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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1949/2025 & CRL.M.A. 15739/2025**

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.....Applicant

Through: Mr. Rajiv Singh Sagar,
Adv.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State.
Insp. Vibas Pannu, ANTF,
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
20.05.2025

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1. The present application is filed seeking regular bail in FIR No. 31/2025 dated 30.01.2025, registered at Police Station Crime Branch for offences under Sections 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').
2. The brief facts of the case are that on 29.01.2025, a secret information was received by the Police that a person, namely, Shiva, who procures contraband (smack) from accused Manjeet's sons and supplies to different locations in Delhi would be coming on his two-wheeler to supply contraband to accused Sagar.
3. It is alleged that pursuant to the trap laid, accused Shiva was nabbed and a recovery of 512 grams of contraband was made. At the instance of accused Shiva, co-accused Sagar was identified, and his car was searched from which a recovery of 304 grams (with green polythene) and 299 grams (without green



polythene) of contraband was made. Some other persons were also arrested at the instance of other accused persons and further contraband was recovered.

4. It is alleged that accused Sagar disclosed that the present applicant used to help him in the operation of drug supply. It is alleged that the applicant used to collect money from another accused namely, Khala, who used to collect money by selling contraband.

5. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that the only evidence against the applicant, at this stage, is the disclosure statement of accused Sagar and that the said disclosure is not admissible in evidence in the absence of any recovery of contraband or other corroborative material.

6. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that there is a recovery of commercial quantity of contraband and consequently the bar under Section 37 of the NDPS Act would act against the applicant in the present case. He submits that the CDR of the applicant demonstrates that he was in regular touch with accused Sagar. He further submits that certain photographs were found in the mobile phone of the applicant which shows that the money was transacted.

7. I have heard the counsels for the parties and perused the material on record.

8. The reply filed by the prosecution opposing the bail before the learned Trial Court is on record and I am of the opinion that



no further opportunity is required to be given to file a separate reply to oppose the present bail application.

9. 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 Apex 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 are 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)



10. A Coordinate Bench of this Court in ***Phundreimayum Yas Khan Vs. State (GNCT of Delhi) : 2023 SCC OnLine Del 135***, held that when there is no material to link the applicant with the recovery of the commercial quantity from the co-accused persons, the rigors of Section 37 would not apply. It was further observed that in the absence of any incriminating material; the CDR details cannot be a ground to deny the bail.

11. Apart from the disclosure of accused Sagar, the only material against the applicant is the existence of CDR to demonstrate that the applicant was in touch with the accused Sagar.

12. This Court, in the case of ***Dalip Singh v. State (NCT of Delhi) : 2019 SCC OnLine Del 6494***, had observed as under:

“11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.

12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.”

(emphasis supplied)

13. Admittedly, no recovery has been effected from the applicant and in such circumstances merely because the applicant



was allegedly in touch with accused – Sagar, the bar of Section 37 of the NDPS Act would not be attracted.

14. It is informed that accused Sagar, on whose disclosure, the applicant was arrested to be one of the persons who was assisting in the operation of drug supply, has already been enlarged on bail by order dated 24.03.2025 by the learned Trial Court.

15. The learned Additional Public Prosecutor for the State submits that the State is considering challenging the said order, however, it cannot be denied that the same has not been done till date despite two months having been elapsed since accused Sagar was enlarged on bail.

16. The role attributed to the applicant cannot be stated to be graver than the accused Sagar. Even otherwise, the applicant is in custody since 10.02.2025 and at this stage, the only evidence against the applicant seems to be the disclosure statement of the accused Sagar and some CDR to demonstrate that the applicant was in touch with accused Sagar. As noted above, accused Sagar has already been admitted on bail by the learned Trial Court.

17. The applicant is stated to be a young boy of 19 years and also does not have any criminal antecedents.

18. The applicant is, therefore, directed to 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 learned Trial Court, on the following conditions:

- a. 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;
- b. The applicant shall under no circumstance leave the



country without the permission of the learned Trial Court;

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

19. In the event of there being any FIR/DD entry/complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

20. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

21. The bail application is allowed in the aforementioned terms. Pending application also stands disposed of.

AMIT MAHAJAN, J

MAY 20, 2025

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