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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision: 17.07.2025**+ **BAIL APPLN. 3600/2024****RAJEEV VINOD KHOSLA**

.....Petitioner

Through: **Mr. R.S. Kundu, Mr. Manu Bakshi, Ms. Shagun Khurana and Mr. Nitesh Shokeen, Advs.**

versus

THE STATE GOVT OF NCT OF DELHIRespondentThrough: **Ms. Meenakshi Dahiya, APP for State with SI Sanjeev Gupta, PS Crime Branch, Delhi.****CORAM:****HON'BLE MS. JUSTICE SHALINDER KAUR****SHALINDER KAUR, J (ORAL)**

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking the grant of Regular Bail in FIR No. 35/2024 dated 10.02.2024, under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS') registered at Police Station Crime Branch, Delhi ('the Subject FIR').

2. As per the prosecution, on 10.02.2024 at around 01:40 AM, ASI Ajay Kumar received a tip-off that the co-accused Faganu Ram, a resident of Himachal Pradesh, was travelling to Delhi with a consignment of *Charas*, to be delivered near Majnu Ka Tila at around 05:00 AM. The information was verified and conveyed to senior



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police officers, following which DD No. 04A was lodged in compliance with Section 42 of the NDPS Act. A raiding party led by ASI Ajay Kumar was constituted which around 04:30 AM reached the vicinity of Majnu Ka Tila and laid a trap near the Gurudwara, however, despite making efforts, no public witnesses joined them. After a while, a man of Pahari origin carrying a blue bag arrived at the spot and was identified by the informer as the co-accused Faganu Ram. Shortly thereafter, another individual arrived at the spot and received a brown parcel from the co-accused Faganu Ram in exchange for some cash. Both were apprehended on the spot and identified as (i) Faganu Ram and (ii) Rajeev Vinod Khosla (the petitioner). They were informed of their rights under Section 50 of the NDPS Act, which they declined to exercise and their refusal was recorded in writing.

3. The search of the apprehended persons led to the recovery of 828 grams of *Charas* from the bag of co-accused Faganu Ram and 332 grams of *Charas* along with Rs. 7,500/- from the pocket of the petitioner's jacket. The total quantity of 1,150 grams of *Charas* was seized and taken into possession. Subsequent thereto, the subject FIR was registered and both the accused persons were formally arrested after completing the legal formalities. Further search led to recovery of two mobile phones each from the co-accused Faganu Ram and the petitioner.

4. During the course of interrogation, the co-accused Faganu Ram stated that he had extracted *Charas* from wild Cannabis plants in the hills near his village in Kullu, Himachal Pradesh, packed it into two parcels, and travelled to Delhi while deliberately avoiding CCTV



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routes. He reached the location and was apprehended while delivering parcel to the petitioner.

5. The petitioner, in his disclosure statement, stated that he had placed an order for approximately 1 kg of *Charas* from the co-accused Faganu Ram before Holi and had made advance payments over 4–5 months through Bunch Note Acceptors (BNA) into the co-accused person's bank account.

6. The Call Detail Records (CDR) of their seized mobile phones revealed frequent contact between the two over the past year and established their location at the scene of crime. Twelve deposit slips amounting to Rs. 2,24,000/- were also recovered from the petitioner, which matched the credit entries in the bank account of the co-accused Faganu Ram, thereby evidencing monetary transactions for the procurement of *Charas*.

7. The samples from the seized contraband were sent for FSL examination, and the substance was confirmed to be *Charas*. Upon culmination of the investigation, a Chargesheet was filed.

8. The petitioner filed an application for grant of Regular Bail under Section 439 of the Criminal Procedure Code, 1973, which was dismissed by the learned Additional Sessions Judge *vide* Order dated 29.08.2024, leading to filing of the present petition.

9. The learned counsel for the petitioner, seeking the bail of the petitioner, submits that the petitioner has been falsely implicated in the present case and he has clean antecedents, with no involvement in any other criminal case. He submits that the secret information received by the Crime Branch, which formed the basis of the raid, was specifically



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in relation to the co-accused Faganu Ram, and not the petitioner. The petitioner's name did not feature in the secret input, nor was he under surveillance prior to the alleged incident.

10. The learned counsel further submits that the contraband allegedly recovered from the petitioner amounts to 332 grams, which is below the threshold of a 'commercial quantity' as defined under the NDPS Act. He contends that the alleged recovery of 828 grams of *Charas* from co-accused Faganu Ram cannot be clubbed with the recovery from the petitioner for the purpose of invoking the bar under Section 37 of the NDPS Act. He submits that the recoveries are distinct and personal, and therefore, clubbing them together is unsustainable in law.

11. The learned counsel further submits that the accused has been in custody for around 1 ½ year and the Charges have not been framed till date. He also submits that the prosecution filed the FSL result before the learned Trial Court on the last date of hearing and there is no certainty of the time that the prosecution would take to conclude the trial, thus, the petitioner cannot be incarcerated for an unknown period when he is not required for any investigation. Thus, he submit, the petitioner be enlarged on Regular Bail.

12. On the other hand, the learned APP for the State opposes the bail application and submits that the petitioner was not a passive recipient, but an active participant in the narcotics transaction. The petitioner had placed an order for approximately 1 kilogram of *Charas* from the co-accused Faganu Ram and had also transferred Rs. 2,24,000/- in advance through BNAs into the bank account of the co-



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accused Faganu Ram, in furtherance of the said transaction.

13. The learned APP submits that CDR establishes that the petitioner and the co-accused were in frequent and consistent contact over the past year, and were found to be in close geographical proximity at the time of delivery of the contraband. These facts, she contends, corroborate the prosecution's version that the petitioner was actively coordinating with the co-accused in the procurement, delivery, and transfer of the narcotic substance.

14. To strengthen the arguments the learned APP has placed reliance upon '*Awadhesh Yadav vs. State of NCT of Delhi*'; 2023:DHC: 8529

15. Having heard the learned counsel for the petitioner, the learned APP for the State and perused the record, the primary issue raised before this Court is that the quantity of contraband recovered from the possession of the petitioner could be clubbed with the quantity of contraband recovered from the possession of the co-accused to allege that whether the individually recovered quantity of contraband from both the accused persons is of commercial quantity.

16. The learned counsel for the petitioner had submitted that the petitioner has been alleged to have bought 322 grams of *Charas* from the co-accused Faganu Ram for consideration, which is an intermediate quantity and therefore, he be released on Regular Bail as there is no evidence on record that the petitioner was in possession of a commercial quantity.

17. On the other hand, the learned APP contends that both the accused persons were apprehended by the raiding party while being in



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possession of commercial quantity of *Charas*, thus, being in joint and conscious possession of contraband, the petitioner cannot raise the plea that he was in possession of merely 332 grams of *Charas*.

18. It is to be noted that the quantity of the contraband as recovered from the possession of the individual(s) is a relevant factor for deciding the quantum of punishment for possession of contraband as prohibited under the NDPS Act. The said recovery is also relevant for deciding the bail application of an accused under Section 37 of the NDPS Act, which reads as under:-

“Section 37. Offences to be cognizable and non-bailable.

37. Offences to be cognizable and non-bailable. -- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

19. From the above provision, it emerges that no person accused of an offence involving commercial quantity of the contraband shall be



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released on bail unless the twin condition as laid down in the above Section are fulfilled, i.e. (i) only when the public prosecutor is given an opportunity to oppose the bail application; (ii) thereafter, the Court is satisfied of presence of reasonable grounds that such an individual is not guilty of the offence and he is not likely to commit any offence while on bail.

20. This Court in case of ***Awadhesh Yadav vs. State of NCT of Delhi*** (supra), while relying upon the decisions passed by the various High Courts, laid down the following principles for clubbing of the recovered quantity of contraband:

“i. invocation of offence of abetment and/or conspiracy under Section 29 of the Act is must for clubbing of quantity. However, there cannot be a straight jacket formula for clubbing the quantity of contraband recovered from all the accused, merely on the basis of invocation of offence under Section 29 of the Act. It will depend on the factual backdrop of each case and the incriminating material available against the accused persons.

ii. the incriminating material relied upon to invoke the offence of abetment and/or conspiracy under Section 29 of the Act, has to be cogent and convincing against each one of the accused charged with the offence of abetment and/or conspiracy.

iii. in a case where joint recovery of contraband has been effected from two or more co-accused, the recovered contraband cannot be equally divided amongst the number of accused to determine whether the quantity of contraband recovered in “commercial quantity” or not.

iv. where accused persons are travelling together in the same private vehicle individually carrying contraband, it will not be proper to consider the alleged recovery to be an individual recovery and the contraband recovered from all persons can be clubbed.



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v. if an accused is a habitual offender, it gives rise to an inference that he knows the tricks of the trade. In such a situation, previous involvement of the accused in the case(s) under the NDPS Act, is an additional factor which could be considered, besides other incriminating circumstances, for adding the quantities of contraband recovered from two or more co-accused.”

21. Having noted the above, in the present case, it is upon a secret information received by the police of Police Station Crime Branch, that a raiding party was constituted which laid a trap near the Gurudwara at Majnu ka Tila, New Delhi. The raiding party spotted the co-accused Faganu Ram who had come to supply *Charas* at the spot to another person as per the tip given by the secret informer. After some time, the petitioner also arrived at the spot, the co-accused Faganu Ram handed over a brown parcel to the petitioner who kept the same inside his jacket. When the petitioner was about to give the cash to the co-accused Faganu Ram, both the persons were apprehended by the raiding party. On the search from the bag of Faganu Ram, a parcel weighing 828 grams of *Charas* was recovered, while the petitioner was carrying a parcel weighing 332 grams that was recovered from the pocket of jacket worn by the petitioner.

22. The learned APP contends that the petitioner was in conscious possession of the contraband that was recovered from the possession of the co-accused also, as the petitioner was in constant touch with the co-accused from past one year which is revealed from the CDR of the mobile phones of the petitioner and the co-accused. The CDR also confirms the presence of both at the spot. Apart from that the petitioner was found in possession of the contraband i.e. *Charas*



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weighing 332 grams.

23. Undisputedly, both the petitioner and the co-accused were present at the spot when the raid was conducted. However, it does not *prima facie* establish that the petitioner had the knowledge that the co-accused Faganu Ram was also carrying another packet containing 828 grams *Charas* in his bag. As per prosecution case, allegedly the co-accused Faganu Ram, being a seller of contraband, had handed over one brown parcel to the petitioner in exchange for some cash. Probably, the co-accused was to sell the other packet to some other person.

24. The present case undeniably entails an alleged recovery of 332 gms *Charas* from the petitioner, which is an Intermediate Quantity and therefore, the rigours of Section 37 of the NDPS Act would not apply. As per the Nominal Roll, the petitioner is in custody since 10.02.2024 for a period of 1 year 5 months and his jail conduct is 'satisfactory'. The Nominal Roll further reflects that the petitioner has not been previously involved in any other crime and has clean antecedents. Moreso, there is nothing on record to show that the petitioner is likely to tamper with the evidence or influence the witness. The prosecution has also not raised any objection as to the petitioner being a flight risk.

25. In view of the above, and the fact that trial would take considerable time to conclude as still date the Charge is not framed, the petitioner is admitted to Regular Bail in FIR No. 35/2024 dated 10.02.2024, registered under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Crime



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Branch, Delhi on his furnishing a personal bond in the sum of Rs.30,000/- with one surety in the like amount, to the satisfaction of the learned Trial Court/ CMM/ Duty Magistrate and further subject to the following conditions:-

- (i) The petitioner shall not leave the NCT of Delhi without prior permission of the learned Trial Court;
- (ii) The petitioner shall report at P.S. Crime Branch once a week i.e. every Wednesday at 04:00 PM for marking his presence;
- (iii) The petitioner shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change of residential address;
- (iv) The petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing;
- (v) The petitioner is directed to give his mobile number to the Investigating Officer and keep it operational at all times;
- (vi) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case;
- (vii) The petitioner shall also not tamper with the evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

26. It is made clear that no observations made above shall tantamount to be an expression on the merits of the petitioner's case and they have been made for the purpose of consideration of bail



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alone.

27. A copy of this Order be sent to the Jail Superintendent concerned for information and necessary compliance.

28. Accordingly, the present Bail Application stands disposed of.

SHALINDER KAUR, J

JULY 17, 2025/KP