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

+ **BAIL APPLN. 2289/2024**

SHAMPAN SINGH

.....Petitioner

Through: Mr. Virender Verma, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Vishan Kumar, PS ANTF,
Crime Branch

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

19.03.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 97/2022 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Crime Branch. Subsequently, a chargesheet was filed and the Applicant has been charged with offences under the aforesaid provision.

2. In brief, the case of the prosecution is as follows:

2.1. On 4th June, 2022, at around 01:30 PM, ASI Karan Singh received confidential information that Mr. Shampam Singh (the Applicant) was

¹ "BNSS"

² "Cr.P.C."

³ "NDPS Act"



involved in the supply of heroin in Delhi. He was reportedly scheduled to deliver the substance to an unidentified individual between 2:00 PM and 2:30 PM at a location behind Sanjay Gandhi Hospital, near Mangolpuri-Sultanpuri Ganda Nala, Delhi. ASI Karan Singh conveyed this information to Inspector Rakesh Duhan, who, in turn informed ACP Arshdeep Singh Panwar (Narcotics Cell). The ACP instructed ASI Karan Singh to take necessary action. Accordingly, ASI Karan Singh documented the information in writing and Inspector Rakesh Duhan registered it in the CCTNS. A copy of the DD entry was forwarded to the senior officer in compliance with Section 42 of the NDPS Act.

2.2. Acting on the secret information, a raiding team led by ASI Karan Singh was formed and a trap was set at the specified location. The Applicant was identified and apprehended based on the secret informant's tip. A notice under Section 50 of the NDPS Act was served on him, informing him of his legal rights and explaining the role of a Gazetted Officer and Magistrate. However, the Applicant declined to be searched in their presence.

2.3. Upon his refusal, ASI Karan Singh conducted a search, leading to the discovery of a white polythene bag inside a black polythene bag, containing 500 grams of heroin. The contraband was placed in a plastic box, sealed, marked and seized through a seizure memo. The confiscated substance was deposited in the Malkhana of P.S. Crime Branch following compliance with Section 55 of the NDPS Act. Subsequently, an FIR was registered and the Applicant was arrested.

2.4. Samples were drawn under Section 52A of the NDPS Act in the presence of a Magistrate. The case exhibits were sent to FSL and the report confirmed the presence of heroin.



2.5. A report under Section 57 of the NDPS Act regarding the seizure and arrest was forwarded to ACP/Narcotics Cell, Crime Branch, Delhi. Upon completion of the investigation, a chargesheet was filed in Court.

3. Counsel for the Applicant states that the Applicant has been falsely implicated and urges the following in support of his request for grant of bail:

3.1. The Applicant has been in custody since 4th June, 2022. The investigation has been complete, chargesheet has been filed and charges have been framed. Out of 15 witnesses, only 7 have been examined and there is no foreseeable conclusion of the trial in the near future. Thus, no purpose would be served by the prolonged incarceration of the Applicant.

3.2. Despite having ample opportunity, the investigating agency failed to secure any independent witnesses to corroborate the recovery, which violates Section 100 of Cr.P.C. Moreover, the absence of videographic or photographic evidence of the alleged seizure further casts doubt on the authenticity of the prosecution's claims.

3.3. There has been a non-compliance of Section 42 of the NDPS Act as the information was not duly communicated to the senior officer.

3.4. The investigating agency has failed to comply with the mandate of Section 50 of the NDPS Act as the police officials have, on their own accord, recorded that the Applicant refused search in the presence of a Gazetted officer. As a result, no Gazetted Officer joined for conducting the search and seizure.

3.5. Section 37 of the NDPS Act shall not be applicable to the present case as the Applicant's right to life and person liberty supersedes the statutory requirement under Section 37.

3.6. Only the examination of police witnesses is remaining and therefore,



there is no likelihood of tampering of witnesses by the Applicant. The Applicant further undertakes that he is willing to abide by the conditions of bail.

4. On the other hand, Mr. Amit Ahlawat, APP for the State, strongly opposes the bail application. He states that all the mandatory provisions under Sections 42, 50, 55, 57 of NDPS Act were duly complied with. He states that the quantity of recovered contraband falls within the commercial quantity, attracting the rigour of Section 37 of the NDPS Act. He further submits that the Applicant is in judicial custody in proceedings arising from FIR No. 1070/2021 registered under Sections 12/9/55 of the Public Gambling Act, 1897 at P.S. Sultan Puri and in FIR No. 25/54/59 of the Arms Act, 1959 at P.S. Sultan Puri. Given his prior involvement in criminal proceedings, there is a likelihood that he may abscond or default on bail conditions, if released. Additionally, the Applicant's request for regular bail has previously been denied by the Additional Sessions Judge-II, Special Judge NDPS, North-West, Rohini Courts by order dated 25th April, 2024.

5. The Court has considered the facts and the submissions advanced. The Applicant was arrest in the present FIR on 4th June, 2022 and as per the latest Nominal Roll, as on 15th March, 2025, the Applicant has been in custody for a period of 2 years, 4 months and 28 days. While the quantity of the recovered contraband, 500 grams of heroin, exceeds the commercial threshold, thereby attracting the rigors of Section 37 of the NDPS Act, the issue of prolonged incarceration and delay in trial assumes significance before assessing the twin conditions under the said provision.

6. In the present matter, investigation is complete, chargesheet has been filed and the matter is at the stage of recording of prosecution evidence.



Considering the fact that out of 15 cited witnesses, only 7 witnesses have been examined, indicates that the trial is not likely to conclude in the foreseeable future. The right to life and personal liberty, enshrined under Article 21 of the Constitution of India, 1950, cannot be rendered nugatory by unwarranted delays in the judicial process. The prolonged incarceration undermines the fundamental right to personal liberty. The Supreme Court in ***Rabi Prakash v. State of Odisha***⁴ has held that in such circumstances, the protection of liberty must take precedence over the statutory restrictions imposed under Section 37(1)(b)(ii) of the NDPS Act. This principle was reaffirmed by the Supreme Court in ***Ankur Chaudhary v. State of Madhya Pradesh***.⁵ The extended period of custody, combined with the delay in trial, justifies the Applicant's plea for grant of bail, thereby balancing the rights of the accused with the requirements of justice.

7. Even on merits, the Applicant satisfies the first condition under Section 37(1)(b)(ii) of the NDPS Act, which requires the Court to be satisfied that there are reasonable grounds to believe that he is not guilty of the offence. The Applicant has raised the issue of the prosecution's failure to include independent witnesses during the search and seizure operations, despite the Applicant his apprehension occurring in a public place.

8. Indeed, the non-joinder of independent witnesses during the search and seizure proceedings casts doubts on the credibility of the prosecution's case. This Court in ***Bantu v. State Government of NCT of Delhi***,⁶ examined the recurring and mechanical explanations offered by prosecuting agencies

⁴ 2023 SCC OnLine SC 1109

⁵ 2024 SCC OnLine SC 2730

⁶ 2024 SCC OnLine Del 4671



for the non-joinder of independent witnesses in cases involving the seizure of contraband under the NDPS Act. It was observed that the failure to associate public witnesses, particularly in seizures conducted at busy public places, raises concerns regarding the transparency of the recovery process and weakens the evidentiary value of the seizure. In the present case, despite the raid occurring at a public location, the prosecution's explanation is that the witnesses refused to join the investigation and due to paucity of time, no notice could be served to them. While the absence of independent witnesses may not be fatal to the prosecution's case per se, it does impact the transparency and reliability of the search and seizure process, particularly at the bail stage, where the Court must assess whether a *prima facie* case has been made out against the accused.

9. The Applicant also points out the prosecution's failure to produce any videographic or photographic evidence of the alleged recovery. The Supreme Court, in the case of *Shafhi Mohd. v. State of H.P.*⁷ emphasised that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence. This judicial observation was made even prior to the enactment of the mandatory videography and photography requirements under the BNSS, illustrating that the Court has recognized the vital role of such documentation in ensuring the fair administration of justice. Further, in *Bantu*, this Court observed that in instances where videography or photography has not been undertaken, the prosecution can provide clear and valid justifications for such omissions.

⁷ (2018) 5 SCC 311



10. The prosecution has failed to offer any justification for not implementing the essential measure of videography or photography during the recovery process. The absence of this safeguard leaves the recovery process open to question, as there is no independent evidence to corroborate the police's account. This omission, coupled with the lack of independent witnesses, casts a shadow over the credibility of the evidence and increases the potential for prejudice against the accused.

11. As regards the second condition of Section 37(1)(b)(ii), it is noted that the Applicant is presently in judicial custody in connection with two other criminal cases – FIR No. 1070/2021 registered under Sections 12/9/55 of the Public Gambling Act, 1897 at P.S. Sultan Puri and FIR No. 25/54/59 of the Arms Act, 1959 at P.S. Sultan Puri. However, this Court in *Parvej Khan v. State Govt. of NCT*,⁸ relying on the decision of the Supreme Court in *Prabhakar Tiwari v. State of Uttar Pradesh*⁹ has observed that while the existence of pending criminal cases is a relevant factor for consideration, it cannot, in itself, form the sole basis for the denial of bail.

12. Moreover, as per the Nominal Roll, the Applicant's jail conduct for the last one year and overall jail conduct has been found to be satisfactory. It is also noted that the Applicant was granted interim bail on two prior occasions, and there have been no reported instances of misuse of the liberty extended to him. The absence of any adverse report during his release on interim bail indicates that the Applicant is not a flight risk.

13. The Applicant has also raised grounds regarding non-compliance with Sections 42 and 50 of the NDPS Act. However, after a careful review of the

⁸ 2024:DHC:4725

⁹ (2020) 11 SCC 648



case records and submissions, this Court does not find sufficient merit in these claims.

14. Nonetheless in consideration of the grounds noted above, this Court is of the opinion that the Applicant is entitled to be enlarged on bail and the Applicant is directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty MM, 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 Trial Court;
- c. The Applicant shall appear before the 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.

15. 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.

16. 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.



17. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

MARCH 19, 2025/ab