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

+ **BAIL APPLN. 4059/2024**

RAJENDER @ YUSAF

.....Petitioner

Through: **Mr. Kundan Kumar, Advocate.**

versus

STATE NCT OF DELHI

.....Respondent

Through: **Mr. Amit Ahlawat, APP.**

SI Kartar Singh Rawat, Anti-Narcotics Cell.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

06.03.2025

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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 grant of regular bail in the proceedings arising from FIR No. 341/2024 dated 2nd April, 2024, registered under Sections 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Narela Industrial Area.

2. Briefly stated, the case of the Prosecution is as follows:

2.1 On 02nd April, 2024, a secret information (DD No. 06) was received by ASI Rajkumar, indicating that a person named Rajender R/o H. No. F-172, JJ Colony Bawana, Delhi, was involved in the bulk sale of heroin. The informer further revealed that on the said day, Rajender would go from his

¹ "BNSS"

² "Cr.P.C."

³ "NDPS"



house in between 01:00 PM to 02:00 PM to deliver a consignment of heroin to one of his customers.

2.2 After verifying the secret information, the raiding party, accompanied by the informer, proceeded to the location and arrived near the park at F-Block, JJ Colony, Bawana, Delhi, around 01:00 PM. The informer identified the suspected individual, Rajender (the Applicant), who was subsequently apprehended. The Applicant's name and address were revealed as Rajender @ Yusuf, son of the late Nishi Bhushan, residing at House No. F-172, JJ Colony, Bawana, Delhi, aged 43 years.

2.3 The Applicant was informed and explained that the Police had received secret information about his involvement in the supply of heroin, and that there was a possibility of the same being recovered from his possession. He was also apprised of his legal right to be searched in the presence of the nearest Gazetted Officer or Magistrate and informed that he could also search the members of the police party prior to his search. However, the Applicant declined both the aforesaid offers. A written notice under Section 50 NDPS Act was served on him, to which he provided a reply in Hindi, and signed it in English.

2.4 During a cursory search of the Applicant, a black-coloured heavy polythene bag was recovered from the right pocket of his jeans. Inside the bag, a transparent polythene packet containing a light brown powdery substance was found. The substance was field-tested and confirmed to be heroin, weighing 520 grams, along with the transparent polythene packet.

2.5 A subsequent search of the Applicant's residence led to the recovery of INR 5 lakh (comprising 10 bundles, each containing 100 notes of Rs. 500) from a steel box located in a room on the first floor of the house.



2.6 During interrogation, the Applicant revealed that the recovered heroin was supplied to him by one Bhure, which heroin was supposed to be delivered to a customer.

2.7 Further, at the instance of the Applicant, co-accused Bhure and Nawab Salem were arrested, with the recovery of 100 grams and 108 grams of heroin, respectively.

3. In the foregoing background, counsel for the Applicant makes the following submissions seeking grant of regular bail:

3.1 The Applicant was served with a notice under Section 50 of the NDPS Act, in which he was offered the option to be searched in the presence of the nearest Gazetted Officer or Magistrate. However, the notice nowhere mentioned that he was also informed of the option to be taken to the nearest Gazetted Officer or Magistrate for the search.

3.2 The said notice was bereft of the twin conditions mandated under Section 50 NDPS Act. Therefore, the prescribed legal procedure was not adhered to by the police officials/ investigating team, rendering the recovery of the contraband invalid.

3.3 On account of the violation of Section 50 of the NDPS Act, the rigors of Section 50 NDPS Act will get diluted. Reliance is placed on the judgments in *State of Rajasthan v. Parmanand & Anr.*,⁴ *Emeka Emmanuel v. State*⁵ and *Ikram v. State of Delhi*.⁶

3.4 The investigation has been concluded, and the chargesheet has been filed. Therefore, keeping the Applicant in custody would serve no fruitful purpose.

⁴ (2014) 5 SCC 345.

⁵ SCC OnLine Del 4493.

⁶ Bail App. No. 3707/2022, decided on 12th July, 2023.



3.5 The other co-accused persons, namely, Bhure and Nawab, have already been granted bail.

4. On the other hand, Mr. Amit Ahlawat, APP for the State, strongly opposes the bail application on the following grounds:

4.1 The contraband recovered from the Applicant falls within the category of commercial quantity. Additionally, the Applicant has confessed that the recovered sum of INR 5 lakh was earned through drug trafficking activities.

4.2 The Applicant has prior antecedents under the NDPS Act to his credit—(i) FIR No. 107/1997, under Sections 21/61/85 NDPS Act, PS Kotwali; (ii) FIR No. 76/2021, under Sections 21/29/61/85 NDPS Act, PS Special Cell; (iii) FIR No. 92/2021, under Section 21B NDPS Act, PS Narela Industrial Area; and (iv) FIR No. 341/2024, under Sections 21/25/29 NDPS Act, PS Narela Industrial Area. This clearly demonstrates that the Applicant is habitual offender of drugs trafficking.

5. The Court has considered the facts of the case and the contentions advanced by the parties. While evaluating a bail application, the Court must consider several factors, including whether there is a *prima facie* case or reasonable grounds to believe the accused has committed the offence, the likelihood of the accused repeating the offence, the nature and seriousness of the accusation, the severity of the potential punishment upon conviction, the risk of the accused absconding or fleeing if granted bail and the reasonable apprehension of witnesses being intimidated by the accused.

6. In the instant matter, the contraband recovered from the Applicant comprises 520 grams of heroin, which qualifies as a commercial quantity under the NDPS Act. As a result, the provisions of Section 37 of the NDPS



Act are attracted, under which the Court can grant bail only after hearing the public prosecutor, and upon being satisfied of the following twin conditions: (i) that there are reasonable grounds to believe that the accused is not guilty of the offence, and (ii) that the accused is not likely to commit any offence while on bail.

7. However, it is pertinent to highlight that the Applicant has sought to rely on the notice issued under Section 50 of the NDPS Act⁷ to argue that the police/investigating agency failed to adhere to the legal requirements prescribed under Section 50, thereby vitiating the recovery process. It is contended that owing to the violation of Section 50, the rigours of Section 37 will be relaxed, as held by this Court in *Ikram*. In light of the aforementioned contention, the Court proceeds to examine the legal principles governing the essential elements of Section 50 of the NDPS Act, and to determine whether these requirements were duly complied with in the present case.

8. In this regard, it is imperative to refer to the leading judgement of the Supreme Court in *State (NCT of Delhi) v. Mohd. Jabir*,⁸ whereby the Court outlined the essential conditions for the issuance of a notice under Section 50 of the NDPS Act:

“Section 50 casts an obligation on the police officer to apprise the person intended to be searched that under Section 50, he is required to be searched only before a Gazetted Officer or a Magistrate. The requirement is that the authorized officer must make the suspect aware of the existence of his right to be searched before a Gazetted Officer or a Magistrate.”

9. Furthermore, this Court, in *Bantu v. State Government of NCT of*

⁷ “Impugned Notice”

⁸ 2024 SCC OnLine SC 4374.



Delhi,⁹ elucidated on the essence and intent of the provision of Section 50, in the following terms:

“37. It is true that provisions of Section 50 of the NDPS Act have to be strictly complied with. The same, however, does not mean that each and every word mentioned in the provision has to be repeated verbatim in the notice. As long as the intention of the notice is clear and the language used substantially complies with the intention of the provision, the same would be strict compliance with the provision. Section 50 of the NDPS Act provides for the responsibility of the officer to search the suspect before the ‘nearest’ magistrate or gazette officer. The duty is cast upon the officer to take the person if he so requires to the nearest Gazetted Officer or a Magistrate. The right of the suspect, however, is to be informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate if he so desires. The officer undoubtedly has to take him to the nearest Gazetted Officer or a Magistrate however, not informing the suspect that he would be taken to the ‘nearest’ Magistrate for the purpose of search will not amount to non-compliance with Section 50 of the NDPS Act. No prejudice, at this stage, is pointed out as to how the accused was prejudiced by not being informed that he would be taken to the ‘nearest’ Magistrate for the purpose of search. The accused in the present case has even otherwise, as stated, refused to exercise his right.

38. As long as the essence of the right is communicated effectively, ensuring that the suspect is aware of his right to be searched in the presence of a magistrate or a gazetted officer, the requirement of Section 50 of the NDPS Act is fulfilled. This approach ensures that the safeguards intended by the provision are maintained without being overtly rigid about the exact phrasing used in the notice.

39. Clearly, the essence of Section 50 of the NDPS Act is to ‘inform’ the concerned suspect of his right. The omission of specific words thereof, does not lead to non-compliance if no prejudice is caused. The substantial compliance with procedural safeguards is adequate if the rights of the accused are not prejudiced. The intention of legislation is that the suspect is made aware of his rights rather than rigid adherence to the statutory text. The substance of the law should prevail over its form, and technical aspects that do not compromise the rights of the suspect cannot be a ground for the grant of bail at this stage, the same is matter of trial.”

10. In light of the aforesaid principles, the Court now proceeds to analyse

⁹ 2024 SCC OnLine Del 4671



the notice issued to the Applicant under Section 50, the translation of which reads as under:

“You, Rajendra @ Yusuf s/o Sh. Nishi Bhushan, r/o H. No. F-172 JJ Colony, Bawana, Delhi, Age- 44 years, are hereby informed through this notice in the presence of the following witnesses that we (the police) have information that you are involved in the supply of heroin and there is a possibility that heroin may be recovered from you today, for which we need to conduct a search. It is your legal right to have your search conducted in the presence of the nearest gazetted officer or magistrate, and arrangements can be made to call them on the spot. It is also your legal right to search the members of the police party and the police vehicles before your own search.”

(emphasis supplied)

11. In reply to the impugned notice, the Applicant replied in Hindi, and rendered his signatures in English. The translation of his reply reads as follows:

“I have received the notice. You have read and explained this notice to me. You also explained the meaning of a Gazetted Officer and a Magistrate. I do not wish to undergo a search in front of any Gazetted Officer or Magistrate, nor do I wish to have the police officers and their vehicle searched.”

12. A bare perusal of the impugned notice clearly indicates that the concerned police officer did inform the Applicant of his legal right to be searched in the presence of the nearest Gazetted Officer or Magistrate, and also provided him with the option to arrange for such an official to be called to the site of the alleged offence. Consequently, the intention to effectively communicate the Applicant’s legal rights and safeguards was fully realized, ensuring that no prejudice was caused to him. As such, the requisite conditions as delineated in ***Mohd. Jabir*** and ***Bantu*** have been satisfactorily met.

13. The Applicant has sought to rely on several judgments to argue that the investigating agency failed to comply with the requirements under



Section 50 of the NDPS Act. These judgments, in the opinion of the Court, are distinguishable and inapplicable to the facts of the present case. The Applicant has specifically referenced the case of ***Parmanand*** to contend that the investigating agency could not have given him a third option other than being searched before the nearest Gazetted Officer or Magistrate. However, this case is not applicable to the current facts for several reasons—*first*, in ***Parmanand***, the accused persons were not provided with individual written notices under Section 50(1), but rather, they were given a joint communication. This did not provide the accused persons with a clear and unequivocal understanding of their right to be searched by the nearest Magistrate or Gazetted Officer. Petinently, one of the co-accused, Parmanand, did not even sign the notice. In contrast, in the present case, the Applicant was provided with a written notice that clearly and unequivocally informed him of his legal right to be searched in the presence of the nearest Magistrate or Gazetted Officer, and the Applicant duly responded to and signed the notice.

14. *Second*, in ***Parmanand***, the accused was given an option to be searched by the nearest Magistrate, Gazetted Officer, or a superintendent who was part of the raiding team. The Supreme Court, in this context, held that the accused could not have been given a third option of being searched by an officer, who was not a Gazetted Officer or Magistrate. It is in such circumstances that the Court in ***Parmanand*** held that providing the accused with an option to be searched by a member of the raiding team, undermined the independence of the search, thereby vitiating the recovery process. However, in the present case, there is no such deficiency. The impugned notice clearly and unambiguously informed the Applicant of his legal right



to be searched in the presence of the nearest Gazetted Officer or Magistrate. The notice did not mention that the search would be conducted by a member of the raiding team.

15. Furthermore, the Applicant has placed reliance on ***Ikram*** to argue that, merely providing an option for the search to be conducted by calling a Magistrate or Gazetted Officer to the place of occurrence, is in contravention of the procedure under Section 50 of the NDPS Act. To address this argument, it is necessary to examine the Section 50 notice served on the accused in ***Ikram***, the relevant portion of which reads as follows:

“You have got a legal right that if you wish, your search may be carried out by having a Gazetted Officer or Magistrate called to the place of occurrence.”

16. This Court, in ***Ikram***, observed that the notice was erroneous because it lacked the option of having the search conducted before the nearest Gazetted Officer or Magistrate. The only option provided to the accused was that these officers could be called to the place of occurrence for the search. However, in the present case, the impugned notice explicitly informed the Applicant of his right to be searched in the presence of the nearest Gazetted Officer or Magistrate, who could be arranged to be called to the spot. Therefore, unlike ***Ikram***, the Section 50 notice in the current case does not suffer from the omission of giving the option to have the search conducted before the nearest Gazetted Officer or Magistrate, and complies with the legal requirements under Section 50 of the NDPS Act.

17. Lastly, the Applicant has relied on ***Emeka Emmanuel*** to argue that the failure to comply with the procedure under Section 50 of the NDPS Act entitles him to bail. However, in that case, the accused was granted bail on



account of an infirmity in the Section 50 notice, wherein the accused was merely informed that he had the option to have his search conducted in the presence of a Gazetted Officer or Magistrate, but was not explicitly informed that he had the “legal right” to be searched in such a manner. The relevant portion of the Section 50 notice in that case stated: “*your personal search is to be conducted by the undersigned, if you so require, such search will be conducted in presence of the nearest Gazetted Officer or Magistrate.*”

18. The Court observed that merely offering the accused the option to be searched before a Gazetted Officer or Magistrate, rather than informing him of his legal right to be searched, did not meet the mandatory requirements of Section 50. In contrast, in the present case, it is evident that the impugned notice served on the Applicant explicitly mentioned his “legal right” to be searched in the presence of the nearest Gazetted Officer or Magistrate. This was not just an offer or option, but a clear communication of the Applicant’s legal right, in line with the procedural requirements of Section 50. Therefore, the Applicant’s reliance on ***Emeka Emmanuel*** is misplaced and does not entitle him to bail.

19. Having regard to the foregoing discussion, it is abundantly clear that the impugned notice served on the Applicant fully complies with the requisite conditions set forth in Section 50 of the NDPS Act and is devoid of any infirmities. Therefore, the rigours of Section 37 should apply.

20. Considering the Applicant’s case on the touchstone of Section 37, it is imperative to note that the allegations against the Applicant are of a serious nature, wherein a commercial quantity of 520 grams of heroin been recovered from his possession. Additionally, several persons have been



arrested at the Applicant's instance, with recovery of a commercial quantity of heroin, thereby strongly suggesting his active involvement in a drug syndicate. Furthermore, the Applicant has a criminal history with numerous prior offenses under the NDPS Act. In light of these circumstances, the Court is not persuaded that the Applicant would refrain from committing further offenses if granted bail.

21. In view of the above, the Applicant's request for bail is dismissed.

22. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and shall not influence the outcome of the Trial.

23. The application is disposed of in the aforesaid terms.

SANJEEV NARULA, J

MARCH 6, 2025

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