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

+ **BAIL APPLN. 2954/2024**

MOHAN GUPTA

.....Petitioner

Through: Mr. Aditya Aggarwal and Ms.
Shivani Sharma, Advocates

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP for State
with SI Sudhir Kumar, ANTF/Crime
Branch

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

04.04.2025

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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. 54/2023 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 Sections 21(c)/29 of the NDPS Act.

2. Briefly, the case of the prosecution is as follows:

2.1. On 2nd March, 2023, ASI Subhash Chand of the ANTF received secret

¹ "BNSS"

² "Cr.P.C."



information that one Mohan Gupta (the Applicant), previously incarcerated in drug trafficking cases in Delhi, was again involved in trafficking heroin. He was expected to deliver a large quantity of heroin near the Wazirabad flyover between 8:00 AM and 9:00 AM. Upon receiving the information, ASI Subhash Chand informed Inspector Rakesh Duhan telephonically, who in turn informed ACP Arvind Kumar of the Crime Branch. The information was recorded in the CCTNS *vide* DD No. 007A dated 2nd March, 2023.

2.2. Acting on the information, a raiding party was constituted and dispatched to the location. At around 8:30 AM, a person carrying an army-coloured handbag was seen walking towards Signature Bridge under the Wazirabad flyover. The secret informer identified him as the Applicant, who was then apprehended. After disclosing his identity as Mohan Gupta, he was served with a notice under Section 50 of the NDPS Act. He was informed of his right to be searched before a Gazetted Officer or Magistrate, but he declined both, and also refused to search the raiding team or their vehicle.

2.3. Upon his personal search, no contraband was recovered and a 'Nil recovery' memo was prepared. However, upon searching the handbag he was carrying, a red-coloured powdery substance wrapped in a white polythene packet was recovered. Field testing confirmed the substance to be heroin, weighing 410 grams. The contraband and the handbag were seized under separate seizure memos.

2.4. During interrogation, the Applicant disclosed that he had procured the heroin from one Wajid, a resident of Bareilly, U.P., on 28th February, 2023,

³ "the NDPS Act"



for onward sale to one Pradeep from Najafgarh, Delhi.

2.5. On 3rd March, 2023, the Applicant was remanded to four days' police custody for the purpose of identifying the source and receiver. Call Detail Records indicated regular contact between the Applicant and Pradeep from 1st September, 2022 to 25th February, 2023.

2.6. On 4th March, 2023, co-accused Pradeep was arrested near his residence. He admitted to purchasing heroin from the Applicant at the rate of INR 800 per gram and reselling it to individuals named Pramod and Mukesh @ Makoda. On 10th March, 2023, Pradeep was remanded to two days' police custody. Subsequently, on 11th March, 2023, a two-wheeler used for taking delivery of heroin from the Applicant was recovered from Pradeep's house.

2.7. Raids were also conducted in Bareilly to trace Wajid, who was found absconding. His real name was revealed to be Akram, previously convicted in FIR No. 26/2012 under Sections 21/29 NDPS Act, registered at P.S. Special Cell, Delhi.

2.8. FSL report confirmed that the recovered substance (Exhibit A1) tested positive for Diacetylmorphine (heroin), Acetaminophen, 6-monoacetylmorphine, and Trimethoprim on chemical, TLC and GC-MS analysis.

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

3.1. The Applicant has been in custody since 4th June, 2022. The investigation has been complete, chargesheet has been filed and the matter is



at the stage of framing of charge. Thus, his continued incarceration serves no purpose.

3.2. Despite having ample opportunity, the investigating agency made no efforts to secure any independent witnesses to corroborate the recovery. 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. While the Applicant has prior involvements under the NDPS Act (FIR No. 22/2019 under Sections 21/25/29 and FIR No. 357/2019 under Sections 21/25, both registered at P.S. Crime Branch), it is submitted that these cannot form the sole basis for rejecting bail. Moreover, the Applicant has been granted bail in FIR No. 357/2019 by this Court on 1st April, 2025.

3.4. 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.

3.5. The co-accused Pradeep was granted bail by the Trial Court by order dated 1st May, 2023 hence, the Applicant is entitled to be enlarged on bail on the grounds of parity.

3.6. The Applicant undertakes that he is willing to abide by the conditions of bail.

4. On the other hand, Mr. Mukesh Kumar, APP for the State, strongly opposes the bail application. 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 has



previous involvements under the NDPS Act. He was arrested in proceedings arising from FIR No. 22/2019 registered under Sections 21/25/29 of the NDPS Act at P.S. Crime Branch, Delhi. While he was on bail in the said case, he again started supplying heroin and was arrested again in FIR No. 357/2019 registered under Sections 21/25 of the NDPS Act at P.S. Crime Branch. In the said FIR, he was granted interim bail on 25th August, 2022 and while on interim bail, the present case against him was registered. 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 Special Judge (NDPS)-02, Central, Tis Hazari Courts by order dated 7th August, 2024.

5. The Court has considered the facts and the submissions advanced. While evaluating a bail application, the Court must consider several factors, including whether there is a *prima facie* case or reasonable grounds to believe the accused has committed the offence, the likelihood of the accused repeating the offence, the nature and seriousness of the accusation, the severity of the potential punishment upon conviction, the risk of the accused absconding or fleeing if granted bail and the reasonable apprehension of witnesses being intimidated by the accused.⁴

6. The contraband recovered from the Applicant comprises of heroin weighing 410 grams which falls within the definition of 'commercial quantity'. As a result, the rigours of Section 37 of the NDPS Act are



attracted, which impose stringent conditions for the grant of bail. This provision mandates a twin-layered threshold to be satisfied before bail can be granted: first, the Court must be satisfied, upon hearing the Public Prosecutor, that there are reasonable grounds for believing that the accused is not guilty of the offence; and second, that he is not likely to commit any offence while on bail. These conditions have to be met conjunctively in order to grant bail to the accused under the NDPS Act. The Supreme Court has consistently held that denial of bail is the rule and its grant is an exception under Section 37(1)(b)(ii) of the NDPS Act.⁵ Hence, in light of the recovery of contraband is of a commercial quantity, the rigours of Section 37 must be strictly applied.

7. As regards the second condition of Section 37(1)(b)(ii), the prosecution has relied on the fact that the Applicant is presently in judicial custody in connection with two other criminal cases – FIR No. 22/2019 under Sections 21/25/29 of the NDPS Act and FIR No. 357/2019 under Sections 21/25 of the NDPS Act, both registered at P.S. Crime Branch.

8. This Court granted bail to the Applicant in FIR No. 357/2019 *vide* order dated 1st April, 2024. However, perusal of the said order, reveals that the Applicant was in custody in relation to the said case for nearly 4 years and 4 months. Thus, considering the long period of incarceration and the delay in trial, this Court granted bail having regard to fundamental right of the Applicant as enshrined under Article 21 of the Constitution of India.

⁴ *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496

⁵ *State of M.P. v. Kajda*, (2001) 7 SCC 673



9. Further, it must be acknowledged that this Court as well as the Co-ordinate Benches have granted bail on the ground of lack of independent witnesses and videographic or photographic evidence of the seizure. However such grounds are considered along with other facts and circumstances, such as long period of incarceration and the corresponding delay in trial.

10. This Court is mindful that the Applicant has been in judicial custody since 2nd March, 2023, and that the investigation in the present matter stands concluded, with the chargesheet having been filed. Although prolonged incarceration and delayed trial proceedings may dilute the statutory restrictions under Section 37 of the NDPS Act, such a benefit cannot be extended mechanically in cases involving habitual offenders. The menace of drug trafficking poses a grave threat to public health and social stability. It erodes the moral and physical fabric of society and undermines lawful economic structures. The repeated involvement of the Applicant in such cases reflects a continued association with drug trafficking activities, suggesting that he is not merely a one-time offender but someone who is habitually engaged in such illicit trade. The Court is, therefore, duty-bound to strike a delicate balance between safeguarding the Applicant's fundamental right to personal liberty and ensuring the broader societal interest of effectively curbing drug-related offences.

11. Thus, in light of the Applicant's antecedents and the serious nature of the present allegations, this Court is not persuaded to believe that he would refrain from similar conduct if released on bail.



12. 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.

13. Accordingly, the bail application, along with pending application(s), if any, is dismissed.

SANJEEV NARULA, J

APRIL 4, 2025/SV