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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3641/2024**
GULSHANPetitioner

Through: Mr. Priyaranjan Kumar and Mr.
Vibhor Tyagi, Advocates.

versus

STATE GNCT OF DELHIRespondent
Through: Mr. Amit Ahlawat, APP.
ASI Pawan Kumar, Spl. Staff North
Distt.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
10.01.2025

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1. The present application is filed under Section 483 read with Section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 seeking regular bail in respect of FIR No. 373/2023 registered under Sections 20/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985¹ at Police Station Kashmiri Gate.

2. In brief, the case of the prosecution is as follows:

2.1. On 7th June, 2023, information was received by HC Parveen Saini that the Applicant is allegedly involved in drug trafficking activities. He was informed that she would supply *ganja* to someone near the stormwater pump

¹ “the NDPS Act”



house under Lothian Bridge, Delhi between 12:30 PM to 1:30 PM.

2.2. The ACP, Sub-Division Kotwali directed HC Parveen Saini to conduct a raid and take appropriate legal action. A DD entry No. 5 dated 7th June, 2023 of the Anti-Narcotics Cell, North, Delhi was recorded in this regard. A raiding party led by HC Parveen Saini was organized and upon reaching the location, HC Parveen Saini attempted to include independent public witnesses at the spot, however, none agreed to join, citing genuine reasons and refused to provide their names or addresses except for one individual, who also refused to join the raid. No notices were served to these individuals due to lack of time.

2.3. A raid was then conducted by HC Parveen Saini and HC Dharam Nath Singh and at 12:50 PM on 7th June, 2023, the Applicant arrived at the spot carrying a plastic *katta* in her hand. She was recognized by the informer and immediately, she was surrounded by the police and she was briefly interrogated. A notice under Section 50 of the NDPS Act was served to her. The Applicant refused to be searched in the presence of a Magistrate or a Gazetted Officer. However, search of the Applicant was conducted by W/HC Sapna and it was revealed that the *katta* carried by the Applicant contained seed-and-leaf substance, which was confirmed to be *ganja* weighing 23.5 Kilograms. This was then sealed and taken into police possession by virtue of a seizure memo.

2.4. Subsequently, the FIR was registered and the Applicant was arrested. During the sustained interrogation, the Applicant disclosed that she had procured the narcotic substance from a woman namely, Ms. Daya, a resident of Wazirabad, Delhi, after which she would distribute it in retail in Kashmiri



Gate. Thereafter, a report of the arrest and seizure was made under Section 57 of the NDPS Act.

2.5. On 8th June, 2023, on the basis of the information provided by the Applicant, Ms. Daya was apprehended with 5 Kilograms of *ganja*. She was then arrested in connection with the present FIR and the narcotic substance was seized from her. Both, the Applicant and Ms. Daya were sent to judicial custody.

2.6. Thereafter, an application under Section 52A of the NDPS Act for the sampling of the recovered narcotic substance was filed before the Court and the samples were sent to FSL for examination which confirmed that the recovered substance was *ganja*. The weight of the recovered contraband during sampling was recovered as 22.5 Kilograms, however, since the contraband was in damp condition when it was seized, the weight was recorded as 23.5 Kilograms.

CONTENTIONS OF THE PARTIES

3. In such background, APP for the State strongly opposes the bail application. He informs the Court that the investigation has been completed and a chargesheet has been filed. He, however, expresses concern that the Applicant may re-engage in similar offences or abscond from the Court proceedings. He emphasizes that the Applicant does not have a permanent address in Delhi.

4. On the other hand, counsel for the Applicant, has advanced the following in support of the Applicant's request for bail:

4.1. The Applicant is a lady aged around 32 years and has two minor children, aged 8 years and 12 years.



4.2. The Applicant has been in custody since 7th June, 2023; the investigation has been concluded and chargesheet has been filed, thus, no fruitful purpose would be achieved by keeping the Applicant in custody.

4.3. The Applicant has been granted interim bail by the Trial Court, which she has not misused. She has complied with all the conditions levied by the Trial Court and has also surrendered herself to the authorities on 6th December, 2023.

4.4. It is also asserted that the co-accused has also been granted bail by the Trial Court through order dated 28th July, 2023.

4.5. The procedure under Sections 42 and 50 of the NDPS Act has not been duly complied with as the alleged recovery proceedings of the narcotic substance through seizure memo dated 7th June, 2023 was conducted before the same ACP, Mr. Vijay Kumar, who received the secret information and ordered to constitute the raiding party. It is further urged that upon personal search of the Applicant, nothing was recovered from her. Further, the prosecution never offered to present the Applicant to the nearest Lady Magistrate or Lady Gazetted Officer for personal search.

4.6. There is a delay of two days in moving the application by the prosecution before the M.M. Court for withdrawal of samples from seizure memo dated 7th June, 2023 of the alleged contraband.

4.7. The prosecution never weighed the alleged contraband separately from the bag and prosecution never disclosed the weight of the contraband and the bag.

4.8. The proceedings under Section 52A of the NDPS Act reflected the alleged contraband weighing 22.5 Kilograms, when weighed with the bag



and after that two samples of 20 Grams each marked as A-1 and A-2 were drawn and remaining contraband weighed 22.46 Kilograms, which is contradictory.

4.9. The Applicant emphasizes that she has no criminal antecedents and undertakes to abide by the conditions of bail.

ANALYSIS AND FINDINGS

5. The Court has considered the facts of the case and the contentions advanced by the parties. There are several factors that are to be considered while considering the application for grant of bail, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence, likelihood of the accused repeating the offence, the nature and gravity of the accusation, severity of the punishment in the event of conviction, danger of the accused absconding or fleeing if released on bail and reasonable apprehension of the witnesses being threatened by the accused.

6. In the present matter, the contraband recovered from the Applicant is 23.5 kilograms of *ganja*, which constitutes commercial quantity under the NDPS Act. This triggers the applicability of Section 37 of the NDPS Act, which imposes stringent conditions for the grant of bail in such cases. As per Section 37, bail can only be granted if the Court is satisfied that there are reasonable grounds to believe that the accused is not guilty of the offence and is not likely to commit any offence while on bail. These twin conditions, in addition to the usual requirements for bail, must be met before bail can be granted. The Supreme Court has consistently held negation of bail is the rule



and its grant is an exception under Section 37(1)(b)(ii).² In the present case, given the nature and gravity of the offence, the significant quantity of contraband recovered and the allegations of the Applicant's involvement in drug trafficking activities, the rigours of Section 37 cannot be overlooked. The statutory bar under Section 37 serves to uphold the public interest by ensuring that offences involving commercial quantities of narcotic substances are dealt with stringently.

7. Having established that Section 37 of the NDPS Act is applicable in the present case due to the recovery of a commercial quantity of contraband, the Court must now proceed to evaluate the grounds raised by the Applicant in support of her bail plea.

Derogation of Section 50 of the NDPS Act

8. The Applicant contends that the requirements of Section 50 were not complied with, as she was not offered the opportunity to be searched before the nearest Lady Magistrate or Lady Gazetted Officer. This contention of the Applicant cannot be accepted. The status report filed by the prosecution indicates that a notice under Section 50 of the NDPS Act was served to her when the Applicant was briefly interrogated after the raid was conducted. The status report also discloses that the Applicant declined to be searched in the presence of a Magistrate or a Gazetted Officer.

9. Even otherwise, this Court in ***Bantu v. State Government of NCT of Delhi***³ observed that the obligation under Section 50 is fulfilled as long as the accused is informed of their right to be searched in the presence of a Magistrate or Gazetted Officer. The omission to use the term “nearest” at the

² *State of M.P. v. Kajda*, (2001) 7 SCC 673



time of informing the suspect of his right to be searched before the Gazetted Officer or a Magistrate does not dilute the safeguards under the provision. Thus, the procedural compliance under Section 50 was adequate, and this ground does not merit consideration for bail.

Discrepancies in Compliance with Section 52A of the NDPS Act

10. The Applicant raises concerns regarding procedural lapses in compliance with Section 52A, including alleged delays in drawing samples and discrepancies in the recorded weight of the contraband. Section 52A specifies the procedure for the disposal of the seized contraband or controlled narcotic drugs and psychotropic substances. In ***Narcotics Control Bureau v. Kashif***,⁴ the Supreme Court observed that any lapse or delay in compliance of Section 52A would merely be a procedural irregularity and would not make the entire evidence to be inadmissible, thus, any *prima facie* delay would not in itself be a ground for bail. At the bail stage, the Court is concerned with the gravity of the offence, the material evidence on record and the statutory requirements under Section 37 of the NDPS Act. The alleged irregularities in this case, being minor and procedural in nature, do not meet the threshold for granting bail. Hence, the Applicant's reliance on Section 52A lapses as a ground for bail is not persuasive.

Other Grounds

11. The Applicant argues for parity with the co-accused, who has been granted bail. However, this contention cannot be accepted as the co-accused was found in possession of 5 Kilograms of *ganja*, which falls under intermediate quantity, not attracting the stringent provisions of Section 37.

³ 2024 SCC OnLine Del 4671



In contrast, the Applicant was found in possession of 23.5 Kilograms, constituting commercial quantity, thereby invoking stricter statutory standards. The principle of parity cannot be mechanically applied in cases under the NDPS Act, especially where the facts and circumstances, including the quantity of contraband recovered, vary significantly. Therefore, the Applicant's plea for parity with the co-accused fails to meet the stricter statutory standards under Section 37 and cannot be considered a valid ground for granting bail.

12. The Applicant has also placed reliance on her compliance with the conditions imposed during the period of interim bail as a ground for seeking regular bail. While the Court acknowledges that the Applicant adhered to the interim bail conditions, such compliance does not, in itself, form sufficient justification for the grant of regular bail.

CONCLUSION

13. Considering the commercial quantity of contraband recovered and the statutory bar under Section 37 of the NDPS Act, this Court does not find sufficient grounds to grant regular bail to the Applicant.

14. Accordingly, the present bail application, along with pending application, is dismissed.

SANJEEV NARULA, J

JANUARY 10, 2025/ab