



2025:DHC:3754



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

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Date of decision: 08.05.2025

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BAIL APPLN. 1273/2025

BHANA RAM CHOUDHARY

.....Petitioner

Through: Mr. Apurv Singhvi, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP with SI
Niraj Kumar, Spl. Cell**CORAM:****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT (ORAL)****RAVINDER DUDEJA, J.**

1. This is an application under Section 439 Cr. PC/Section 483, BNSS, 2023, filed on behalf of petitioner/applicant for the grant of regular bail in case FIR No. 0239/2023, registered at PS Special Cell, under Sections 18, 25 & 29 of the NDPS Act.

2. Learned counsel for the applicant submits that nothing has been recovered from the person of the applicant. He neither has any role nor any knowledge that the car, in which he was a mere passenger, had drugs stored in its cavity. His mere presence in the vehicle does not establish conscious possession of the contraband. It is submitted that the applicant is a poor labourer and has been incarcerated since



11.09.2023. Trial is likely to take considerable time. He is the sole bread-earner of his family, comprising of aged parents and dependent family members.

3. Bail application has been opposed by the learned Additional PP, appearing on behalf of the State, submitting that there is recovery of commercial quantity of opium from the cavity of the car in which he and co-accused Amara Ram were travelling. He submits that during investigation, they disclosed that they were indulged in transporting and delivery of opium for the last six months on the direction of their master Bhalla Ram to various parties and at their instance, co-accused Bhalla Ram was also arrested from Jodhpur, Rajasthan and at his instance, 3.508 kgs of opium was recovered from Jodhpur.

4. It is further argued that applicant has criminal antecedents, inasmuch as, he is involved in two more criminal cases at Jodhpur. Learned APP places reliance on the decision of the Supreme Court in **UOI, through Narcotics Control Bureau, Lucknow Vs. Mohd. Nawaz Khan (Criminal Appeal No. 1043/2021)** to argue that the present case is a case of criminal conspiracy, and therefore, the bar of Section 37 of the NDPS Act would also apply in the present case.

5. As per prosecution version, on 11.09.2023, a specific information was received that two persons named Bhana Ram (applicant) and Amara Ram, members of drug syndicate run by Bhalla Ram, involved in transportation and supply of narcotic substance opium/Afeem, would reach at about 3.30 – 4.00 pm at Noida Link



Road, near Crown Plaza Hotel, Mayur Vihar-I, in Rajasthan number Kia Seltos car to deliver the consignment to their associates.

6. On receiving the aforesaid information, a raiding team was constituted. During the raid, applicant and co-accused Amara Ram were apprehended with a Kia Seltos car, having no number plate on the backside and having a temporary number plate on the front side. Both of them took off the front and back wheels of the right side of the car with the help of jacks. They removed the front and back side of the right side of the fender line and took out 22 packets from a secret cavity inside chasis line behind the fender line. On checking, the packets were found containing black colour substance, which was confirmed as *Afeem*/Opium from smell and physical appearance. The total quantity of the recovered substance was found to be 40.876 kgs.

7. At the instance of the applicant and co-accused Amara Ram, co-accused Bhalla Ram (mastermind of the syndicate) was arrested from Jodhpur, Rajasthan and 3.058 kgs. of opium was recovered from his house.

8. The FSL result confirmed that the recovered substance was opium.

9. While granting bail, the Court has to consider whether the bar of Section 37 NDPS Act shall apply to the case of the petitioner. In the case of **Md. Nawaz Khan** (*supra*), three persons were travelling from Dimapur, Nagaland to Rampur, Uttar Pradesh in Maruti Ritz car. Based on the secret information, they were apprehended and from the



car, two packets were recovered, containing 1.740 Kgs and 1.750 Kgs of contraband. The submission of accused before the Court was that he was only a companion in the vehicle and was not in conscious possession of the contraband since it was recovered from the wiper fitted on front bonnet of vehicle, of which he had no knowledge. Dealing with the question as to what constitutes conscious possession, Hon'ble Apex Court observed as under:-

“22 We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In **Madan Lal and Another v. State of Himachal Pradesh** this Court held that

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such



possession, Section 20 is not attracted.

22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52] to work out a completely logical and precise definition of “possession” uniform[ly] applicable to all situations in the context of all statutes.

23. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended.

[...]

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.”

What amounts to “conscious possession” was also considered in **Dharampal Singh v. State of Punjab**, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In **Mohan Lal v. State of Rajasthan**, this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.



23 We have referred to the above precedents to reiterate the governing principles. At this stage of the proceedings, it needs only to be clarified that the trial is to take place this Court where evidence will be adduced.

24 As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in **Union of India v. Rattan Malik**, a two-judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the 'possession' of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

25 In line with the decision of this Court in **Rattan Malik** (supra), we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.”

10. In the present case, the specific secret information named the applicant and co-accused Amara Ram. As per status report, the car from which the recovery was affected, was not having any number plate at the back. The contraband was recovered from the hidden cavity of the car and was recovered at the instance of the applicant and the co-accused. Applicant, therefore, had the knowledge that the contraband was lying in the cavity of the car and the same was being transported surreptitiously.

11. Status Report further reveals that at the time of arrest, applicant disclosed wrong mobile number. On verification of the IMEI number of the recovered mobile phone, the correct mobile number came to be known.



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12. The recovery of contraband is far more than the threshold of commercial quantity of opium, and therefore, the bar of Section 37 of the NDPS Act is attracted in the present case. Applicant has failed to overcome the rigour of Section 37 of the NDPS Act.

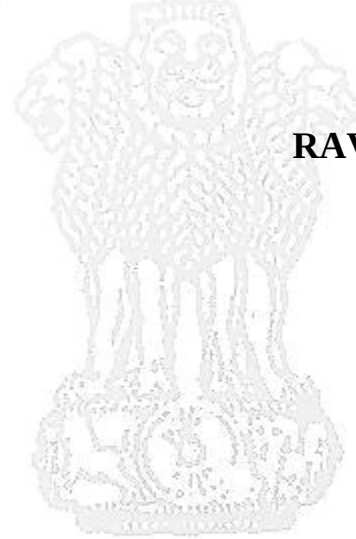
13. Trial is still at an initial stage. The allegations qua the present applicant are grave and serious in nature. I am therefore not inclined to grant bail to the applicant/petitioner.

14. The application is therefore dismissed along with pending applications, if any.

RAVINDER DUDEJA, J.

MAY 8, 2025

AK/RM



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