



2025:DHC:3272



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

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Judgment reserved on: 01.05.2025
Judgment pronounced on: 05.05.2025

+ BAIL APPLN. 3969/2024

ARJUN SARKAR

.....Petitioner

Through: Mr. Faiz Imam, Adv

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Meenakshi Dahiya, APP
for State, SI Vikram Lamba
Special Staff SWD

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking Regular Bail in FIR No. 0377/2024 dated 07.07.2024, registered at Police Station Palam Village, for offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. Succinctly put, the factual matrix giving rise to the present petition is as follows. On 07.07.2024, while on routine crime prevention and detection duty in the area of South-West Delhi, a team comprising seven personnel from the Special Staff is stated to have



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apprehended five individuals, including the present petitioner, near the CGHS Dispensary, Palam Flyover, Palam, Delhi. It is alleged that each of the five apprehended persons was found in possession of *Ganja*, concealed in backpacks. Following preliminary inquiries, the identities of the five apprehended persons were ascertained.

3. In compliance with the mandate of Section 50 of the NDPS Act, the accused were apprised of their legal right to be searched before a Gazetted Officer or a Magistrate. All five, however, declined to be searched in the presence of a Gazetted Officer or a Magistrate, asserting that they carried no further contraband. Notices under Section 50 were served accordingly, which were duly acknowledged. A search of their persons yielded no additional recovery.

4. The *Ganja* recovered from the backpacks of the accused was weighed, amounting in total to 27.7 Kgs. The distribution of the recovered contraband, as per the prosecution, is as under: (i) Deepak – 7.266 Kgs (ii) Rabindera- 6.008 Kgs (iii) Pradip- 3.944 Kgs (iv) Arjun(petitioner)-1.990 Kgs (v) Gautam- 8.942 Kgs.

5. On the basis of the said recovery, the aforesaid FIR came to be registered, initially invoking only Section 20 of the NDPS Act. During investigation, all five individuals were arrested. Interrogation of the co-accused led to disclosures to the effect that they were transporting *Ganja* at the instance of the accused Deepak, purportedly for monetary gain. The accused Deepak then disclosed that he supplied the said contraband on the instructions of one Arin, who is also a resident of the same district as all of the accused.



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6. While the four accused other than Deepak were remanded to judicial custody, Deepak was taken into police custody for the purpose of tracing and apprehending the said Arin. However, the investigation yielded no information as to Arin's whereabouts. In the interregnum, Section 29 of the NDPS Act came to be added to the FIR. An application under Section 52A of the NDPS Act was also preferred before the learned Special Judge (NDPS), Dwarka Courts, on 08.07.2024.

7. The Charge-Sheet in the FIR was filed on 03.09.2024, followed by a supplementary Charge-Sheet on 25.10.2024, incorporating the FSL report. The petitioner filed a Bail Application in the aforementioned FIR, which was dismissed by the learned Special Judge on 14.10.2024, compelling the petitioner to file the present application.

8. The learned counsel for the petitioner, at the outset, submitted that the quantity of *Ganja* allegedly recovered from the petitioner is 1.990 Kgs. This quantity, he submitted, is well below the threshold of *commercial quantity* as prescribed under the NDPS Act, the said threshold being 20 Kgs. It is submitted that the present case involves only *intermediate quantity* and, therefore, the rigours of Section 37 of the NDPS Act, which are attracted solely in cases involving *commercial quantity*, would have no application in the facts of the present case.

9. It is further submitted that the learned Special Judge, NDPS, Dwarka Courts, has erred in mechanically applying the embargo under Section 37 of the NDPS Act to the case at hand, in complete disregard



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of the settled legal position that the said provision is not attracted where the recovery pertains to *intermediate quantity*.

10. The learned counsel submitted that the learned Special Judge has failed to appreciate that, in the absence of demonstrable evidence of criminal conspiracy, the recoveries effected from different individuals cannot be clubbed together merely to give the appearance of a *commercial quantity*.

11. The learned counsel submitted that the invocation of Section 29 of the NDPS Act in the present matter is equally misconceived. The prosecution has not placed on record any credible material to substantiate the existence of a conspiracy or any meeting of minds between the petitioner and the co-accused persons. The statement of co-accused persons under custody cannot, in the absence of corroborative material, form the sole basis to invoke Section 29 of the NDPS Act.

12. The learned counsel submitted that the matter is presently at the stage of arguments on Charge, and a total of 19 prosecution witnesses are to be examined. Thus, the continued incarceration of the petitioner at this stage of the trial would serve no meaningful purpose, especially when there is no allegation that the applicant would tamper with evidence or influence witnesses in any manner. Further, the learned counsel submitted that the petitioner has clean antecedents and has been incarcerated for a period of about 10 months.

13. While seeking a dismissal of the bail application, the learned APP for the State submitted that all of the accused in conspiracy with each other had participated in commission of the offence and a chance



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recovery was made on routine checking. He submitted that the CDR analysis of the accused persons reveals that location of the mobile phone of all of the accused on 05.07.2024 was at station road Cooch Behar and as per their location, they all travelled by the same train to Delhi. Moreover, the location of their mobile phones was also found in the Mahipalpur area in the morning of 07.07.2024.

14. He, thus, submitted that in view of the aforesaid circumstances, Section 29 of the NDPS Act is rightly invoked in this case and the petitioner along with other co-accused were found in possession of a *commercial quantity* of *Ganja*. Therefore, embargo of Section 37 of the NDPS Act would apply and the petitioner is not entitled to Bail.

15. To strengthen his plea, the learned APP places reliance on the following decisions:

- ***Ridhm Rana vs. State (NCT of Delhi)*** 2022 SCC OnLine Del 771
- ***Sheela vs. State Govt. of Delhi*** 2023 SCC OnLine Del 6391
- ***Awadhesh Yadav vs. State Govt. of NCT of Delhi*** 2023 SCC OnLine Del 7732

16. The learned APP for the state has also handed over to this Court the CDR of all the accused persons, which reveals that:

- (i) The petitioner and the co-accused Pradip called each other 17 times between 12.06.2024 to 06.07.2024
- (ii) The petitioner and the co-accused Deepak called each other 31 times between 12.06.2024 and 07.07.2024
- (iii) The petitioner and the co-accused Rabindera called each other 51 times between 28.06.2024 and 07.07.2024



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(iv) The co-accused Pradip and the petitioner called each other 13 times between 27.06.2024 to 06.07.2024

17. The learned APP submitted that from the aforesaid, it is evident that all the accused were known to each other and were in regular touch one another. Thus, the contraband carried by the petitioner can be clubbed to be made a *commercial quantity* as it was jointly carried while being active participation, thereby rightly invoking Section 29. Further, the conspiracy amongst the accused can be established through the CDR handed over the board today.

18. In rebuttal, the learned counsel for the petitioner submitted that there is no explanation as to how the petitioner came into such possession and that no source from the same has been given. He further submitted that 'Arin' who is said to be behind this operation, has still not been apprehended and therefore, merely travelling together cannot amount to conspiracy.

19. He submitted that the CDR may show that the accused are familiar with each other, however, it does not further prove anything beyond that. To conclude, the learned counsel submitted that the petitioner has no previous involvement in any other case and considering his age, i.e. 28 years, he be released on Regular Bail.

20. Having heard the learned counsel for the petitioner, the learned APP for the State and perused the record, the primary question that comes up for the consideration of this Court is, whether the contraband recovered from the accused person, including the petitioner, can be clubbed in order to make it a *commercial quantity*.



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21. The quantity of *Ganja* stated to have been recovered from the petitioner is 1.990 Kg, which is undisputedly below the threshold of *commercial quantity*, which, for *Ganja*, stands at 20 kg as per the NDPS Act. Ordinarily, therefore, the statutory bar to bail under Section 37(1)(b) of the NDPS Act would not stand attracted.

22. However, where Section 29 of the NDPS Act is invoked, and the allegation pertains to a conspiracy to commit an offence involving a *commercial quantity*, the statutory rigour under Section 37 of the NDPS Act becomes applicable, notwithstanding the fact that the quantity individually recovered from the petitioner falls short of the *commercial* threshold.

23. The principal submission of learned Counsel for the petitioner is that the allegation of conspiracy is unsubstantiated, and that mere acquaintance or association among co-accused, unsupported by credible evidence of a common intention, cannot justify the invocation of Section 29 of the NDPS Act.

24. The material placed on record by the prosecution, particularly the CDRs of the accused, paints a picture which, at the present stage, cannot be dismissed as merely coincidental. The petitioner is stated to have been in frequent telephonic contact with co-accused persons, as follows:

- 31 calls exchanged between the petitioner and co-accused Deepak between 12.06.2024 and 07.07.2024.
- 51 calls exchanged between the petitioner and co-accused Rabindera between 28.06.2024 and 07.07.2024.



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- 17 calls exchanged between the petitioner and Pradip between 12.06.2024 and 06.06.2024.
- 13 calls between the petitioner and Pradip between 27.06.2024 and 06.06.2024.

25. The precise overlap of timing and regularity of contact between the petitioner and all other co-accused, just days and hours before the recovery of the contraband, points to a sustained and coordinated exchange and does not seem to be an innocent coincidence.

26. Further, the location data retrieved from the mobile phones of the accused shows that all five accused were present at Station Road, Cooch Behar on 05.07.2024, and travelled to Delhi by the same train, with their mobile phones subsequently being traced to the Mahipalpur area on 07.07.2024, which is the very day and location of recovery. This synchronised movement of multiple individuals, from a common point of origin to a common destination, followed by the recovery of similar contraband from each, speaks to a concerted act rather than an isolated or independent instance of possession.

27. The submission of the learned counsel for the petitioner that the recoveries made from individual accused cannot be clubbed to constitute *commercial quantity* stands squarely answered in the following decisions.

28. In ***Ridhm Rana*** (supra), ***Sheela*** (supra), and ***Awadhesh Yadav*** (supra) this Court has repeatedly held that that conspiracy can be inferred from circumstantial evidence, communication records, and synchronized conduct, even if recoveries are separately made. Once conspiracy under Section 29 of the NDPS Act is established *prima*



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facie, individual quantities may be aggregated, invoking the embargo under Section 37 of the NDPS Act.

29. The learned counsel for the petitioner has sought to downplay the significance of the CDRs, submitting that mere telephonic contact does not establish conspiracy. While that submission may merit examination during trial, at the present stage, what is required is the existence of reasonable grounds for believing that the petitioner is not guilty of the alleged offence, and that he is not likely to commit any offence while on bail. The record as it stands, replete with coordinated communication, collective travel, and simultaneous recovery, falls far short of satisfying the first limb of this two-pronged test.

30. The submission that the petitioner is 28 years of age and has no prior involvement, though worthy of consideration in a fit case, cannot override the express bar under Section 37 of the NDPS Act. The statute mandates that in cases involving conspiracy to traffic in *commercial quantity*, bail shall not be granted unless both conditions of Section 37(1)(b) are fulfilled—a threshold which the petitioner fails to cross.

31. The investigation has culminated in the filing of the Charge Sheet and a supplementary Charge Sheet incorporating the FSL report. The case is now at the stage of arguments on charge. However, mere completion of investigation or pendency of trial is not a ground for bypassing the mandate of Section 37.

32. In view of the foregoing discussion, this Court finds no infirmity in the view adopted by the learned Special Judge. The



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material on record, at this stage, furnishes sufficient basis to sustain a *prima facie* inference of conspiracy involving commercial quantity, thereby attracting the rigors of Section 37 NDPS Act.

33. Accordingly, the present bail application is dismissed.

SHALINDER KAUR, J

MAY 05, 2025/FRK

Click here to check corrigendum, if any