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

+ **BAIL APPLN. 3854/2024**

MOHD NAZIM

.....Petitioner

Through: Mr. Amarnath Saini, Ms. Neelam Pathak, Mr. Karan Gupta, Mr. Rohit Singh and Ms. Kashish Gupta, Advocates

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for State with SI Jagbir, Anti-Narcotics Cell, North

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **14.02.2025**

1. Present petition has been filed under Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) read with Section 36A (3) of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) seeking regular bail in FIR no. 326/2023, registered at Kashmere Gate under Sections 21/65/85 of NDPS Act, 1985.
2. The petitioner herein was arrested on 02.06.2023. The investigation is complete and charge-sheet has been filed on 23.11.2023.
3. It is the case of the prosecution in the status report¹ that HC² Ravinder Dhaka received a secret information at about 02:25 PM that one person namely Nazim (applicant herein) would come to supply huge quantity of

¹ Dated 25.11.2024

² Head Constable



Heroin to someone near ISBT Kashmere Gate under Yudhister Flyover, road towards Tis Hazari Court, Delhi Between 03:45 PM to 04:00 PM. It is stated that as required under Section 42 of the NDPS Act HC Ravinder Dhaka took all necessary steps to inform the senior police official Inspector Surinder Singh, who after his satisfaction conveyed the information to Sh. Vijay Singh, ACP/Sub-Division Kotwali/North; who gave permission to conduct raid, search and seizure. It is stated that DD No. 05 dated 02.06.2023 was lodged in Anti-Narcotics Cell/North Delhi in this regard.

4. It is stated that as per the directions of the senior officer, a dedicated raiding party of the Anti-Narcotics Cell led by HC Ravinder Dhaka and other police officials was organized and departed from the office in a private Car at about 03:15 PM. It is stated that after reaching the spot, i.e., near ISBT Kashmiri Gate, under Yudhister Flyover, road towards Tis Hazari Court, Delhi, HC Ravinder Dhaka tried to join independent public witness at the spot but none joined citing genuine reasons. It is stated that no notices under Section 100(8) of CrPC were served on the said persons due to paucity of time. It is stated that the raiding team scattered their positions and waited for the accused persons to arrive.

5. It is stated that approximately 03:45 PM, an individual (Nazim) arrived from the side Ring Road, Kashmiri Gate, Delhi, and stopped near ISBT Kashmiri Gate, under the Yudhister Flyover, on the road leading to Tis Hazari Court. Thereafter, around 03:50 PM, another individual came from the side of the Ring Road and engaged in conversation with him (Nazim). It is stated that the informer pointed towards the said persons as being involved in drug trafficking activities and subsequently left the location. It is stated that after waiting for sometime, the police/raiding team moved to



apprehend both the persons. However, one individual managed to escape, while the other i.e. Applicant (Nazim) herein was detained after a scuffle.

6. It is stated that HC Ravinder Dhaka introduced himself and the raiding party to the Applicant/Nazim and apprised him of the secret information received against him. It is stated that Applicant was also apprised of his legal rights and a notice under Section 50 of the NDPS Act was duly served upon the Applicant. It is stated that Applicant refused to be searched before the nearest Magistrate or a Gazetted Officer.

7. It is stated that the concerned ACP/Sub-Division Kotwali was duly informed about the apprehension of the Applicant/Nazim and at 05:55 PM, the concerned ACP arrived at the spot and directed the search of the Applicant/Nazim.

8. It is stated that during search the cotton *thailli* which the Applicant was holding was taken and upon inspection it contained a black colour polythene, which contained a camel colour powder substance. It is stated that the recovered substance was checked with the help of field-testing kit and it was found to be *Heroin*. It is stated on being weighed, the weight of the substance along with the polythene was found to be 316 grams. It is stated that no contraband was found in the bodily search of the Applicant/Nazim. It is thereafter, the concerned ACP left after issuing further directions to the raiding team.

9. It is stated that during investigation on 02.06.2023 a dual SIM mobile phone was recovered from the possession of the accused. This mobile phone contained (i) SIM card for a Vodafone number 9759888875; and (ii) SIM card for a Jio number 6396128344.



10. It is stated that one mobile phone having SIM number 9389395505 was recovered from the house of the Applicant on 06.06.2023.

11. It is stated that the CDR of the aforesaid three (3) mobile phone numbers were obtained from the concerned telecom service provider and filed with the main charge-sheet dated 23.11.2023.

12. It is stated that as per the CDR for Vodafone number 9759888875 the location of this mobile number at Kashmere Gate on 02.06.2023 is about 12:53 PM. It is stated that it is possible that the applicant has not used his mobile thereafter on 02.06.2023.

13. It is stated that data of WhatsApp calls between Inspector Surinder Singh and HC Ravinder Dhaka could not be retrieved at this stage.

14. It is stated that in his disclosure that Applicant had stated that he procured the recovered contraband from Nihaluddin @ Pahalwan, Owaish and Tasleem. It is stated however though the aforesaid suspects were interrogated no incriminating evidence have been found against them and therefore they have not been charge-sheeted.

15. It is stated that FSL report for the sample of contraband recovered has been received as positive and it has been filed with the charge-sheet.

Arguments of the Applicant

16. Learned counsel for the Applicant states that the Applicant/accused has been falsely implicated in the present case. He states that Applicant has been forcefully abducted by the HC Ravinder Dhaka and was planted at the scene of crime. To substantiate this plea, he states that HC Ravinder Dhaka has been recently arrested by the CBI on the charges of corruption and similarly tampering with the evidence to unlawfully provide benefit to the accused in exchange of money. He states that HC Ravinder Dhaka is in



custody under the said FIR. He states that similarly in this case the investigation conducted by the HC Ravinder Dhaka is tainted and the contraband has been planted on the Applicant.

17. He states that the fact that entire case of the prosecution with respect to the arrest of the Applicant on 02.06.2023 from Kashmere Gate is fictitious becomes evident from the CDRs of the Applicant's mobile number 9759888875 and 6396128344 available on record. He states that the CDR and location details of all the above mobile numbers is filed with charge sheet till up to 12:53 pm on 02.06.2023 only and the Applicant's location as per the CDR at Kashmere Gate is at 12:53 PM; whereas the petitioner was allegedly apprehended by the prosecution at 03:55 pm on 02.06.2023.

18. He states that the prosecution has alleged that the Petitioner arrived at Delhi on 02.06.2023 to supply the contraband, however, this is incorrect as the CDR would show that the Applicant was always at Delhi as he resides at Delhi and does the work of tailoring in a sewing factory in Delhi.

19. He states there is no CDR available for the mobile number 9759888875 after 12:53 pm after 02.06.2023 until 16:46 pm on 03.06.2023. Similarly, there is no CDR available for the mobile number 6396128344 after 13:03 pm on 02.06.2023 until 14:54 pm on 05.06.2023. He states that there is no CDR as the Applicant had already been apprehended by HC Ravinder Dhaka and the subsequent case set up pursuant to DD No. 05 under Section 42 of NDPS Act has been created.

20. He states that the arrest on 02.06.2023 at 03:55 PM was allegedly carried out at Kashmere Gate. He states there are atleast three CCTV Cameras available and installed at the said spot, but, despite that no CCTV footage has been retrieved and placed on record. He states that though ISBT



Kashmere Gate is a very busy junction, no independent public witness joined of the alleged search and seizure. He states that the recovery is doubtful. He states that Applicant is a tailor and has no prior criminal antecedents. He relies upon the judgment of coordinate bench in **Gopal Dangi v. State of NCT Delhi**³.

21. He states that the Applicant herein allegedly in his disclosure named three other persons from whom the contraband was procured. He states that the said other persons have been left after interrogation and were never arrested.

Arguments on behalf of the prosecution

22. In reply, Mr. Khanna, learned APP states that argument of the Petitioner that HC Ravinder Dhaka has been arrested by the CBI on charges of corruption and tampering with the evidence in another case cannot prima facie lead to a finding that there is a foul play during search and seizure in the present case also.

23. He states that the that argument of the Applicant that CDR of his mobile numbers shows his location at Kashmere Gate at 12:53 pm on 02.06.2023 and thereafter there is no CDR until 03.06.2023 does not lead to the inference that the Applicant was apprehended at 12:53 PM. He states that the absence of CDR could be since the accused may not have received any SMS or calls between 12:53 pm and 03:35 pm. i.e. on the date of arrest.

24. He states that quantity recovered from the possession of the accused/Applicant is a commercial quantity and therefore, for the Applicant to be enlarged on bail twin conditions of section 37 NDPS has to be satisfied.

³ 2024:DHC:5175



25. He fairly states that it is a matter of record that CCTV footages were not collected neither there is entry in the police diary with respect to the availability of the CCTV footage at the location.

Arguments on behalf of the prosecution

26. This Court has heard the submissions advanced by the learned counsel for the parties and perused the record.

27. The accusation in the present case is with regard to the recovery of commercial quantity i.e., 316 grams of contraband *Heroin* therefore, the rigours of section 37 of NDPS Act are attracted thus, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of NDPS Act are satisfied in addition to the usual requirements for the grant of bail (i) the Court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (ii) That the person is not likely to commit any offence while on bail.

28. In the facts of this case there are several unexplained facts. The secret informer who at 02:25 PM allegedly gave the information leading to the arrest of the Applicant. The secret informer though apprised the police that the Applicant/Nazim would meet another person around 03:45 PM for exchange of the contraband, failed to identify the other person, who Applicant/Nazim was supposed to meet.

29. Thereafter, when the police tried to apprehend accused Nazim and the other person from Kashmere Gate at 03:55 PM, the said other person absconded and could not be arrested. Thus, the alleged other person remains an untraceable and unverifiable unnamed-character in the story.

30. The prosecution has alleged that HC Ravinder Dhaka informed Inspector Surinder Singh about the secret information, which led to the



registration of DD No. 05 at 03:05 PM after compliance of Section 42 NDPS Act and which finally led to Applicant's apprehension at 03:55 PM. It is alleged that HC Ravinder Dhaka made WhatsApp calls to Inspector Surinder Singh at 04:55 PM for asking the ACP to come to the spot. It is stated that however, the ACP arrived at the spot only at 05:55 PM and the search was conducted in his presence which led to the seizure of the contraband.

31. It is stated in the status report that the WhatsApp calls between HC Ravinder Dhaka and Inspector Surinder Singh are not on record. There is thus even as per the prosecution theory a gap of two hours between 03:55 PM to 05:55 PM before the Applicant was searched in the presence of the ACP.

32. The apprehension of the accused and the search took place near ISBT⁴ at Kashmere Gate and though the prosecution admits that there were CCTV cameras installed at the location, no endeavour to retrieve CCTV footage has been made by the IO. So also considering that ISBT is a very busy junction no reasonable explanation has been given for not joining public witnesses. The reliance placed by the learned counsel for the Applicant on the judgment of the coordinate Bench in **Gopal Dangi** (supra) relevant. The coordinate Bench in **Gopal Dangi** (supra) has observed as under:

“26. The learned counsel for the applicants have also raised the issue that no independent witness was joined by the prosecution even though the applicants were apprehended in a public place. This Court in the case of Bantu v. State Govt of NCT of Delhi: 2024: DHC: 5006 has observed that while the testimony of police witness is sufficient to secure conviction if the same inspires confidence during the trial,

⁴ Interstate Bus Terminal



however, lack of independent witnesses in certain cases can cast a doubt as to the credibility of the prosecution's case.

27. It was held that when the Investigating Agency had sufficient time to prepare before the raid was conducted, not finding the public witness and lack of photography and videography in today's time casts a doubt to the credibility of the evidence.

28. A bald statement has been made, as stated in the chargesheet filed, that a few passers by were asked to take part in the police action, however, they refused to join the investigation and left the spot citing legitimate compulsion of their journey.

29. In the present case, no notice under Section 100 (8) of the CrPC was given to any person on the refusal to support the Investigating Agency during the search procedure. The secret information was received almost three hours prior to the accused person ('Mohd Munib') being apprehended on 05.09.2022. Subsequently, on a disclosure given by the accused ('Mohd Munib') co-accused ('Gopal Dangi') was apprehended on 12.09.2022. It is peculiar that the Investigating Agency was unable to associate even a single public witness at the time, especially since the prosecution had prior secret information and the applicants were apprehended at a public place.

30. It is also pertinent to note that the investigating agency was also unable to procure/ place on record any CCTV footage since the alleged recovery was made at a public place.

31. This Court in Bantu v. State Govt of NCT of Delhi (supra), noted that the Hon'ble Apex Court, way back in the year 2018 in Shafhi Mohd. v. State of H.P. (supra), after taking note of the technological advancements, had passed certain directions. The Hon'ble Apex Court had emphasised the role of audio-visual technology in enhancing the efficacy and transparency in the police investigations.

33. This Court further noted that the procedure prescribed in NCB Handbook which has been adopted by the Delhi Police may be argued to be not binding, however, it cannot be denied that the same has been prescribed as the best and crucial practice for



obtaining evidence in order to avoid the allegation in regard to foul play.

34. Thus, while it is true that the effort, if any, made by the prosecution to have the search conducted in the presence of the independent witnesses would be tested during the course of trial and the same may not be fatal to the case of the prosecution, however, the benefit, at this stage, cannot be denied to the accused. **Undoubtedly, the search in the present case was conducted at a busy public place. It is not the case of the prosecution that no CCTV were installed around the area where raid/search was conducted. It is also not the case that equipments were not available to videograph and photograph the search/seizure. It cannot be denied that almost every person today carries a smart phone with a camera installed in it."**

(Emphasis Supplied)

33. Lastly, the prosecution admits that HC Ravinder Dhaka has been arrested by CBI on charges of corruption pertaining to evidence tampering so as to assist an accused. In the facts of this case, the entire prosecution story starting from alleged secret information received at 02:25 PM until the search in the presence of the ACP at 05:55 PM has been exclusively narrated by HC Ravinder Dhaka as he was the man leading the raiding party. The prosecution during arguments has been unable to explain the CDRs, which shows that the Applicant's phone was last working at 12:53 PM on 02.06.2023 at Kashmere Gate and thereafter there is no activity registered on it. Though the Applicant is alleged to have been exchanging contraband with a third party, the alleged third party has neither been traced nor arrested; the third party appears to have disappeared like a phantom.

34. Thus, on a holistic review of the facts as alleged by the prosecution this Court and considering the facts set out by the Applicant, the accused has been able to raise serious doubts about his apprehension at 03:55 PM from Kashmere Gate as alleged. The prosecution has been unable to explain the



CDR records of the mobile numbers 9759888875 and 6396128344 of the Applicant, which do not support the case set up by the prosecution as regards alleged apprehension of the Applicant from Kashmere Gate at 03:55 P.M. The prosecution has been unable to justify not making any attempt to retrieve CCTV footage of the scene of incident despite its availability. All these facts considered with the admitted facts the HC Ravinder Dhaka has been arrested by CBI on the charge of evidence tampering in NDPS cases assumes significance and cannot be ignored. This Court therefore finds that the Applicant at this stage has been able to satisfy the first condition of Section 37 of the NDPS Act that there is reasonable ground to believe that he is not guilty of the offence charged.

35. The Applicant admittedly has no criminal priors; has already undergone incarceration for 1 year 8 months; the alleged other person to whom contraband was sold has not been apprehended and this theory is yet to be tested. In these facts, considering the finding returned qua the first condition in favour of the Applicant, this Court also finds that Applicant is not likely to commit such offence while on bail. **(Re. Dheeraj Kumar Shukla v. State of U.P⁵)**

36. In light of the above, and that the trial in the matter is likely to take some time, and it would not be prudent to keep the petitioner behind the bars for an indefinite period, this Court finds it to be a fit case for grant of bail to the petitioner. Consequently, the applicant is directed to be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:



- i. Petitioner will not leave the country without prior permission of this Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Trial Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

37. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

38. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

⁵ 2023 SCC OnLine SC 918.at para 3



39. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 14, 2025/hp/AKT