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

+ **BAIL APPLN. 1330/2025**

SAJIA @ SONIA

.....Applicant

Through: Mr. Sharwan Kumar
Tiwari, Mr. Gopesh
Tripathi, Mr. Hem Kumar
and Mr. R.K. Bhatti, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Deepak Kumar, PS
Jahangir Puri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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27.05.2025

1. By the present application, the applicant seeks pre-arrest bail in FIR No. 163/2025 dated 05.03.2025, registered at Police Station Jahangir Puri, for the offence under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. It is alleged that on the intervening night of 04-05.03.2025, a chance recovery of 12.65 g of smack was effected from accused Simran, who is the sister of the applicant. This led to registration of FIR. In her disclosure statement, accused Simran stated that the applicant had supplied the contraband to her and asked her to sell the same to customers at night.

3. The learned counsel for the applicant submits that the applicant is innocent and she has been falsely implicated in the



present case.

4. He submits that the disclosure statement of accused Simran is inadmissible in the absence of any corroborating material. He further submits that pursuant to the disclosure, search was also conducted in the house of the applicant and no incriminating material was found there.

5. He states that the applicant belongs to poor strata of society and is the sole care taker of her minor children.

6. *Per contra*, the learned Additional Public Prosecutor ('APP') for the State opposes the grant of any relief to the applicant due to the nature of the allegations.

7. He however fairly concedes that the applicant has joined the investigation.

8. Status Report has been handed over by the learned APP. The same is taken on record.

9. I have heard the counsel and perused the record.

10. In the present case, recovery has been effected from the sister of the applicant and it is alleged that the contraband was supplied to her by the applicant.

11. *Prima facie*, the applicant has been implicated in the present case primarily on the basis of the disclosure statement of the accused Simran. It is relevant to note that while the veracity of the disclosure statement of the co-accused is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Supreme Court in ***Tofan Singh v. State of Tamil Nadu* : (2021) 4 SCC 1**, wherein it was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration. The relevant paragraphs of the



said judgment is set out below:-

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments in Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law.

158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

(emphasis supplied)

12. It is pertinent to note that no recovery has been effectuated from the applicant in the present case. As pointed out by the learned counsel for the applicant, no incriminating material was found in the search of the applicant’s house as well. Moreover, the status report mentions that the chargesheet has already been filed against accused Simran.

13. It is relevant to note that the applicant was granted interim protection by order dated 04.04.2025. Concededly, the applicant



has already joined investigation.

14. It is not in doubt that order for grant of pre-arrest bail cannot be passed in a routine manner so as to allow the accused to use the same as a shield. At the same time, it cannot be denied that great amount of humiliation and disgrace is attached with the arrest. In cases where the accused has joined the investigation and is not likely to abscond, the custodial interrogation should be avoided.

15. The purpose of custodial interrogation is to aid the investigation and is not punitive. In the opinion of this Court, no purpose would be served by subjecting the applicants to custodial interrogation.

16. The applicant is also stated to be belonging to poor strata of society and having minor children to be taken care of.

17. In view of the above, it is directed that in the event of arrest, the applicant be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount subject to the satisfaction of the concerned SHO, on the following conditions:

- a. The applicant shall join and cooperate with the investigation, if required, as and when directed by the IO;
- b. The applicant shall not leave the country without the prior permission of the learned Trial Court;
- c. 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;



- d. The applicant shall appear before the learned Trial Court as and when directed;
- e. The applicant shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/SHO;
- f. The applicant shall give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.

18. In the event of there being any violation of the stipulated conditions, it would be open to the State to seek redressal by filing an application seeking cancellation of the bail.

19. It is clarified that the observations made in the present order are for the purpose of deciding the present pre-arrest bail application, and should not influence the outcome of the Trial and should not be taken, as an expression of opinion, on the merits of the case.

20. The present bail application is allowed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 27, 2025

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