



2025:DHC:2162



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment reserved on: 27.03.2025*
Judgment pronounced on: 01.04.2025

+ BAIL APPLN. 3017/2024, CRL.M.A. 25331/2024
CHHALIMUDDINPetitioner

Through: Ms. Dolly Sharma, Adv.

versus

STATE NCT OF DELHIRespondent
Through: Ms. Meenakshi Dahiya, APP
for State.
SI Chandra Shekhar, Anti
Narcotics Squad (West)
Mr. Tarannum Khan, Adv. for
the complainant.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present application under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed by the petitioner/applicant, seeking Regular Bail in FIR No.93/2024 registered at Police Station Rajouri Garden for the offences punishable under Section 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

CASE OF THE PROSECUTION

2. The case of the prosecution would reveal that on 02.02.2024, SI



2025:DHC:2162



Rajender Prasad, posted at the Narcotics Squad/West District, Delhi, received secret information through an informer that a person named Khokan Burman, along with an associate, would be supplying *Ganja* in Woodland Park in Tagore Garden between 9:00 and 10:00pm. SI Prasad then informed Inspector Ishwar Singh I/C Narcotics Squad at around 8:30 pm, who then called SI Prasad back and intimated him that the said information was relayed to the ACP, who has instructed him to take appropriate action. A raiding party was then constituted and the raiding party, along with the informer, reached the spot where the petitioner was to be apprehended.

3. SI Prasad provided the secret information to four public persons; however, they all left the spot without providing their names or addresses, citing their own legitimate compulsions. At around 9:40pm, two suspects, one carrying a black bag in both his hands and the other carrying a grey bag on his back and holding a red bag in his right hand came towards Tagore Garden from the Subash Nagar side. The informer then recognized one of the two suspects, Khokan Burman, and on such information being given, the raiding party apprehended the two suspects. The two suspects were then identified, the one with the black bags in both the hands being Khokan Burman, and the other with the carrying a grey bag on his back and holding a red bag in his right hand being the petitioner/applicant herein.

4. On apprehending the two, they were informed by SI Prasad that he had received secret information that they were involved in the supply of *Ganja* and possessed the same. Both of them were



2025:DHC:2162



separately informed about their legal rights, which are whether they wished to be searched in the presence of the nearest Gazetted Officer or Magistrate, for which they would have to be taken to the nearest Gazetted Officer or Magistrate, or they would be called to the spot. They were also informed that they could search the raiding party and police vehicle before getting their search done. Both the accused were given a copy of the notice under Section 50 of the NDPS Act in Hindi Language, explaining the meaning of Gazetted Officer and Magistrate. Both the accused then informed the raiding party that they could read Hindi, however, not write the same. They both then replied to the notice in mixed language that is, Hindi and English and waived their right to be searched by a Gazetted Officer or Magistrate.

5. A total of 19.949 kgs of *Ganja* was recovered from the accused Khokan Burman and a total of 12.388 kgs of *Ganja* was recovered from the petitioner, totalling upto 32.349 kgs. The contraband was then seized, stored and sealed by the raiding party. A *rukka* along with sealed exhibits and the Notice under Section 55 of the NDPS Act was handed over to HC Dinesh for registering the case, pursuant to which the aforementioned FIR came to be registered.

6. The petitioner has been in Judicial Custody since 03.02.2024 and his Regular Bail application filed before the Additional Sessions Judge/Special Judge (NDPS), West District, Delhi (Trial Court) came to be dismissed on 13.08.2024, leading him to approach this Court.

SUBMISSIONS OF THE PETITIONER

7. The learned counsel for the petitioner submitted that the



2025:DHC:2162



investigation in the present case is complete and the Charge-Sheet has been filed, therefore, custody of the petitioner is not required. She submitted that the petitioner has undergone about 1 year and 2 months of custody and therefore, he be released on Bail.

8. The learned counsel submitted that from a perusal of the contents of the FIR, it is evident that quantity recovered from the petitioner is 12.388 kgs, however, the Police has deliberately clubbed the recovered contraband from the petitioner and the co-accused to make it a commercial quantity of 32.349 kgs, which in law is incorrect as the quantity recovered from each of the accused cannot be clubbed to make it a commercial quantity to attract Section 37 of the NDPS Act. The learned counsel further submitted that it is prosecution's own case that petitioner had been caught with 12.388 kgs, which is an intermediate quantity, therefore, the bar of Section 37 would not apply to the present case, which applies to commercial quantities.

9. The learned counsel submitted that the petitioner has clean antecedents and no cases pending against him and therefore considering all the factors surrounding the case, he be released on bail. The learned counsel relied on the decisions of this Court in *Nawab vs State (NCT of Delhi)* BAIL APPLN.2458/2024 dated 05.08.2024 and *Chand Miyan vs State (NCT of Delhi)* BAIL APPLN.3010/2023 dated 31.01.2024.

SUBMISSIONS OF THE RESPONDENT

10. The learned APP for the State opposed the bail application and submitted that the learned Trial Court has rightly dismissed the bail



2025:DHC:2162



application of the petitioner after considering all factors surrounding the case. He submitted that the FSL Report is still awaited and the matter is presently at the stage of Misc./Appearance.

11. The learned APP submitted that the allegations levelled against the petitioner are serious in nature and there is a possibility of tampering of evidence, influencing the witnesses and fleeing if he is granted bail. The recovery made from the accused persons is commercial in nature and there is a bar under Section 37 of the NDPS Act, therefore, the bail application be dismissed.

12. Having heard the submissions made by both the sides and perused the record, we may begin by noting that the position of law is well settled, that in a case where joint recovery of contraband has been affected from two or more co-accused, the recovery of the contraband cannot be clubbed in order to ascertain that the quantity of the contraband recovered is a commercial quantity. It will be proper to consider the alleged recovery to be an individual recovery of the contraband from each of the accused persons.

13. The present case undeniably entails an alleged recovery of 12.388 kgs *Ganja* from the petitioner, which is an intermediate quantity and therefore, the rigors of Section 37 of the NDPS Act, would not apply.

14. The investigation is complete and Charge-Sheet has been filed. As per the Nominal Roll, the petitioner has a 'satisfactory' jail conduct and he has been in judicial custody for about 1 year and 2 months, since the date of his arrest, that is, 03.02.2024. The record



2025:DHC:2162



also reflects that the petitioner has not been previously involved in any other crime and that he has clean antecedents. Moreover, there is nothing to show that the petitioner is likely to tamper with evidence or influence the witnesses.

15. In view of the above, and the fact that the trial is yet to commence, the petitioner is admitted to regular bail on furnishing a personal bond in the sum of Rs. 30,000/- with one surety in the like amount, to the satisfaction of learned Trial Court / CMM / Duty Magistrate, subject to the following conditions: -

- i. The Petitioner shall not leave India without prior permission of the Learned Trial Court.
- ii. The Petitioner is directed to give all his mobile numbers to the Investigating Officer and keep it operational at all times.
- iii. The Petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other person 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.
- iv. The Petitioner shall report at the Police Station Rajouri Garden, Delhi on every Friday between 4:00 PM to 6:00 PM. The concerned officer shall



2025:DHC:2162



release the Petitioner after recording his presence and after completion of all the necessary formalities.

- v. The Petitioner shall immediately intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change of residential address.
- vi. The Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.

16. Needless to state, any observation made hereinabove shall not tantamount to be an expression on the merits of the case before the learned Trial Court and has been made for the consideration of the present bail application alone in the prevailing circumstances.

17. Copy of the order be sent to the Jail Superintendent concerned for information and necessary compliance.

18. Accordingly, the petition, along with the pending application, is disposed of.

SHALINDER KAUR, J

APRIL 1, 2025
SU/FRK

Click here to check corrigendum, if any