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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3729/2024**
JAIPALPetitioner

Through: Mr. S. S. Das with Ms. Sia Das and
Ms. Ria Das, Advocates.

versus

STATE(NCT OF DELHI)Respondent

Through: Mr. Utkarsh, APP for the State with
SI Dharmender, P.S.: Special Cell,
Rohini Delhi.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
09.01.2025

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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 FIR No. 337/2022 dated 15.11.2022 registered under section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S.: Special Cell, Delhi. Consequent upon completion of investigation, offence under section 29 of the NDPS Act and section 14 of the Foreigners Act 1946 have been added in the chargesheet filed in the case.

2. Notice on this petition was issued on 15.10.2024. Status Report dated 05.11.2024 has been filed by the State.
3. Nominal Roll dated 26.11.2024 has also been received from the Jail Superintendent.



4. Mr. S.S. Das, learned counsel appearing for the petitioner has made the following principal submissions in support of the bail plea :
- 4.1. *Firstly*, it is submitted, that admittedly, no recovery of any contraband whatsoever has been made from the petitioner; and the recovery of 360 grams of heroin (which is 'commercial quantity') alleged to have been made from co-accused/Mohan Babu Gupta cannot be attributed to the petitioner to deny him bail;
- 4.2. *Secondly*, it is argued, that the petitioner's name has been brought in based only on disclosure statement dated 17.11.2022 recorded of co-accused/Mohan Babu Gupta. Even upon a reading of that statement however, it would be seen that the said co-accused only says that he (along with others) *used to supply* contraband to the petitioner, but there is no material to show that any such contraband was actually supplied to the petitioner. Furthermore, it is submitted that the prosecution is relying upon the disclosure statement of the petitioner himself, pursuant to which however no recovery has been made and therefore such disclosure statement is of no relevance;
- 4.3. *Thirdly*, it is pointed-out that the petitioner has been charged *vide* order dated 10.07.2024 *only* for the offence under section 29 of the NDPS Act and the prosecution has cited 29 witnesses in the chargesheet, but not even a single witness has been examined so far, whereby it is clear that trial in the matter will take a very long time to conclude and the petitioner cannot be kept in judicial custody indefinitely, awaiting conclusion of the trial.



- 4.4. *Fourthly*, the petitioner submits that the CDR connectivity cited between the petitioner and co-accused/Mohan Babu Gupta as an incriminating circumstance relates to 21.07.2022, 29.07.2022 and 12.11.2022, which dates are too remote and far-fetched to connect the petitioner to the offence, which is alleged to have been committed on 15.11.2022 leading to registration of the subject FIR; and
- 4.5. *Lastly*, it is argued, that as would be seen from Nominal Roll dated 26.11.2024, the petitioner has already suffered judicial custody for about 02 years and 02 months as an undertrial; his jail conduct has been 'satisfactory'; and he has no other criminal involvements.
5. In the foregoing circumstances, Mr. Das prays that the petitioner be released on regular bail.
6. On the other hand, Mr. Utkarsh, learned APP appearing for the State has opposed the grant of bail on the following grounds :
- 6.1. *One*, that the *overall* quantity of heroin recovered in the case is more than 4 Kgs, which is way beyond the threshold of commercial quantity, *i.e.* 250 gms and on the concept of 'clubbing', the recovery of such contraband must be attributed to the petitioner as well, regardless of the fact that no contraband has been recovered from him personally, since the petitioner is accused of criminal conspiracy under section 29 of the NDPS Act. In support of this argument, learned APP has relied upon a



decision of a Co-ordinate Bench of this court in *Awadhesh Yadav vs. State Govt. of NCT of Delhi*,¹ to submit that in cases of criminal conspiracy, it is permissible to club the quantity of contraband recovered from various co-accused persons. Learned APP has also cited a decision of a Co-ordinate Bench of this court in *Aakash Mehra vs. Narcotics Control Bureau*,² to submit that in that case the court had dismissed the bail petition though no recovery was made from that particular accused, premised on the concept of clubbing of quantities of contraband recovered from other co-accused persons;

6.2. *Two*, that the prosecution is relying not just on CDR connectivity between the petitioner and co-accused/Mohan Babu Gupta but their conversations were in fact intercepted; on forensic examination, the voice of the petitioner has matched with those conversations; and the transcripts of those conversation, copies of which have been filed, show that the petitioner was transacting with Mohan Babu Gupta and some other co-accused persons in relation to contraband; and

6.3. *Lastly*, that in particular the last conversation between the petitioner and co-accused/Mohan Babu Gupta happened on 12.11.2022, *i.e.* just 03 days before the date of commission of the offence on 15.11.2022, in which conversation the petitioner is

¹ 2023 SCC OnLine Del 7732

² 2023 SCC OnLine Del 5597



found discussing specific quantifies of 'सामान' with the said co-accused.

7. Upon a conspectus of the facts and circumstances of the case, what weighs with the court are the following considerations :

7.1. Admittedly, no recovery of *any* contraband whatsoever has been made from the petitioner. Also, the records shows that the petitioner's name has been brought into the case based on the disclosure statement of co-accused/Mohan Babu Gupta and the disclosure statement of the petitioner himself, pursuant to which however, no recovery of any incriminating material has been made;

7.2. The petitioner is alleged to have been in telephonic communication with co-accused/Mohan Babu Gupta and other co-accused persons on various dates, including on 12.11.2022 *i.e.* just three days before the date of alleged commission of the offence, in which conversations the prosecution alleges, the petitioner was discussing transactions relating to contraband; and these conversations are being cited as incriminating circumstances against the petitioner. However, the prosecution is yet to prove that those conversations *led to* some actual transaction in contraband between the interlocutors, which would have to await trial;

7.3. In the meantime, the petitioner has suffered judicial custody for about 02 years and 02 months as an undertrial; his jail conduct is stated to be 'satisfactory'; he has no other criminal involvements; and of the 29 prosecution witnesses cited, not even a single



witnesses has so far been examined before the learned trial court. It is therefore beyond doubt that trial in the matter will take a long time to conclude; and

- 7.4. Furthermore, at least on a *prima-facie* reading of the judgments cited by the State in support of the proposition of ‘clubbing’ of contraband recovered from other co-accused persons, it is seen that those cases were decided on their own facts. Whether the quantity of contraband recovered from co-accused persons in the present case can be read against the petitioner will require further consideration in the course of trial, since it will be required to be seen if evidence comes on record during trial to substantiate the offence of ‘conspiracy’ against the petitioner, which is the basis on which the concept of ‘clubbing’ would apply.
8. Above all else, as observed by this court in ***Mohd. Hakim vs. State (NCT of Delhi)***,³ courts *must play ‘doctor’ and not ‘coroner’*, that is to say, courts must not wait for the period of undertrial incarceration to become excessive *before* waking-up to say that the right of an accused to speedy trial has been defeated. The right to speedy trial arising from Article 21 of the Constitution must be *preserved in time* rather than *resuscitated too late in the day*.
9. As a sequitur to the above, this court is persuaded to grant to the petitioner – ***Jaipal s/o Khachedu*** – *regular bail* pending trial, subject to the following terms and conditions :

³ 2021 SCC OnLine Del 4623



- 9.1. 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;
- 9.2. 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;
- 9.3. 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;
- 9.4. 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
- 9.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
10. 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.
11. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
12. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.



13. The petition stands disposed-of.
14. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 9, 2025
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