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

+ **CRL.M.C. 768/2020**

STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP
for the State
Inspector Sunil Kumar &
ASI Mahesh Kumar, PS-
Crime Branch

versus

VINAY VERMA & ANR

.....Respondents

Through: Mr. Yogesh, Adv. for R1
Mr. M.K. Sharma &
Ms. Vishakha Sharma,
Advs. for R3

+ **CRL.M.C. 1340/2020**

STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP
for the State
Inspector Sunil Kumar &
ASI Mahesh Kumar, PS-
Crime Branch

versus

RINKU RATHI @ RINKU
CHOUDHARY

.....Respondent

Through: Mr. M.K. Sharma & Ms.
Vishakha Sharma, Advs.
for R3

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **08.04.2025**

CRL.M.C. 768/2020

1. The present petition is filed challenging the orders dated 15.10.2019 and 16.11.2019 (hereafter '**the impugned orders**') passed by the learned Special Judge, Tis Hazari Court, Delhi pursuant to which the respondents were admitted on bail in FIR No. 165/2018 dated 18.06.2018 registered at Police Station Crime Branch, for offences under Sections 21/29 of the Narcotic

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2. Briefly stated, the case of the prosecution is that on



17.06.2018, the Crime Branch received secret information that one Md. Nadeem, resident of Meerut, was involved in the illegal supply of Phensedryl syrup containing Codeine Phosphate—a manufactured drug under the NDPS Act—without valid documentation. On 18.06.2018, acting on the information, a truck bearing registration number UP15CT7724 was intercepted near Mori Gate, Delhi. A search led to the recovery of 112 cartons (11,200 bottles) of Phensedryl syrup concealed under mattresses, amounting to a commercial quantity under the NDPS Act. Subsequently, co-accused persons, namely, Srinivas and Md. Nadeem were arrested on the spot. Accordingly, the present FIR was registered.

3. During investigation, it was revealed that the respondent - Rinku Rathi @ Rinku Choudhary, was the transporter who arranged and deputed the driver for the truck used in smuggling the contraband from Agra and Bareilly to Malda.

4. It was further revealed that the respondent - Vinay Verma, another accused, received 50 cartons of Phensedryl syrup from Prakash Bansal and independently arranged for 28 more cartons through other illegal sources. He then handed over all 78 cartons to Nadeem and got them packed in sacks to be clandestinely transported to Malda.

5. The respondents were arrested on 18.06.2018 and 02.05.2019 respectively.

6. By order dated 23.09.2019, charges were framed against the respondents for offence punishable under Section 29 of the NDPS Act.

7. As noted above, by the impugned orders, the respondents were admitted to bail by the learned Trial Court primarily on the ground that no recovery was effected from or at their instance.

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The learned Trial Court also took note of the fact that there was no allegation of any prior criminal involvement against them and that there had been a delay in the commencement of the trial.

8. The learned APP for the State/ petitioner submits that the learned Trial Court had erred in granting bail to the respondents despite the fact that they were actively involved in a criminal conspiracy to transport and distribute commercial quantity of Phensedryl syrup containing codeine phosphate, a narcotic drug under the NDPS Act. He submits that the respondents, although not apprehended at the spot, played distinct and crucial roles in the procurement, supply, and transportation of the contraband.

9. He submits that the investigation had revealed a well-organised network involving the respondents, and their involvement was corroborated through call detail records, witness statements, and documentary evidence, including transport and supply records. He contends that the recovery of a commercial quantity of contraband attracted the bar under Section 37 of the NDPS Act, and the learned Trial Court failed to record the mandatory satisfaction as to the twin conditions for the grant of bail under the said provision.

10. He submits that the Trial Court had placed undue emphasis on the absence of direct recovery from the respondents, overlooking the legal position that in offence under Section 29 of the NDPS Act, a person may be held liable for conspiracy or abetment even without physical possession. It was further urged that the gravity of the offence, the volume of contraband seized, and the likelihood of tampering with evidence or influencing witnesses warranted cancellation of bail.

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11. It is trite law that an order granting bail ought not to be disturbed unless there are strong reasons to do so. The party



seeking cancellation of bail must establish a compelling case and demonstrate that the said order was illegal, unjust or improper.

12. The law in relation to the setting aside or cancellation of bail is well settled. The consideration for cancellation of bail stands on different footing than grant of bail. The Hon'ble Apex Court, advertent to a catena of judgments, had discussed the grounds for cancellation of bail in exercise of jurisdiction under Section 439 (2) of the Code of Criminal Procedure, 1973 (*pari materia* to Section 483 (3) of the BNSS) in the case of **Deepak Yadav v. State of U.P. : (2022) 8 SCC 559**. The relevant portion of the judgment is reproduced hereunder:

“C. Cancellation of bail

31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

32. A two-Judge Bench of this Court in *Dolat Ram v. State of Haryana* [*Dolat Ram v. State of Haryana*, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] laid down the grounds for cancellation of bail which are:

- (i) interference or attempt to interfere with the due course of administration of justice;
- (ii) evasion or attempt to evade the due course of justice;
- (iii) abuse of the concession granted to the accused in any manner;
- (iv) possibility of the accused absconding;
- (v) likelihood of/actual misuse of bail;
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial

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nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527], the accused was granted bail by the High Court. In an appeal against the order [*Mitthan Yadav v. State of U.P.*, 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under : (SCC p. 513, para 12)

“12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail...”

13. The Hon’ble Apex Court in the case of ***Himanshu Sharma v. State of Madhya Pradesh : 2024 INSC 139*** had held as under:

“12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured

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by misrepresentation or fraud”

(emphasis supplied)



14. In the present case, the learned APP submits that the learned Trial Court has erred in granting bail to the respondents by applying incorrect principles of law and not appreciating the restriction on the grant of bail as contained in Section 37 of the NDPS Act.

15. The learned Trial Court, while passing the impugned order, was fully conscious of the restrictions placed under Section 37 of the NDPS Act, which mandates that in cases involving commercial quantity of narcotic drugs or psychotropic substances, the Court must, before granting bail, be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail. Despite such statutory embargo, the learned Court, upon careful consideration of the material available on record, proceeded to grant bail.

16. The impugned order has been passed upon due consideration of all relevant and germane factors and cannot be termed as perverse, whimsical, or suffering from non-application of mind. The learned Trial Court rightly found that there was no recovery of contraband either from the respondents or at their instance. Further, no incriminating material directly connecting the respondents to the physical possession or custody of the contraband was placed before the Court at the time of deciding the bail applications. It is also relevant to note that the respondents at the time of passing of the impugned order had already spent a considerable time in custody. The respondents are stated to have clean antecedents.

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17. The prosecution has not challenged the grant of bail to co-accused persons, namely, Md. Nadim and Sriniwas, from whom



the recovery of the contraband was allegedly made. This aspect assumes significance since the respondents herein are not alleged to be in possession of the contraband but are sought to be implicated solely on the basis of alleged conspiracy and linkages, which are yet to be proved during trial.

18. It is relevant to note that since the passing of the impugned order, the trial has significantly progressed and 11 out of 39 listed witnesses have already been examined.

19. It is not the case of the prosecution that the respondents, while on bail for more than four years now, have misused the liberty granted to them in any manner whatsoever.

20. Furthermore, it is not the case of the prosecution that there is a possibility of respondents absconding or not cooperating during the trial proceedings.

21. Given the long passage of time since the grant of bail and the fact that the trial is ongoing without any impediment caused by the respondents, this Court finds no compelling ground to cancel the bail now. To unsettle the liberty granted to the respondents at this belated stage would amount to causing unwarranted hardship and would not serve the ends of justice.

22. In view of the above, this Court does not consider it apposite to entertain the present petition. The petition is, therefore, dismissed.

23. This Court however deems it apposite to clarify that the observations made by the learned Trial Court or in the present order ought not be taken as opinion on the merits of the case and shall not affect the trial in any manner.

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APRIL 8, 2025 / "SS"

AMIT MAHAJAN, J