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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 3813/2024**

DHARMENDER YADAV

.....Petitioner

Through: Mr. Pratyush Prasanna and Ms.
Saumya Yadav, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP.
SI Ankur Yadav, PS: Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

05.03.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 175/2020 registered under Section 20/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Crime Branch. Subsequently, a chargesheet was filed and the Applicant has been charged with offences under Sections 20/25/29 of the NDPS Act.

2. Briefly, the case of the prosecution is as follows:

2.1. On 19th November, 2020, acting on secret information, Mr. Dharmender Yadav (the Applicant) was apprehended near Indraprastha Park

¹ "BNSS"

² "Cr.P.C."



Bus Stand, Ring Road, Delhi with one truck bearing registration No. DL-1GC-1080, containing 315 Kg of *ganja* in 23 plastic bags. All the recovered plastic bags, containing *ganja*, were seized through seizure memo. Accordingly, the instant FIR was registered and investigation was taken up.

2.2. On the same day, the Applicant was arrested, and a site plan was prepared at the instance of ASI Pramod. During interrogation, the Applicant disclosed that he worked as a professional driver and had struggled financially during the lockdown. He claimed that he was approached by one Mr. Naveen Mishra, who offered him a lucrative sum to transport *ganja* from Orissa to Delhi NCR. As per the Applicant's disclosure, Mr. Naveen Mishra instructed him to procure the contraband from Mr. Rahul Bahera in Orissa and deliver it to him.

2.3. On 20th November, 2020, both Mr. Naveen Mishra and Mr. Rahul Bahera were arrested. During their apprehension, 20.30 kg of *ganja* was found in the exclusive possession of Mr. Naveen Mishra, while 20.70 kg was recovered from Mr. Rahul Bahera. The seized contraband was documented through a seizure memo and deposited in the Malkhana of the P.S. Crime Branch.

2.4. Upon sustained interrogation, accused Mr. Naveen Mishra revealed that he would purchase *ganja* from Mr. Rahul Bahera at lower prices and transport it through the Applicant for resale in Delhi NCR at higher rates. Mr. Rahul Bahera further disclosed that on 20th November, 2020, he had travelled to Delhi to collect payment for the contraband delivered to the Applicant on behalf of Mr. Naveen Mishra.

³ "the NDPS Act"



2.5. The investigation uncovered financial transactions between the accused persons. It was found that Mr. Naveen Mishra had transferred INR 39,600 to Mr. Rahul Bahera's bank account and an additional INR 19,000 via Paytm. The details of these transactions were duly collected.

2.6. The CDR and CAF of the mobile numbers associated with all three accused were obtained and analyzed. The mobile number xxxxxxx389, recovered from the Applicant, was registered in his name. Similarly, numbers xxxxxxx395 and xxxxxxx409 were retrieved from Mr. Rahul Bahera, while numbers xxxxxxx861 and xxxxxxx079 were found in the possession of Mr. Naveen Mishra, all of which were registered under their respective names.

2.7. The CDR analysis confirmed that on 11th November, 2020 at 00:39:04, the Applicant and Mr. Rahul Bahera were at Katak, Orissa which is the same location from where the seized contraband was loaded onto the truck. Furthermore, on 19th November, 2020 at 09:10 AM, the mobile locations of Mr. Rahul Bahera and Mr. Naveen Mishra were traced to IGI Airport, Delhi, corroborating Mr. Bahera's statement that he had come to collect payment from Mr. Mishra.

2.8. Upon completion of the investigation, a charge sheet was filed against all three accused before the Court. Additionally, the FSL report was submitted through a supplementary charge sheet. All the three accused persons are in judicial custody.

3. Against such background, the Applicant urges that he was falsely implicated and advances the following in support of his request for bail:

3.1. The Applicant was arrested on 19th November, 2020 and has remained in custody for more than 4 years.



3.2. There has been non-compliance of Section 52A of the NDPS Act as the sampling was conducted on the spot. Even when sampling was later carried out before the Magistrate, samples were not taken from all the seized contraband.

3.3. The seized contraband was not forwarded to the officer in charge of the police station as mandated under Sections 52 and 53 of the NDPS Act. Additionally, the application for sampling before the Magistrate was moved by an officer who lacked the requisite authority. As a result, the entire process of search, seizure, and sampling is questionable, casting doubt on the prosecution's case.

3.4. The Applicant is not a beneficiary of the financial transactions, which exclusively took place between the co-accused. There is no evidence on record to establish that the Applicant derived any financial gain from the alleged offence.

3.5. No independent witnesses were present during the entire procedure of search and seizure. Furthermore, the fact that the sampling was conducted at the recovery site and that the truck was subsequently driven by a police officer raises concerns. The alleged contraband was transported separately in a private vehicle by the police, further casting doubt on the integrity of the recovery process, especially in the absence of independent witnesses.

3.6. No videographic or photographic evidence was recorded during the alleged recovery. Despite the recovery taking place in a public area, no CCTV footage has been produced on record.

3.7. Out of the 23 prosecution witnesses, only 1 has been examined thus far. The delay in examining witnesses and the slow progress of the trial are not attributable to the Applicant.



3.8. The co-accused have already been granted bail by this Court through an order dated 27th November, 2024. The Applicant, therefore, seeks bail on the grounds of parity. He undertakes to comply with all conditions that may be imposed if bail is granted.

4. On the other hand, Mr. Amit Ahlawat, APP for the State strongly opposes the present bail application and urges the following:

4.1. The offence in question is of a grave and serious nature, involving a quantity of contraband far exceeding the commercial quantity threshold.

4.2. As per CDR details and the bank account details, all three accused were in communication with one another. The CDR of the Applicant's mobile phone further confirms his presence in Orissa on 11th November, 2020.

4.3. The Applicant's earlier request for bail has been rejected by the Trial Court through order dated 4th October, 2024.

4.4. The recovery of contraband was conducted in full compliance with the procedures prescribed under the NDPS Act. The samples were drawn before the Magistrate on 26th November, 2020, in accordance with Section 52A of the Act, and there was no undue delay in the process.

4.5. The Applicant has a prior conviction under the NDPS Act in Jharkhand. At the time of committing the present offence, he was on parole in connection with that case. Consequently, the rigors of Section 37 of the NDPS Act are attracted and therefore, the Applicant's request for bail ought to be rejected.

5. The Court has considered the facts and the submissions advanced. The Applicant was arrested in the present FIR on 19th November, 2020 and as per the latest Nominal Roll, as on 30th January, 2025, the Applicant has been



in custody for a period of 4 years, 2 months and 11 days. While the quantity of the recovered contraband, 315 kg of *ganja*, exceeds the commercial threshold of 20 kg, thereby attracting the rigors of Section 37 of the NDPS Act, the issue of prolonged incarceration and delay in trial assumes significance before assessing the twin conditions under the said provision.

6. In the present matter, investigation is complete, chargesheet has been filed, charges have been framed and the matter is at the stage of prosecution evidence. Considering the fact that out of 23 cited witnesses, only 1 witness has been examined so far, indicates that the trial will conclude in the foreseeable future. The right to life and personal liberty, enshrined under Article 21 of the Constitution of India, 1950, cannot be rendered nugatory by unwarranted delays in the judicial process. The prolonged incarceration undermines the fundamental right to personal liberty. The Supreme Court in ***Rabi Prakash v. State of Odisha***⁴ has held that in such circumstances, the protection of liberty must take precedence over the statutory restrictions imposed under Section 37(1)(b)(ii) of the NDPS Act. This principle was reaffirmed by the Supreme Court in ***Ankur Chaudhary v. State of Madhya Pradesh***.⁵ The extended period of custody, combined with the delay in trial, justifies the Applicant's plea for grant of bail, thereby balancing the rights of the accused with the requirements of justice.

7. Even on merits, the Applicant satisfies the first condition under Section 37(1)(b)(ii) of the NDPS Act, which requires the Court to be satisfied that there are reasonable grounds to believe that he is not guilty of the offence. The non-joinder of independent witnesses during the search and

⁴ 2023 SCC OnLine SC 1109

⁵ 2024 SCC OnLine SC 2730



seizure proceedings casts doubts on the credibility of the prosecution's case. This Court in *Bantu v. State Government of NCT of Delhi*,⁶ examined the recurring and mechanical explanations offered by prosecuting agencies for the non-joinder of independent witnesses in cases involving the seizure of contraband under the NDPS Act. It was observed that the failure to associate public witnesses, particularly in seizures conducted at busy public places, raises concerns regarding the transparency of the recovery process and weakens the evidentiary value of the seizure. In the present case, despite the raid occurring at a public location i.e. at Indraprastha Park Bus Stand, Ring Road, no effort was made to document the identities of those who allegedly refused to join the proceedings, nor has the prosecution furnished any explanation for this omission.

8. Moreover, the omission of videographic or photographic evidence at the time of recovery further diminishes the reliability of the recovery of the contraband. The significance of video recording the recovery process especially in cases involving commercial quantities of narcotic substances, has been emphasized by the Supreme Court. The Court has highlighted that the video or photographic documentation of such recoveries serves as a critical safeguard, ensuring transparency and accountability in the handling of evidence. It is viewed as an essential step to protect the rights of the accused and maintain the integrity of the investigation. In this regard, the Supreme Court in the case of *Shafhi Mohd. v. State of H.P.*⁷ has emphasized that the video or photographic documentation of a crime scene, serves as a critical safeguard, ensuring transparency and accountability in

⁶ 2024 SCC OnLine Del 4671

⁷ (2018) 5 SCC 311



the handling of evidence.

9. Further, in **Bantu**, this Court observed that in instances where videography or photography has not been undertaken, the prosecution may provide clear and valid justifications for such omissions. In the present case, the prosecution has failed to offer any justification for not implementing the essential measure of videography or photography during the recovery process. The absence of this safeguard leaves the recovery process open to question, as there is no independent evidence to corroborate the police's account. This omission, coupled with the lack of independent witnesses, casts a shadow over the credibility of the evidence and increases the potential for prejudice against the accused.

10. As regards the second condition under Section 37(1)(b)(ii), which requires the Court to be satisfied that the accused is not likely to commit any offence while on bail, it is relevant to consider the Applicant's antecedents in conjunction with the broader constitutional principles governing personal liberty. This Court acknowledges that the Applicant has a prior conviction in a case registered under the NDPS Act in Jharkhand. However, as discussed earlier, the prolonged period of incarceration coupled with the delay in trial warrants a nuanced approach that prioritizes the fundamental right to personal liberty.

11. In view of the foregoing, this Court is inclined to enlarge the Applicant on bail subject to stringent conditions. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:



- a. 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;
 - b. The Applicant shall under no circumstance leave the NCT of Delhi without the permission of the IO;
 - c. The Applicant shall appear before the Trial Court as and when directed;
 - d. 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;
 - e. 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;
 - f. The Applicant shall report to the concerned PS on first and third Monday of every month.
12. 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.
13. 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.
14. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

MARCH 5, 2025/d.negi