovered, the rigours of Section 37 of the NDPS Act stand attracted. It is submitted that the Applicant has failed to satisfy the twin conditions stipulated therein, namely, that there are reasonable grounds to believe he is not guilty of the offence and that he is not likely to commit any offence while on bail. In the absence of such satisfaction, the Applicant is not entitled to the relief sought.

4.2. The Applicant played an active and incriminating role in the chain of events. The recovery from him cannot be seen in isolation. Co-accused Taslima @ Putti was apprehended with 400 grams of heroin. Her disclosure led to the arrest of the present Applicant, from whose residence an additional 100 grams of heroin was recovered. Subsequently, a further recovery of 60 grams was effected from co-accused Vijender @ Harinder. When taken together, these recoveries demonstrate involvement in a coordinated narcotics operation involving commercial quantities. There is also a reasonable apprehension that the Applicant may tamper with evidence, influence witnesses, or abscond if enlarged on bail.

5. The Court has carefully considered the aforementioned contentions and



perused the material on record. On a careful appraisal of the factual matrix, it emerges that 400 grams of heroin were recovered from co-accused Taslima @ Putti, a quantity that undeniably falls within the category of “commercial quantity” as defined under the NDPS Act. Subsequently, based on her disclosure, a further recovery of 100 grams of heroin, classified as an “intermediate quantity”, was effected from the residence of the present Applicant. It is also relevant to note that Section 29 of the NDPS Act, which deals with abetment and criminal conspiracy, has been invoked against the Applicant. The central question that thus arises for consideration is, whether the quantity recovered from the co-accused can be cumulatively attributed to the Applicant, by virtue of the alleged conspiracy, so as to bring the case within the fold of “commercial quantity.” This issue assumes significance in light of its bearing on the applicability of the statutory bar under Section 37 of the NDPS Act.

6. The question of whether quantities recovered from co-accused can be clubbed to attract the threshold of “commercial quantity” has been addressed by co-ordinate Benches of this Court. In **Anita v. State (NCT of Delhi)**,⁴ the Court held that the quantity recovered from a co-accused cannot be attributed to the applicant for the purpose of assessing bail eligibility under Section 37 of the NDPS Act. This view was subsequently reaffirmed in **Anita @ Kallo vs. The State (NCT of Delhi)**⁵ where the Court reiterated that the recovery from a co-accused could not be clubbed with that from the applicant. Accordingly, the rigours of Section 37 were held inapplicable.

⁴ BAIL APPLN. 1538/2022

⁵ Decision dated 18th July, 2023 passed in Bail Appln. 957/2023.



7. However, in ***Awadhesh Yadav V State Govt. of NCT***⁶, another co-ordinate bench of this Court took a nuanced approach. In that case, based on overwhelming material indicating a concerted conspiracy amongst the accused, the Court upheld the clubbing of quantities recovered from different individuals. Drawing upon various precedents, the Court culled out the governing principles applicable, at the stage of bail, while assessing the propriety of clubbing contraband quantities. The extracted portion of the judgment reads as follows:

“49. From the provisions of law and the essence of case-laws, as discussed above, following principles can be culled out governing clubbing of the quantity of contraband recovered from two or more co-accused, at the stage of bail:

- i. invocation of offence of abetment and/or conspiracy under Section 29 of the Act is must for clubbing of quantity. However, there cannot be a straight jacket formula for clubbing the quantity of contraband recovered from all the accused, merely on the basis of invocation of offence under Section 29 of the Act. It will depend on the factual backdrop of each case and the incriminating material available against the accused persons.*
- ii. the incriminating material relied upon to invoke the offence of abetment and/or conspiracy under Section 29 of the Act, has to be cogent and convincing against each one of the accused charged with the offence of abetment and/or conspiracy.*
- iii. in a case where joint recovery of contraband has been effected from two or more co-accused, the recovered contraband cannot be equally divided amongst the number of accused to determine whether the quantity of contraband recovered in “commercial quantity” or not.*
- iv. where accused persons are travelling together in the same private vehicle individually carrying contraband, it will not be proper to consider the alleged recovery to be an individual recovery and the contraband recovered from all persons can be clubbed.*
- v. if an accused is a habitual offender, it gives rise to an inference that he knows the tricks of the trade. In such a situation, previous involvement of the accused in the case(s) under the NDPS Act, is an additional factor which could be considered, besides other*

⁶ Judgement dated 29th November, 2023 passed in Bail Appl. 1692/2023



incriminating circumstances, for adding the quantities of contraband recovered from two or more co-accused.

50. Needless to state that the above noted circumstances are only illustrative and not exhaustive. As a matter of principle, bail applications are to be decided having regard to facts and circumstances of each case and the aforementioned principles may only act as guiding factors.”

[Emphasis Supplied]

8. Turning to the facts at hand, while it is true that Section 29 of the NDPS Act has been invoked, a bare perusal of the charge sheet and material on record reveals that, apart from the disclosure statement of co-accused Taslima @ Putti, there is no independent or corroborative material establishing a conspiracy or common design between the Applicant and the co-accused. The prosecution has not placed on record financial transactions, or other tangible evidence that would support the invocation of Section 29 in a meaningful and credible manner. In any event, such a conclusion involves a factual determination which must await trial. In the absence of such material, the mere invocation of conspiracy cannot justify the aggregation of quantities recovered from different individuals to attract the bar under Section 37. Thus, this Court is of the opinion that there are reasonable grounds for believing that the Applicant is not guilty of being in possession of a ‘commercial’ quantity of contraband.

9. In light of the foregoing discussion, the alleged recovery of 100 grams of heroin from the Applicant’s premises, assuming the prosecution’s case at its highest - would fall within the category of ‘intermediate quantity’. Consequently, the stringent twin conditions under Section 37 of the NDPS Act would not be attracted. While the co-accused Taslima @ Putti was allegedly found in possession of 400 grams of heroin, such recovery cannot, at this stage of proceedings, be mechanically clubbed with the quantity



recovered from the Applicant, in the absence of independent material substantiating the existence of a conspiracy or common intent. In view of the above, the Court is required to assess the prayer for regular bail under the general principles governing Section 483 of the BNSS (earlier Section 439 of the CrPC), *de hors* the limitations prescribed under Section 37 of the NDPS Act.

10. It is well established through catena of judgments by the Supreme Court that the object of granting bail is neither punitive nor preventative. The primary aim sought to be achieved by bail is to secure the attendance of the accused person at the trial.⁷ As per the nominal roll, as on 3rd April, 2025 the Applicant has undergone custody for 9 months 29 days. The investigation is complete, the chargesheet has been filed, and the matter is presently at the stage of arguments on charge. In these circumstances, further incarceration of the Applicant serves no meaningful purpose.

11. As regards the Applicant's involvement in FIR No. 114/2014, registered under Section 33 of the Delhi Excise Act, 2009 at P.S. Civil Lines, Delhi, it is pertinent to note that he has already been granted bail in the said matter. In any event, the pendency of another case, by itself, cannot operate as an absolute bar to the grant of bail. The Supreme Court in ***Prabhakar Tiwari vs. State of Uttar Pradesh***⁸ has observed that while antecedents and involvement in other criminal cases are relevant considerations, they cannot, by itself, form the sole basis for the denial of bail.

12. The Applicant is a resident of Delhi and the possibility of flight risk

⁷ See also: ***Sanjay Chandra v. CBI***, (2012) 1 SCC 40; ***Satender Kumar Antil v. Central Bureau of Investigation***, (2022) 10 SCC 51.



or tampering with evidence has not been convincingly demonstrated. This Court is, therefore, of the opinion that continued incarceration, in the absence of compelling reasons, would not serve the ends of justice, particularly when the trial is likely to take considerable time.

13. In view of the foregoing, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. 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;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

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

⁸ AIR Online 2020 SC 96



15. 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.

16. The bail application is allowed in the afore-mentioned terms.

MAY 28, 2025
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SANJEEV NARULA, J