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

+ **BAIL APPLN. 2969/2025 & CRL.M.A. 23008/2025**

MASOOM ALAM

.....Applicant

Through: Mr. S. Islam, Mr. Shan,
Mr. Mohd. Kaif & Mrs.
Aleena Saman, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP
for the State
SI Sudhir Kumar, PS-
ANS/ SED

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

10.10.2025

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1. The present application is filed seeking regular bail in FIR No. 284/2024 dated 06.12.2024, registered at Police Station Hazarat Nizamuddin, for the offences under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. Briefly stated, on 05.12.2024, on the basis of secret information, a scooty was stopped by the raiding team near Bhogal Flyover. The person riding the scooty was identified as the accused Akash and the pillion rider was identified as accused Mariyam. These accused persons were both found to be carrying a bag with them, and a recovery of 4.093 kg and 6.115 kg of contraband (*Ganja*) was effected from the respective bags.

3. During interrogation, the said accused persons disclosed that they had rented a premises for storing *Ganja*. On the basis of



their disclosure, a raid was conducted at the concerned premises and a recovery of 71.062 kg of Ganja was effected from there.

4. It is alleged that the accused Mariyam disclosed about the involvement of the applicant in supply of Ganja. It is the case of the prosecution that another accused Sabir *alias* Sikku used to send Ganja in bags from Vishakhapatnam, Andhra Pradesh to the accused Mariyam by train through various individuals, including the applicant and his wife—accused Haseena.

5. The learned counsel for the applicant submits that he is innocent and he has been falsely implicated in the present case essentially on the basis of disclosure of other accused persons.

6. He submits that the disclosure statement of the co-accused persons is *per se* not substantial without any corroboration and no recovery was effected from the applicant in the present case.

7. He further submits that the chats relied upon by the prosecution do not involve any specific reference to contraband and the same is insufficient to infer that the applicant was involved in the supply of contraband.

8. He submits that the applicant has spent more than eight months in custody and the charges have been recently framed. He submits that there are twenty prosecution witnesses in the present case and no purpose will be served by subjecting the applicant to undergo further incarceration.

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



with the other accused persons. She submits that although there is no direct reference to the contraband in the WhatsApp chats of the applicant with other accused persons, however, certain chats regarding tickets of train have been found which lends credence to the allegations.

10. She submits that the applicant is also involved in another case of similar nature, that is, FIR No. 392/2021, registered at Police Station Jamia Nagar, for the offences under Sections 21/29 of the NDPS Act.

11. I have heard the counsel and perused the record.

12. Undisputably, the applicant has been implicated in the present case primarily on the basis of the disclosure statement of another accused. It is relevant to note that while the veracity of the disclosure statements 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 : (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 paragraph of the said judgment is set out below:-

“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.”

13. 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 of the NDPS Act would not apply. It was further held that the disclosure statement of co-accused is *per se* not admissible without there being any corroboration and the benefit of the same cannot be denied at the stage of bail.

14. Apart from the disclosure statement of co-accused, the only material against the applicant is the CDR connectivity with other accused persons as well as certain WhatsApp chats and there is no other evidence to show that the applicant was involved in the commission of the offence. It is pertinent to note that concededly, the chats don't reflect any direct or explicit reference to contraband.

15. This Court considers it apposite to consider the case of ***Dalip Singh v. State (NCT of Delhi) : 2019 SCC OnLine Del 6494***, wherein while granting bail to the accused therein, the Coordinate Bench of this Court had noted that only because the accused therein had been having telephonic conversations with the co-accused, the same was not sufficient to hold that the concerned accused is guilty of the subject offence. In that case as well, the accused was being implicated on the basis of disclosure of co-accused and no recovery had been effected from him.

16. While the probative value of evidence will be inferred during the course of trial, at this stage, in the absence of any recovery or corroborative financial trail, merely because the applicant was in regular touch with other accused persons, *prima facie*, the same is not sufficient to infer the applicant's complicity in the alleged offence.



17. It is argued that the rigours of Section 37 of the NDPS Act are attracted against the applicant. As held by the Hon'ble Apex Court in the case of ***Union of India v. Shiv Shanker Kesari : (2007) 7 SCC 798***, while considering the application for bail, after a *prima facie* appraisal of the material on record, the Court is only required to record its satisfaction about the existence of reasonable grounds that the accused is not guilty, and to assure itself that the accused is not likely to commit any offence while on bail.

18. As noted above, the material on record is *prima facie* insufficient to link the applicant to the offence and there are reasonable grounds to believe that he may not be guilty.

19. Insofar as the applicant's involvement in another case of a similar nature is concerned, it is important to note that criminal antecedents of an accused cannot be the sole basis for refusal of bail [Ref. ***Prabhakar Tewari v. State of U.P. : (2020) 11 SCC 648***]. Moreover, it has been pointed out that the other case involved recovery of intermediate quantity of contraband and applicant has already been enlarged on bail therein as the recovery had not been effected from his possession.

20. The charges have already been framed and the trial is likely going to take long to conclude. It is stated that the applicant is stated to be the sole bread earner in his family.

21. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment.

22. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or



evading the trial.

23. In view of the facts of the case, in the opinion of this Court, the applicant has *prima facie* established a case for grant of bail.

24. In view of the aforesaid discussion, the applicant is directed to be released on bail (if not in custody in any other case) 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 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 to the concerned IO/SHO 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 and shall keep his mobile phone switched on at all times.

25. In the event of there being any FIR/ DD entry / complaint



lodged against the applicant, it would be open to the respondent to seek redressal by filing an application seeking cancellation of bail.

26. 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.

27. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

OCTOBER 10, 2025

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