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

+ **BAIL APPLN. 2413/2025 & CRL.M.A. 19122/2025**

ANJU

.....Applicant

Through: Mr. Rahul Sharma, Mr.
Radhey Shayam, Mr.
Harsh Bansawal and Ms.
Darshitha P. Mandoth,
Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP
for the State with SI Jagbir
Singh, PS Narcotics
Squad, NWD.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **14.08.2025**

1. The present application has been filed by the applicant seeking regular bail in FIR No. 565/2025 dated 12.05.2025, registered at Police Station Jahangir Puri, for offences under Sections 20/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').
 2. The Status Report is handed over in Court today and the same is taken on record.
 3. Briefly stated, on 11.05.2025, on the basis of a secret information pertaining to supply of large quantity of contraband (*Ganja*), a raiding team was constituted and co-accused Shiv Nath and Pankaj were apprehended. It is alleged that on their search a recovery of 27.754 Kgs of *Ganja* was recovered.
 4. It is alleged that during the course of investigation both co-
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accused Shiv Nath and Pankaj disclosed that they had received this consignment from one person namely Mohan Rai, who is stated to be absconding.

5. Co-accused Shiv Nath further disclosed that he had supplied the contraband to the present applicant on several occasions, whereafter the applicant was apprehended on 24.05.2025.

6. The learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case.

7. He submits that applicant has been arrested solely on the basis of the disclosure statement of the co-accused.

8. He further submits that there was no recovery effectuated from the applicant at the time of arrest.

9. Per contra, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the present applicant. She further submits that there is a recovery of commercial quantity of contraband and thus the bar under Section 37 of the NDPS Act would act against the applicant in the present case.

10. I have heard the learned counsel for the parties and perused the record.

11. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction;



the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

12. *Prima facie*, the applicant has been implicated in the present case primarily on the basis of the disclosure statement of the accused Shiv Nath. 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*** (*supra*), 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)

13. It is pertinent to note that no recovery has been effectuated from the applicant in the present case. It is alleged that CDR analysis show the connectivity between the accused persons.

14. 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)

15. Merely because the applicant was in regular touch with the other co-accused persons, the same is not sufficient to *prima facie* establish the offence against the applicant.

16. The State has contended that the applicant cannot be enlarged on bail unless the conditions laid down in Section 37 of



the NDPS Act are met.

17. The Hon'ble Apex Court, in the case of **Union of India v. Shiv Shanker Kesari : (2007) 7 SCC 798**, has observed as under:

“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.”

18. The Hon'ble Apex Court, in the case of **Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352**, has reiterated the law in regard to Section 37 of the NDPS Act as under:

“20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

19. In the present case, as discussed above, there are reasonable grounds to believe that the applicant is not guilty of



the alleged offence.

20. Undisputedly, nothing has been recovered from the applicant in that regard and the arrest of the applicant, in the opinion of this Court, was not required when the only allegations is on the basis of disclosure of co-accused that contraband was supplied to the applicant sometime in the past.

21. The applicant is also stated to have clean antecedents. In view of the above, this Court is of the opinion that the embargo of Section 37 of the NDPS Act does not come in the way of granting bail to the applicant.

22. In view of the facts of the case, the applicant has *prima facie* established a case for grant of bail.

23. In view of the above, the applicant is directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. She 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. She shall under no circumstance leave the boundaries of the country without informing the concerned IO/SHO;
- c. She shall appear before the learned Trial Court as and when directed;
- d. She shall provide the address where she would be residing after her release and shall not change the address without informing the concerned IO/ SHO;



e. She shall, upon her release, give her mobile number to the concerned IO/SHO and shall keep her mobile phone switched on at all times.

24. 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.

25. 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.

26. The bail application is allowed in the aforementioned terms. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

AUGUST 14, 2025

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