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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3691/2024 & CRL.M.A. 30694/2024**
PRINCE KAPOORApplicant

Through: Mr. Harshit Jain, Advocate.
versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Mukesh Kumar, APP.
SI Ashish, P.S. Rajouri Garden.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
14.01.2025

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1. The present application filed under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, seeks regular bail in FIR No. 0127/2020 under Section 21, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985², registered at P.S. Rajouri Garden. In brief, the case of the prosecution is as follows:

1.1. The FIR No. 127/2020 was registered on 10th February, 2020, on the basis of statements made by Head Constable³ Resham Singh, P.S. Rajouri Garden – i.e., the complainant. In his statement, the Complainant reported that on 9th February, 2020, while being posted on picket duty with Constable Ram Bharose at Kuda Khatta TC Camp, they initiated a search for suspicious individuals passing by the check point, when at approximately

¹ “BNSS”

² “NDPS Act”

³ “HC”



11:25 PM, he observed a man with long hair and glasses, who was later identified as the Applicant herein - Prince Kapoor, holding a white plastic packet. Upon noticing the police, the Appellant – Prince Kapoor attempted to turn around and flee, leading to a brief pursuit, following which the complainant, along with the assistance of other police staff, apprehended him and recovered the packet which contained an electronic scale with a red, knot-like substance which smelled and appeared to be “smack”. In fact, upon inquiry on the spot, the Appellant confirmed that the substance was “smack”.

1.2. Afterwards, testing was conducted and the total weight of the recovered substance was identified as 7.10 grams. Accordingly, the Applicant was taken into custody on the same day – i.e., 9th February, 2020 and the subject FIR was registered on 10th February, 2020.

1.3. After investigation, on 31st March, 2021, a chargesheet was filed. Subsequently, through order dated 23rd April, 2021, the Applicant was released on interim bail, however, he flouted the bail conditions and did not surrender himself before the Trial Court, which resulted in the Applicant being declared as a Proclaimed Offender on 21st February, 2023, by the ASJ Special Judge (NDPS), West. Later, on 18th November, 2023, the Applicant was re-arrested by the police and sent to judicial custody. On 10th April, 2024, the Investigating Officer⁴ filed a supplementary chargesheet in the matter.

2. Against the above background, the Applicant seeks release on regular bail. Counsel for the Applicant contends that he has been falsely implicated in the present case. He further submits that the trial is at a nascent stage and



only one witness has been examined so far. Moreover, he argues that there are procedural irregularities in terms of the search conducted of the Applicant before his arrest. In this regard, he urges that notice under Section 50 of NDPS Act was not served on the Applicant and he was also not produced before a Gazetted Officer in compliance with Section 50 of the NDPS Act. The Applicant was searched by an officer who was not authorised to carry out such a search. Thus, he argues that this ground alone entitles the Applicant to be released on bail. Reliance in this regard is placed on the judgment of the Supreme Court in *Arif Khan @ Aga Khan v. State of Uttarakhand*⁵ and the judgment of this Court in *Dharamvir v. State*⁶. Furthermore, he urges that in the present case there is also non-compliance of Section 52A of NDPS Act since there was delay in filing of the application for drawing of samples and certifications before the Magistrate, for which there is no plausible reason given. Lastly, he contends that the prosecution has failed to prove any financial link or flow in terms of sale or purchase of the alleged contraband substance and has also not made any effort to show from whom the Applicant was able to procure such a quantity of the said contraband. Counsel for the Applicant thus urges that these procedural lapses raise serious doubts on the story of the prosecution.

3. On the other hand, Mr. Mukesh Kumar, APP for State, strongly opposes the present application. He submits that the Applicant is a repeat offender. He urges that there is a history of 10 prior criminal involvements of the Applicant, demonstrating repeated disregard of the law. There is a risk of repetition of the offences and therefore the bail should not be granted. He

⁴ “IO”

⁵ AIR 2018 SC 459



highlights that the Applicant's conduct of flouting the interim bail and absconding for a year to argue that the Applicant is a flight risk. Therefore, Mr. Kumar argues that considering the serious nature of offences under the NDPS Act, releasing the Applicant on bail would not only jeopardise public safety but also cause hindrances in the ongoing trial.

4. As regards the allegation of non-compliance of Section 50 of NDPS Act is concerned, Mr. Kumar urges that such a contention is untenable in law. The notice was in fact given to the Applicant. Moreover, in the instant case the recovery was made not from the person, but from the plastic packet.

5. The Court has considered the facts and contentions presented by the parties. Indeed, the Applicant has a past history of offences. There have been eight (8) criminal cases against the Applicant. However, these cases are related to theft. According to the counsel for Applicant, four (4) of the cases have been closed or settled and in the remaining four (4) cases, the Applicant has presently been granted bail. However, on account of the custody in the present case, he cannot be released.

6. It is observed that in the instant case, the quantity recovered from the Applicant falls in the category of 'intermediate' and therefore, Section 37 of the Act is not attracted. The Court agrees with Mr. Mukesh Kumar, APP for the State, that the Applicant's previous conduct is not inspiring as he did, in fact, violate the conditions of the interim bail, leading to the delay in conclusion of the trial and the Applicant being declared as a Proclaimed Offender. However, as per the Nominal Roll dated 8th November, 2024⁷ issued by the Jail Superintendent, he has spent a total period of 1 year and 4

⁶ CrI. Appeal No. 658/2017, decided on 13th November, 2018

⁷ Checked and verified on 9th November, 2024 and emailed to the Registry of High Court of Delhi on 11th



months in custody as under-trial in relation to the present offence. Furthermore, the chargesheet has already been filed in the present case, therefore, in the opinion of the Court, there does not appear to be an immediate necessity to demand custody of the Applicant for the purpose of investigation. Further, in terms of the other cases of theft filed against him, the Applicant has already been either discharged or granted bail in the same. In light of the foregoing, while the contention of the prosecution, that the Applicant is a flight risk, has merit, in the opinion of the Court, the present bail application can be allowed after placing strict restrictions on him so that the Applicant's movement can be monitored and it can be ensured that he does not violate the terms of the bail granted. To this effect, counsel for Applicant states that the mother of the Applicant is willing to stand as one of the sureties and she would ensure the Applicant's presence before the Trial Court, as and when required.

7. In light of the above, the Applicant is directed to be released on bail on furnishing a personal bond for a sum of Rs. 50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. 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;
- c. The Applicant shall under no circumstance leave the bounds of Delhi NCR without obtaining the prior permission of the Trial Court;

November, 2024



- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO. He shall also report once a week before the concerned Police Station.
- f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
8. In the event of there being any FIR/DD entry/complaint lodged against the Applicant; it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
9. 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.
10. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

JANUARY 14, 2025

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