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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1322/2024, CRL.M.A. 515/2025

ROHIT @ RAHUL

.....Petitioner

Through: Mr. Aditya Aggarwal and Mr.Naveen
Panwar, Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastva, APP for the
State wit SI Amit Sehrawat,
P.S.:Special Cell/NR.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

28.02.2025

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By way of the present petition filed under section 439 of the Code of Criminal Procedure, 1973 the petitioner seeks regular bail in case FIR No. 172/2023 dated 01.07.2023 registered under sections 21/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S.: Special Cell, Delhi.

2. Notice on this petition was issued on 22.04.2024. Status report dated 14.05.2024 has been filed by the State. Nominal Roll dated 15.01.2025 has been received from the Jail Superintendent.
3. Mr. Aditya Aggarwal, learned counsel appearing for the petitioner submits, that as per the prosecution case, 1050 grams of 'heroin' was recovered from co-accused - Parveen - who happens to be the brother-in law of the petitioner; and 500 grams of heroin was recovered from a car in which two co-accused persons - Manoj Kumar and Bheem - were travelling. Mr. Aggarwal submits, that though the prosecution alleges that the petitioner was also involved in selling contraband



alongwith the other co-accused persons, admittedly no recovery has been made from the petitioner; nor is there any monetary transaction between the petitioner and any of the co-accused persons.

4. Mr. Aggarwal further points-out, that though the prosecution is placing reliance upon transcripts of certain conversations that the petitioner had had with his brother-in-law, and with one Raju and Sharafat, the veracity of those conversations will have to be tested in the course of trial and such conversations cannot be taken as conclusive proof that the petitioner was involved in the contraband trade. It is also pointed-out that the within-named Raju and Sharafat have not been arrayed as co-accused in the matter.
5. Mr. Aggarwal also submits, that the petitioner was arrested on 19.10.2023 *i.e.*, about 03 months after the registration of the subject FIR, based on a disclosure statement alleged to have been made by the petitioner's own sister - Kajal; and that he has now been in judicial custody as an undertrial for about 01 year and 02 months.
6. In the circumstances, it is prayed that the petitioner be enlarged on regular bail.
7. On the other hand, Mr. Tarang Srivastva, learned APP appearing for the State opposes grant of bail, to argue that there is sufficient material on record to show that the petitioner is a member of a 'gang' involved in buying and selling contraband. Learned APP submits, that a 'commercial' quantity of heroin has been recovered from co-accused persons in the present case; and cash of Rs.4.10 lacs has also been recovered during the search of the house of co-accused/Kajal, who is the petitioner's sister.



8. Mr. Srivastva submits, that there is also CDR connectivity between the petitioner and co-accused persons - Parveen and Kajal. It is argued that a perusal of the transcripts of those conversations would show that the petitioner was discussing quantity, rates, and quality of contraband, which is a seriously incriminating circumstance against the petitioner.
9. Mr. Srivastva further submits, that the petitioner was apprehended on 19.10.2023; and while he was being arrested, the petitioner's family assaulted the raiding team, to free the petitioner from their custody. It is pointed-out that pursuant to a complaint made by the police team, an FIR bearing No. 482/2023 dated 19.10.2023 has been registered under sections 186/353/332/509/354/34 IPC at P.S.: Kapashera, Delhi, in which the petitioner is also an accused.
10. In view of the submissions made, what weighs with the court at this stage, are the following considerations :
 - 10.1. Admittedly, no recovery has been made from the petitioner and his name has been brought into the investigation based on the disclosure statement of his sister - Kajal. It is also noticed that the FIR is dated 01.07.2023, whereas the petitioner was arrested more than 03 months later on 19.10.2023;
 - 10.2. Furthermore, what is alleged against the petitioner is that he was in telephonic contact with certain other persons, including co-accused Parveen; however, Parveen happens to be the petitioner's brother-in-law. The transcript of the petitioner's conversations with one Raju and one Sharafat have also been cited as incriminating circumstances against the petitioner;



however, neither Raju nor Sharafat have been made accused in the matter (as of now);

- 10.3. The court has also been taken through the transcript of the conversations between the petitioner and Raju, and between the petitioner and the Sharafat, but it is noticed that those conversations do not contain any reference, at least directly, to any contraband. Learned APP argues, that reference to “समान ” and to certain colors is a reference to contraband, since those are code-words used in the drug-trade. On the other hand, it is submitted on behalf of the petitioner that the rates and quantities being discussed in the conversations relate to groceries, since the petitioner runs a grocery store. These rival contentions, and whether or not the reference in those conversations is to contraband, would have to be decided in the course of trial;
- 10.4. Since no recovery has been made from the petitioner, it cannot be alleged, at least at this stage, that the petitioner was part of a ‘conspiracy’ within the meaning of section 29 of the NDPS Act; or that therefore the contraband alleged to have been recovered from the co-accused persons can also be held against the petitioner. Accordingly, the additional twin conditions contained in section 37 of the NDPS Act would also not apply to the petitioner; and
- 10.5. The petitioner’s Nominal Roll dated 15.01.2025 shows that he has suffered judicial custody of about 1 year and 02 months; that his jail conduct has been ‘satisfactory’; and that he is not



involved in any other case under the NDPS Act. On the other hand, chargesheet dated 28.12.2023 has already been filed in the matter, in which the prosecution has cited 38 witnesses but only 01 prosecution witness has so far been examined; and trial in the matter will take a considerable period of time to conclude.

11. In the above circumstances, this court is persuaded to admit the petitioner – ***Rohit @ Rahul s/o Jaggan Paswan*** – to regular bail pending trial, subject to the following conditions :

- 11.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Twenty-five Thousand Only) with 02 sureties in the like amount, from which at least 01 should be from a family member, to the satisfaction of the learned trial court;
- 11.2. The petitioner shall furnish to the Investigating Officer/S.H.O a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- 11.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 11.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and



- 11.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
12. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
13. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
14. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
15. Petition stands disposed-of in the above terms.
16. Pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 28, 2025

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