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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 26.05.2025*+ **BAIL APPLN. 1133/2025**

SANJAY

.....Petitioner

Through: Mr. Amzad Khan, Advocate

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the
State.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this application, the applicant seeks grant of regular bail in case arising out of FIR No. 267/2023, registered at Police Station, Crime Branch, Delhi, for the commission of offences punishable under Sections 21(a) and 29 read with Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereafter '*NDPS Act*'] and Section 174A of Indian Penal Code, 1860 [hereafter '*IPC*'].

2. The present case arises from an operation conducted by the Crime Branch, Delhi, on 04.11.2023, wherein a team led by ASI Jitender Singh, under directions from Inspector Lichhman and ACP Arvind Kumar, had been deployed for surveillance near TR



Sawhney, Maruti Showroom, North-East Delhi, following the receipt of information from a secret informer regarding a drug deal involving one Sanjay (the applicant herein) and his associates Pradeep @ Chintu and Paras. As alleged, the informer had revealed that the accused persons would supply Heroin near Pratibha School wall, D-block, Nand Nagri, between 01:00 PM to 02:00 PM the same day. The information had been recorded as per provisions of Section 42 of NDPS Act *vide* GD No. 102A dated 04.11.2023. Pursuant to receipt of this information, a trap had been laid, and at 01:40 PM, Sanjay, the applicant herein, was apprehended along with his scooty, after receiving the signal of secret informer. He was served with a notice under Section 50 of NDPS Act, however, he refused to get searched before a Magistrate or Gazetted Officer. A cursory search yielded no recovery from him, and a nil recovery memo had been prepared. However, upon searching his scooty's storage compartment, one black polythene containing two transparent polythene packets with pink powder was recovered. The said powder, when tested by a field testing kit, tested positive for Heroin. The packets were marked as 'A' (200 grams) and 'B' (300 grams), i.e., a total of 500 grams of Heroin. The said contraband was sealed, and a seizure memo was prepared. Thereafter, the present FIR was registered and mandatory provisions of the NDPS Act were complied with.

3. It is the case of prosecution, that the applicant herein had revealed that he had procured 100 grams of Heroin from co-accused Pradeep @ Chintu, 100 grams from Paras, and 300 grams from



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Chandani, all residents of Nand Nagri, Delhi. He also revealed that he had supplied Heroin to one Sunita @ Sonu. Thereafter, on 09.11.2023, at the instance of the applicant, a raid was conducted at the residence of the co-accused Pradeep, and a weighing machine having some paste on its weighing plate was found at his residence. The said paste, upon being tested by a field testing kit, tested positive for Heroin. During interrogation, co-accused Pradeep had disclosed the names of his associates Aakash@Vicky and Vikas, both residents of Nand Nagri, Delhi. A follow-up raid on 22.12.2024 led to the recovery of 50 grams of Heroin from co-accused Aakash @ Vicky.

4. As per Status Report, the FSL report of the contraband recovered from the applicant herein, revealed that the parcels marked as 'A' and 'B' tested positive for Heroin. By way of order on charge dated 07.12.2024, charges for offence under Sections 21(a) and 29 read with 21(c) of NDPS Act, and Section 174A of IPC, were framed against the present accused/applicant.

5. The learned counsel appearing for the applicant argues that the applicant has been falsely implicated in the present case and he is in judicial custody since 05.11.2023. It is argued that the alleged recovery of the contraband from the applicant was *prima facie* in violation of the law of search and seizure as the ASI Jitender Singh was not competent to carry out search and seizure and the same should have been carried out by Inspector Lichman, who was authorised to do so. It is further contended that even though the



purported recovery happened in a public place, there are no independent witnesses in the present case. It is submitted that there are more than 30 prosecution witnesses in the present case and the trial will take a long time to conclude. It is stated that the applicant herein is not involved in any other criminal case, and he had previously been granted interim bail twice by the learned Trial Court, and he had surrendered within time without violating any conditions of the interim bail. It is also pointed out that co-accused Pradeep @ Chintu has been granted regular bail by this Court. Therefore, it is prayed that the applicant herein be granted regular bail. In support of his contentions, the learned counsel for the applicant has also placed reliance on certain case laws.

6. The learned APP for the State, on the other hand, argues that commercial quantity of Heroin i.e. 500 grams had been recovered from the scooty in the possession of the present applicant. It is argued that the FSL report has confirmed that the contraband recovered from the applicant is Heroin. It is further argued at the instance of applicant, a raid had been conducted at the residence of co-accused Pradeep @ Chintu, and Heroin had been recovered from his residence also, which shows that the applicant herein was procuring Heroin from co-accused Pradeep @ Chintu by visiting his house. It is contended that the chargesheet in this case has been filed before the learned Trial Court, and that bail applications filed by the applicant have been dismissed four times by the learned Trial Court and one bail application filed before this Court in the year 2023 had been



withdrawn. It is therefore prayed that the present application be also dismissed.

7. This Court has **heard** arguments addressed by learned counsel appearing for either side, and perused the material placed on record.

8. A perusal of the record in this case reveals that the applicant had been apprehended at the spot by the police officials, pursuant to receipt of a secret information, and two packets containing about 500g of Heroin had been recovered from the scooty on which the applicant was travelling. Concededly, the quantity of narcotic substance recovered in this case from the applicant is commercial quantity, i.e. about 500 grams of Heroin. Therefore, the twin conditions under Section 37 of NDPS Act will have to be satisfied by the applicant so as to be entitled to grant of bail. 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 19 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.



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(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.”

9. 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.”

10. The commercial quantity of Heroin i.e. 500 grams was recovered from the scooty, on which the applicant was travelling. During investigation, it was found that the earlier owner of the scooty in question had sold the same to the present applicant and the original RC of the scooty was produced by the applicant’s wife. The FSL report also supports the case of prosecution, that the contraband recovered and seized in this case was Heroin. On the basis of disclosure statement of the applicant, further raids were also conducted and co-accused persons were apprehended and recoveries were made. In these circumstances, there are no ‘reasonable grounds’ to believe that the applicant is not guilty of the alleged offence, for



the purpose of Section 37 of NDPS Act.

11. The primary argument of the learned counsel for the applicant, is that the provisions of Section 42 of NDPS Act were not followed as the alleged raid, search and seizure was supposed to be conducted by the competent authorized officer, i.e, Inspector Lichman, whereas the same had been conducted by ASI Jitender Singh, who was not authorised specifically for the said purpose by the concerned ACP. In this regard, it is relevant to note that the learned Trial Court in the order dated 07.03.2025, while dismissing the bail application of the applicant, has taken note of Notification No. F.10(76)/85-Fin.(G), published in Delhi Gazette on 14.11.1995, *vide* which all the Delhi police officials, superior in rank to a Constable, had been empowered by the administrator to exercise powers under Section 42(1) of NDPS Act, and therefore, ASI Jitender Kumar, being an Assistant Sub-Inspector in Delhi police, was duly authorised to conduct entry, search, seizure and arrest and that he was not required to obtain prior authorization from ACP Arvind Kumar, nor was he obligated to secure a warrant or authorization from a Magistrate or any other officer competent to issue such a warrant under Section 41 of the NDPS Act before taking action based on the information received.

12. Further in this regard, it shall be apposite to note that similar view has been taken by this Court in ***Kamal Thakur v. State (Delhi Administration): 1995 JCC 76*** and ***Vinod Sharma v. The State (NCT of Delhi): CRL.A. 457/2012***. The relevant extract of the



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decision in ***Vinod Sharma v. The State (NCT of Delhi)*** (*supra*) is set out below:

“13. As regards the doubts raised by learned counsel for the appellant regarding competency of ASI Bijender Singh who seized the contraband substance on the ground that a police officer below the rank of a sub Inspector is not competent to exercise the powers under NDPS Act, the same is devoid of merit. The matter came up for consideration before this Court in ***Kamal Thakur vs. The State (Delhi Administration)*** 1995 JCC 76. In that case, the investigation was completed by a Head Constable of Delhi Police regarding recovery of 5 Kg and 500 gms of Charas from the possession of the accused. The question for consideration, therefore, was whether Head Constable of Delhi police is an officer superior in rank to a Constable as Section 42 of the Act authorizes officers superior in rank to a peon, sepoy or constables of different departments, as referred in the Section to enter, seize, search and arrest without warrant or authorization. A single Judge of this Court referred to the following notification issued by the State Government:

“No.F.10(76)/85-Fin.(G) – in exercise of the powers conferred by sub-Section (1) of Section 42 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (61 of 1985) read with Government of India, Ministry of Home Affairs Notification No.S.O.818(E) dated the 8th November, 1985, the Administrator of the Union Territory of Delhi is pleased to empower all officers (being officers superior in rank to a peon or constable) of the following Departments of the Delhi Administration, Delhi, if they have reason to believe from personal knowledge or information given to any person and taken down in writing, that any narcotic drug or psychotropic substance in respect of which an offence punishable under Chapter IV of the said Act has been committed or any document or other article which may furnish evidence of the commission of such offence is kept or concealed in any building, conveyance or enclosed place within the Metropolitan Area of Delhi between sunrise and sunset, to:-

(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 material 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 the said Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under Chapter IV of the said Act, relating to such drug or substance, 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 Chapter IV of said Act relating to such drug or substance.

Provided, that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for 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,

1. Revenue Department.
2. Drugs Control Department,
3. Excise Department, and
4. Police Department.”

for holding that a Head Constable being superior in rank to Constable is competent to investigate the matter. In the instant case PW-5 Bijender Singh was Additional sub- Inspector in Delhi Police and, therefore, was competent to carry out the search and seizure. Therefore, this submission has no merit.”

13. Thus, this argument of the learned counsel for the applicant, is rejected, being devoid of any merit. The applicant however may raise the said contention at appropriate stage of trial.

14. Insofar as reliance on order dated 03.02.2025, passed by this Court in *BAIL APPLN. 4589/2024* of co-accused Pradeep is



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concerned, it is to be noted that recovery effected from the house of co-accused Pradeep was 0.050 grams of Heroin only i.e. a small quantity, and there was *prima facie* no other corroborative evidence to link him with the present applicant. In contrast, recovery of 500 grams of Heroin was made from the applicant herein, as noted above. Therefore, the plea for regular bail on the ground of parity is rejected.

15. Therefore, at this stage, considering the fact that the applicant had been apprehended at the spot, and recovery of commercial quantity of Heroin i.e. 500 grams had been made from his scooter, this Court finds no ground to grant regular bail to the applicant/accused.

16. Accordingly, the present bail application stands dismissed.

17. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

18. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 26, 2025/A