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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3692/2024

AZEEM AHMED

.....Petitioner

Through: Mr. M.L. Yadav, Mr. Harish Chand,
Mr. Anant Chittoria, Mr. Deepak
Ahlawat, Mr. Prashant and Ms.
Mamta Rani, Advocates.

versus

NARCOTICS CONTROL BUREAU (NCB)Respondent

Through: Mr. Arun Khatri, Senior Standing
Counsel with Ms. Shelly Dixit and
Ms Anoushka Bhalla and Ms. Tracy
Sebastian, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

30.01.2025

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks regular bail in Case No. VIII/39/DZU/2022 registered under sections 8(c)/21(c)/23/25/27-A/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S.: Narcotics Control Bureau ('NCB'), Delhi.

2. Notice on this petition was issued on 09.10.2024.
3. Status Report dated 11.11.2024 has been filed in the matter.
4. Nominal Roll dated 14.11.2024 has also been received from the Jail Superintendent.
5. Pursuant to last order dated 13.01.2025, Mr. Arun Khatri, learned senior standing counsel appearing on behalf of the NCB has handed-up a compilation of documents under cover of Index dated



30.01.2025, which include a snapshot of a WhatsApp chat and details of financial transactions, which the NCB claims are incriminating of the petitioner. The compilation of documents is taken on record.

6. Mr. M.L. Yadav, learned counsel appearing on behalf of the petitioner argues that in complaint dated 22.10.2022 filed by the NCB *inter-alia* against the petitioner it has been alleged that the petitioner, alongwith certain other persons, was involved in drug trafficking; and that 50 kg. of heroine was recovered from the house of co-accused Razi Haider Zaidi.
7. Mr. Yadav submits, that admittedly no recovery of any contraband whatsoever was made from the petitioner or at his instance; and that the NCB is alleging that the petitioner was involved in the offence based only on disclosure statement dated 27.04.2022 of co-accused Razi Haider Zaidi.
8. The NCB alleges that in his disclosure statement dated 27.04.2022 co-accused Razi Haider Zaidi has said that the heroine seized from him was concealed in a consignment of *mulethi* received from one Rajinder, who was running a business in the name and style of M/s R.R. Global Impex; and that another consignment of 200kg. of heroine was also imported in a container of chemicals; and further that proceeds of sale of the heroine were divided among various persons, and a portion of the proceeds was delivered to the *brother of one Shahid* - who happens to be the present petitioner - and that the petitioner used to send the money onward to Shahid.
9. Learned counsel argues however, that the NCB has cited only one financial transaction against the petitioner, *viz.* a banking transaction



whereby the petitioner had *received* Rs.11,500/- on 16.03.202; and in support of this the NCB have filed a copy of a statement of account relating to the petitioner. Mr. Yadav points-out that even this sum of Rs. 11,5000/- is seen to have been transmitted onward by the petitioner to another co-accused Shamim Ahmed; and the NCB has not established how this paltry sum of Rs. 11,500/- was in any manner related to drug trafficking.

10. Mr. Yadav also also points-out that co-accused persons, namely Shamim Ahmed and Rajinder, have already been admitted to regular bail *vide* order dated 12.02.2024 made in BAIL APPLN. No. 2840/2023 and judgment dated 10.04.2024 made in BAIL APPLN. No. 2291/2023 by a Co-ordinate Bench of this court; and that another co-accused Abdul Rab has been released on regular bail by a different Co-ordinate Bench *vide* order dated 20.01.2025 made in BAIL APPLN. No 3023/2024.
11. Learned counsel argues that it is no longer *res-integra* that the disclosure statement of an accused person cannot be used against another co-accused person^I; and more specifically, it must be noted that the co-accused to whom the said sum of Rs.11,500/- is alleged to have been sent by the petitioner, namely Shamim Ahmed, has already been enlarged on bail by a Co-ordinate Bench *inter-alia* on the ground that the nature of the transaction would have to be proved in the course of trial.

^I Toofan Singh vs. State of Tamil Nadu., (2021) 4 SCC 1



12. Most importantly, it is argued that the NCB have cited 110 prosecution witnesses but charges in the matter are yet to be framed; and it is obvious that trial in the matter will take a very long time to conclude. In the meantime, Mr. Yadav submits, that the petitioner has already suffered judicial custody of more than 2-1/2 years; that his jail conduct has been 'satisfactory'; and that the petitioner has only one other case pending against him, which is also connected with the present FIR, though he is not on bail in that case.
13. Mr. Arun Khatri, learned senior standing counsel appearing on behalf of the NCB, on the other hand, opposes the grant of regular bail to the petitioner, arguing that a huge quantity of 50 kg. of heroine has been recovered from co-accused Razi Haider Zaidi; and that in his disclosure statement under section 67 of the NDPS Act the said person has specifically named the petitioner; and has said that the petitioner was transmitting money received from drug trafficking to his brother Shahid in Dubai.
14. Mr. Khatri has also drawn attention to screenshot of a WhatsApp Chat, to argue that the members of the WhatsApp group titled 'QSA GROUP' are seen to be discussing receipt of various sums of money; and that the petitioner was a member of that group. Learned senior standing counsel submits, that the petitioner's bank account statement shows receipt of Rs.11,500/- from the main accused in matter *i.e.*, Razi Haider Zaidi on 16.03.2022, which receipt is proximate to the date of recovery of contraband from the latter on 27.04.2022.
15. Mr. Khatri also argues that the petitioner cannot claim parity with the other accused persons who have been enlarged on regular bail, since



no incriminating financial transaction was found in the bank accounts of those other persons.

16. Upon a conspectus of the facts and circumstances of the case, the following considerations prevail with this court at this stage :

16.1. Admittedly, the petitioner has been implicated in the matter based on Disclosure Statement dated 27.04.2022 of co-accused Razi Haider Zaidi recorded under section 67 of the NDPS Act. Pursuant to such disclosure statement however, no recovery of any contraband or other incriminating material has been made from the petitioner.

16.2. The only concrete piece of 'evidence' that the NCB cites against the petitioner is a bank transaction, whereby the petitioner had received Rs.11,500/- from co-accused Razi Haider Zaidi on 16.03.2022, which the NCB alleges is an incriminating piece of evidence, since contraband was subsequently recovered from Razi Haider Zaidi on 27.04.2022. However, in the opinion of this court, the NCB would still have to show the character of this payment and would also have to co-relate the money received by the petitioner to a drug related transaction. As of now however, there is nothing on record to show that the money received by the petitioner was tainted in any manner. Even the contention that the transaction of Rs.11,500/- in the petitioner's account 16.03.2022 is *proximate* to the haul of 50 kgs. of heroine from co-accused Razi Haider Zaidi on 27.04.2022 does not show that connection, since the money received is far from proportionate to the quantity of



heroin that is alleged to have been seized; nor is it proximate to the date of seizure. Also, co-accused Shamim Ahmed, to whom the petitioner is alleged to have transmitted the said sum of Rs. 11,500/- has already been admitted to regular bail.

16.3. As per the record, the NCB has cited 110 prosecution witnesses but charges are yet to be framed in the matter; and it is evident that trial in the matter will take a very long time to conclude. In the meantime, the petitioner's nominal roll shows that the petitioner has suffered judicial custody of more than 2-1/2 years as an undertrial and that his jail conduct has been 'satisfactory'.

16.4. Insofar as the other case pending against the petitioner under the NDPS Act is concerned, needless to say that whether or not the petitioner is to be enlarged on bail in the other case would have to be decided in appropriate proceedings by the concerned court; and the present order would be confined only to the petitioner's bail in Case No. VIII/39/DZU/2022.

17. As a sequitur to the above, this court is persuaded to grant to the petitioner – **Azeem Ahmad S/o Tanweer Ahmed** – regular bail, pending trial, subject to the following conditions:

17.1. The petitioner shall furnish a personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;

17.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at



- any time and shall ensure that the number is kept active and switched-on at all times;
- 17.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 17.4. 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 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; and
- 17.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
18. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
19. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
20. A copy of this order be sent to the concerned Jail Superintendent *expeditiously*.
21. The petition stands disposed-of.
22. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 30, 2025/ss