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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1832/2024

MOHD FARUKH ANSARI

.....Petitioner

Through: Mr. Rahul Sharma with Mr. Utkarsh
Jaiswal, Mr. Pankaj Kumar and Mr.
Nitin Kumar, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Tarang Srivastava, APP for the
State with SI Manoj Kumar, P.S.:
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

22.01.2025

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks regular bail in case FIR No. 0206/2023 dated 22.08.2023 registered under sections 15/18/25/29 of the Narcotics Drugs and Psychotropic Substances, 1985 ('NDPS Act') at P.S.: Crime Branch, Delhi ('subject FIR').

2. Notice on this petition was issued on 22.05.2024; consequent to which Status Report dated 'nil' has been filed on behalf of the State.
3. Nominal Roll dated 25.07.2024 has also been received from the concerned Jail Superintendent.
4. The court has heard Mr. Rahul Sharma, learned counsel appearing on behalf of the petitioner; as well as Mr. Tarang Srivastava, learned APP appearing for the State.
5. Mr. Sharma submits, that the petitioner was implicated in the present case solely on the disclosure statement made by co-accused Pappu



Kumar, who (latter) was apprehended alongwith two other co-accused Chand and Sonu in two tempos bearing No. DL-1-LU-9094 and DL-1-LU-9784, from which *Opium Doda* weighing in aggregate 160.80 kgs was recovered.

6. Learned counsel submits, that the prosecution says that co-accused Pappu Kumar disclosed that he has been working as a broker for railway parcels in Delhi since 2008; and that in January 2023 he received instructions from one Shahjada Hussain *alias* Birju to pack and send a parcel containing Opium Doda for delivery to Farukh - *viz.* the present petitioner.
7. It is submitted that the prosecution further alleges, that as per the disclosure statement of Pappu Kumar, several parcels such as this were sent on instructions of Birju to the petitioner *and other recipients*; and that in the present incident, Birju had sent 04 bags to the railway parcels warehouse, of which *some* were to be delivered to the petitioner. Mr. Sharma points-out however, that no such parcel has been shown to have been delivered to the petitioner; and no recovery of any contraband or other incriminating material whatsoever has been made from the petitioner.
8. Mr. Sharma submits, that the other incriminating circumstance being cited against the petitioner is that he was found to be in telephone contact with co-accused Pappu Kumar, which allegation is sought to be supported by certain CDRs of the concerned persons. It is on this basis that prosecution alleges that petitioner was part of a group of persons who were running a drug racket.



9. Learned counsel however submits, that there is nothing on record to show that the CDR connectivity between the petitioner and co-accused Pappu Kumar was in any way linked to any contraband trade; that admittedly the petitioner was not riding in the tempos from which contraband has allegedly been recovered; and that therefore, merely on the basis of a disclosure statement of a co-accused, the petitioner cannot be charged with any offence, least of all under the NDPS Act.
10. Mr. Sharma further submits, that the investigation in the matter is complete and chargesheet has been filed in February 2024; the prosecution has cited 21 witnesses but charges are yet to be framed and trial has therefore yet to begin. In the meantime, the petitioner has suffered judicial custody for more than 01 year and 04 months as an undertrial and conclusion of the trial is nowhere in sight.
11. In support of his submissions, Mr. Sharma has drawn attention to the decision of the Supreme Court in ***Toofan Singh vs. State of Tamil Nadu***,¹ to argue that the statement of a co-accused recorded under section 67 of the NDPS Act is merely in the nature of a confessional statement of a co-accused, which must be dealt with in accordance with the well settled principles under sections 25 and 27 of the Indian Evidence Act, 1872; and that such statement can definitely not be read against the petitioner. The relevant portion of *Toofan Singh* (supra) reads as follows :

“158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the

¹ (2021) 4 SCC 1



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.”

12. On the other hand, opposing the grant of bail, Mr. Srivastva, learned APP submits that about 160 kgs of Opium Doda has been recovered from the co-accused persons, who have said that they were carrying it at the instance of one Birju and a portion of the contraband was meant to be delivered to the petitioner.
13. Mr. Srivastava submits, that the CDR connectivity between the petitioner and co-accused Pappu Kumar shows his involvement in the drug trade, even though he may not have been found in possession of any contraband, and even if no other incriminating material may have come on record against him.
14. Furthermore, learned APP submits, that though the nominal roll does not reflect any other criminal involvement, there is another case pending against the petitioner under the NDPS Act, which is registered in Loni, Ghaziabad, Uttar Pradesh; which may not have been part of the record maintained at Tihar Jail, Delhi.
15. Upon a conspectus of the facts and circumstances of the case, what prevails with the court *at this stage* are the following considerations :
 - 15.1. Admittedly the petitioner was not found in the 02 tempos, from which 160 kgs of Opium Doda has allegedly been recovered,



and in which tempos the other co-accused were riding. Furthermore, no recovery of any contraband or other incriminating material whatsoever has been made from the petitioner;

- 15.2. The petitioner has been implicated on the basis of the disclosure statement of co-accused Pappu Kumar, who names the petitioner as one of the persons to whom the contraband recovered from him (Pappu Kumar) was to be delivered; however there is no material to show that the petitioner was a 'consignee' of the contraband; or that the contraband was in fact delivered to the petitioner;
- 15.3. Though the prosecution is citing certain CDRs to show telephonic connectivity between the petitioner and the co-accused persons, no transcript of any conversation nor any text or other messages have come on record during investigating to show the context or content of the alleged conversations;
- 15.4. Investigation in the matter is complete and chargesheet has been filed as far back as in February 2024. The prosecution has cited 21 witnesses but charges are yet to be framed and trial has yet to be begin. Needless to guess that trial in the matter will take a considerable period of time to conclude; and
- 15.5. The nominal roll shows that the petitioner has suffered more than 01 year and 04 months of judicial custody as of date as an undertrial; and that his overall jail conduct has been 'satisfactory'.



16. As a sequitur to the above, this court is persuaded to grant to the petitioner – ***Mohd. Faaruk Ansari s/o Mohd. Navi Ansari*** (as per nominal roll) – *regular bail* pending trial, subject to the following conditions :
- 16.1. The petitioner shall furnish a personal bond in the sum of Rs. 50,000/- (Rs. Fifty Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 16.2. The petitioner shall furnish to the Investigating Officer ('I.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;
- 16.3. 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;
- 16.4. 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
- 16.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
17. 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.

18. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
19. A copy of this order be sent to the concerned Jail Superintendent *forthwith*, for information and compliance.
20. The petition stands disposed-of.
21. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 22, 2025

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