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

+ **BAIL APPLN. 4083/2024**

VARIS

.....Petitioner

Through: Mr. K.P. Sharma and Mr. Tushar
Talwar, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Laksh Khanna, APP for the State

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

13.02.2025

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1. The present application under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed seeking regular bail in FIR No. 0044/2024 dated 26.02.2024 registered at Police Station (P.S.) Crime Branch, Delhi for offences under Section 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. As per the case of the prosecution, on 26.02.2024, an official of P.S. Crime Branch, Delhi received an information from a secret informer that two persons, who are travelling in Duranto Express coming from Andhra Pradesh to Nizamuddin Railway Station, Delhi, are bringing contraband *Ganja* to Delhi. It is stated that on basis of the said information, a raid was conducted at Nizamuddin Railway Station and two persons, namely, Varis (the Applicant herein) and co-accused Arif were apprehended by the police.

2.1. It is stated that the Applicant/Varis was carrying a bag on his shoulder and Arif was carrying a suit case with him.

2.2. It is stated that thereafter, the accused persons were served upon with the notice under Section 50 of the NDPS Act and the content of the said



notice were read out and explained to the them. It is stated that since the accused persons waived of their right to be searched in front of any nearest Gazetted Officer or the Magistrate, a cursory search of the accused persons was made.

2.3. It is stated that in the meanwhile, Applicant/Varis herein received a call from one person, who informed that the said person is standing under the bridge on the Sarai Kale Khan side and asked the Applicant to quickly bring both the parcels. It is stated thereafter, the police officials arrested the said person and after interrogation, the said person was found to be Mohd. Khushi; and was arrayed as co-accused in the subject FIR.

2.4. It is stated that upon searching the suitcase carried by Arif, 17.5 Kgs of the contraband *Ganja* was recovered.

2.5. It is stated that upon searching the Applicant/Varis, two (2) slips were recovered from him. It is stated that on one slip 'LR No. 54199013', Kakinanda to Hyderabad' was mentioned and on another slip 'PW Bill LT No. 4270519' was mentioned.

2.6. It is stated that PW Bill LT No. 4270519 was issued by Railways and related to two (2) parcels which were kept on the platform. It is stated that when these two parcels were opened and checked, 7 pairs of sound boxes (speakers) were found inside the cardboard sheets, out of which 1/1 packets wrapped in khaki tape were recovered inside 5 pairs. It is stated that upon further checking, 16 Kgs of *Ganja* was recovered from these sound boxes.

2.7. It is stated that while these proceedings were being conducted, Applicant/Varis and co-accused Mohd. Khushi received many phone calls. It is stated that upon asking, Varis told that one of the calls was from a person named Javed who along with Irfan and Akil was coming to Delhi in Andaman Express carrying *Ganja*.



2.8. It is stated the upon recovery of the contraband *Ganja* from the accused persons, and the fact that Mohd. Khushi had connived with them, the subject FIR under Sections 20/25/29 of NDPS Act was registered at P.S. Crime Branch, Delhi against Varis, Arif and Mohd. Khushi.

2.9. It is stated that subsequently, on 26.02.2024 9:38 PM, the officials of P.S. Crime Branch, Delhi received an information that the other three accused persons namely, Javed, Irfan and Akil about whom Applicant/Varis and co-accused Mohd. Khushi had informed the police, have been found in Agra.

2.10. It is stated that thereafter, Javed, Irfan and Akil as well were interrogated and arrested from Agra.

2.11. It is stated that thereafter, Javed, Irfan and Akil were served upon with the notice under Section 50 of the NDPS Act and the content of the said notice were read out and explained to them. It is stated that since Javed, Irfan and Akil waived of their right to be searched in front of any nearest Gazetted Officer or the Magistrate, a cursory search was conducted on them; however, no contraband was recovered from the body of the said three persons.

2.12. It is stated that on basis of the disclosures made by Javed, Irfan and Akil, 54 Kgs of *Ganja* was recovered from room No. 104 of Hotel Taj Prince, Agra, where the said persons were staying before they got arrested.

2.13. It is stated that during investigation at Kakinanda, Andhra Pradesh, it was found that the booking slip bearing 'LR No. 54199013' recovered from Applicant/Varis belonged to Andhra Pradesh State Road Transport Corporation (APSRTC). It is stated that as per the records of APSRTC, the said booking slip was a delivery receipt destination copy, which means that the parcel was received by Varis and the said parcel was booked by Irfan.



2.14. It is stated that during the investigation, the train tickets were found on which the accused persons were travelling in the trains. It is stated that relevant information obtained from Indian Railway Catering and Tourism Corporation (IRCTC) is as under: -

- (i) Accused persons – Javed, Irfan and Akil were travelling from Tenali, Andhra Pradesh to Delhi in Andaman Express on the ticket bearing PNR No. 4816739550.
- (ii) Accused persons – Varis and Arif were travelling from Secunderabad, Hyderabad to Delhi in Duranto Express on the ticket bearing PNR No. 4816750252.

2.15. It is stated that during the investigation it was further revealed that the aforesaid tickets were booked at the behest of co-accused Irfan and the money for the same was paid by co-accused Javed.

2.16. It is stated that the booking and travel by all the accused on the aforesaid train tickets obtained by co-accused Javed and Irfan shows that they were all acting in conspiracy and therefore the recovery of contraband from all of them is joint.

2.17. It is stated the aforesaid facts and circumstances proves the planning and execution of the conspiracy by all the accused persons of committing the alleged crime under the NDPS Act.

2.18. It is stated that the charge-sheet in the subject FIR has already been filed on 06.08.2024. It is stated that the matter before the Trial Court is at the stage of arguments on charge and the next date of hearing is 18.03.2025. It is stated that there are 31 witnesses in the present matter.

Arguments on behalf of the Applicant

3. Learned counsel for the Applicant states that the Applicant has not committed any offence and has been falsely implicated in the present matter.



3.1. He states that no role has been assigned to the Applicant and no offence under Sections 20/25/29 NDPS Act has been made out against the Applicant.

3.2. He states that in the present case, there was clear violation of provisions of Section 50 of the NDPS Act, as mere enquiry by the Police Officer as to whether the suspect would like to be searched in the presence of a Magistrate or a Gazetted Officer cannot be held to be due compliance of Section 50 of the NDPS Act. He states that the Applicant's search was not conducted in the presence of the Gazetted Officer or Magistrate. He states that it is the prosecution's case that the prosecution was notified about the details of the Applicant's arrival at the station by the secret informer on 26.02.2024 around 9:40 AM, and the Applicant was arrested on the same day at 11:40 AM. He states that therefore, the Respondent had sufficient time to arrange for public witnesses and further to comply with the procedure laid down under Section 50 of the NDPS Act. He states that there was no recovery of the contraband from the body of the Applicant.

3.3. He states that the material against the Applicant/Varis i.e., CDR and certain financial transactions between the Applicant and co-accused Irfan cannot be a ground to keep the Applicant behind the bars. He states that the CDR analysis and details of financial transactions being relied upon by the prosecution does not establish that the Applicant was involved in procurement or supply of the contraband. He states that the calls and the financial transactions between the co-accused and the Applicant were in relation to the business transactions.

3.4. He states that the Applicant has a business of trading old/new clothes and the said calls as well as the financial transactions with co-accused Irfan were made in the due course of business.



3.5. He states that no public witnesses have been examined by the prosecution and this certainly raises doubt on the credibility of the seizure of the contraband.

3.6. He states that the discrepancy in the weight of the parcels also raises doubts in the manner the investigation has been carried out. He states that the weight of the parcel as shown on the parcel booking slip PW Bill LT No. 4270519 is 92.5 kgs, however, the weight of the alleged contraband seized by the police from the two parcels is 16 kgs. He states this discrepancy of 92.05 kgs vis-à-vis 16 kgs has not been explained and casts a doubt on the recovery.

3.7. He states that the rigors of Section 37 of NDPS Act are not attracted to the present case, as the alleged recovery of the contraband *Ganja* from the Applicant is only 16 Kgs, which is an intermediate quantity. He states that alleged recovery of 17.5 kgs contraband *Ganja* from co-accused Arif cannot be added to the alleged quantity recovered from the Applicant. In this regard he relies upon the judgment dated 25.04.2024 passed by the Co-ordinate Bench of this Court in BAIL APPLN. 3214/2023 titled **Vinod Yadav v. The State**.

3.8. He states that the Applicant belongs to a respectable family, having deep roots in the society and therefore, there is no chance of the Applicant's absconding or fleeing from trial.

3.9. He states that the Applicant has clean antecedents, and has never been convicted in any case of any kind prior to registration of the subject FIR or thereafter.

3.10. He states that as per the Nominal Roll the Applicant has been in judicial custody since 26.02.2024. He states that the investigation in the present matter has been completed and the charge-sheet has also been filed



on 06.08.2024. He states that the matter before the Trial Court is at the stage of arguments on charge. He states that therefore, the continued detention of the Applicant who is aged about 50 years, will serve no purpose other than to cause hardships to the Applicant.

Arguments on behalf of the Respondent/State

4. In reply, Mr. Laksh Khanna, learned APP states that since the quantity recovered in the present matter is 87.7 Kgs of *Ganja*, which is more than the commercial quantity of 20 Kgs, the bar under Section 37 of the NDPS Act would be attracted and the Applicant should not be released on bail.

4.1. He states that the contention raised by the learned counsel for the Applicant that in the present matter, that there was non-compliance of Section 50 of NDPS Act, as the Applicant's search was not conducted in the presence of a Gazetted Officer or a Magistrate is incorrect. He states that the notice under Section 50 of NDPS Act was duly served upon the Applicant, however, the Applicant waived off his right to be searched in presence of the Gazetted Officer. He states that therefore, there cannot be any issue and/or dispute in regard to compliance of Section 50 of NDPS Act.

4.2. He states that the contention raised by the Applicant that with respect to discrepancy in weight of the contraband is without any merits. He states that weight of the parcel as shown on booking receipt PW Bill LT No. 4270519 as 92.5 Kgs is the weight of the two (2) parcels which were being carried by the Applicant. He states that the contraband weighing 16 kgs which was seized by the police officials was concealed in 7 pairs of speakers out of which 5 pairs contained in them. He states that the total weight of the two parcels including the speakers and the contraband would have been 92.5 kgs when the parcel was booked. However, the weight of the contraband seized by the police from the two parcels is 16 kgs. He states that therefore,



the difference in weight of the parcel and the weight of the contraband seized is clearly discernible.

4.3. He states that the contention raised by the Applicant that no independent witness has been examined in the present matter and thereby casting doubt qua the credibility of the seizure of the contraband is factually incorrect. He states that there are two independent witnesses to the seizure carried out at Nizamuddin Railway Station. He states these are both officials of Railway Protection Force (RPF) and they were not a part of the raiding party.

4.4. He states that the raiding party has taken photographs of the parcels at the platform with GPS logs which duly substantiate the search and seizure.

4.5. He states it has been further contended by the Applicant that all members of the raiding party were not made witness in the present case. He states that even if during the course of incident or thereafter, public persons gathered, it is not necessary that all of them are eye witnesses and need to be examined. He states that it is trite law that it is the quality of the witnesses and the quantity of witnesses that has to be appreciated at trial. In this regard, he relies upon the judgment dated 24.01.2023 passed by the Division Bench of this Court in CRL. A. 998/2017 titled **Ahmed Sayeed v. State**.

4.6. He states that the connection of the Applicant with the co-accused persons is established from the calls and financial transaction exchanged between the Applicant and the other co-accused persons.

4.7. He states that during course of investigation, CDRs of all the accused persons were analysed and it was found that 31 calls were exchanged between the Applicant and co-accused Irfan from 01.01.2024 till 28.02.2024. He states that there are several financial transactions between the Applicant and other co-accused persons being Arif, Javed, Irfan and



Akil.

4.8. He states therefore, in view of the aforesaid facts, circumstances and gravity of the offence, the present bail application of the Applicant be dismissed by this Court.

Finding and Analysis

5. This Court has considered the submissions of the parties and perused the records.

6. It is the case of the prosecution, that two accused persons—the Applicant/Varis and co-accused Arif were found travelling together in Duranto Express and were apprehended together on 26.02.2024 from Nizamuddin Railway Station, Delhi. It is stated that at the instance of the Applicant 16 kgs of *Ganja* was recovered from the concealed speakers in the two parcels from the parcel van of the said train. In addition, 17.5 kgs of *Ganja* was recovered from the suitcase of co-accused Arif. Further, 54 kgs of *Ganja* was recovered from the cupboards of room no. 104 of Hotel Taj Prince, Agra, where the co-accused Javed, Irfan and Akil were staying before they got arrested.

7. While the quantity individually recovered from the Applicant/Varis and co-accused Arif would be intermediate, the prosecution on basis of detailed analysis of CDRs and financial transactions between all the accused persons, asserts that the accused persons were acting in conspiracy with each other. And, therefore the quantity recovered have been clubbed together making it a commercial quantity. The prosecution has placed on record the web of financial transactions and CDRs between all the accused which show that they all are closely connected with each other; and other than the contraband there is no other relationship between the parties to substantiate their inter-se financial dealings.



8. At this juncture it would be apposite to refer to the judgment in **Awadhesh Yadav v. State Govt. of NCT of Delhi**¹, wherein a Coordinate Bench of this Court while deciding on the issue of clubbing together of the quantities of contraband recovered individually, at the stage of bail, noted as under: -

“49. From the provisions of law and the essence of case-laws, as discussed above, following principles can be culled out governing clubbing of the quantity of contraband recovered from two or more co-accused, at the stage of bail:

- i. invocation of offence of abetment and/or conspiracy under Section 29 of the Act is must for clubbing of quantity. However, there cannot be a straight jacket formula for clubbing the quantity of contraband recovered from all the accused, merely on the basis of invocation of offence under Section 29 of the Act. It will depend on the factual backdrop of each case and the incriminating material available against the accused persons.
- ii. the incriminating material relied upon to invoke the offence of abetment and/or conspiracy under Section 29 of the Act, has to be cogent and convincing against each one of the accused charged with the offence of abetment and/or conspiracy.
- iii. in a case where joint recovery of contraband has been effected from two or more co-accused, the recovered contraband cannot be equally divided amongst the number of accused to determine whether the quantity of contraband recovered in “commercial quantity” or not.
- iv. where accused persons are travelling together in the same private vehicle individually carrying contraband, it will not be proper to consider the alleged recovery to be an individual recovery and the contraband recovered from all persons can be clubbed.
- v. if an accused is a habitual offender, it gives rise to an inference that he knows the tricks of the trade. In such a situation, previous involvement of the accused in the case(s)

¹ 2023:DHC:8529



under the NDPS Act, is an additional factor which could be considered, besides other incriminating circumstances, for adding the quantities of contraband recovered from two or more co-accused.”

(Emphasis Supplied)

9. The prosecution has placed on record in the status, crucial facts which clearly establishes a connection between the Applicant/Varis with co-accused persons Arif, Mohd. Khushi, Irfan, Akil and Javed. There are financial transactions and CDRs between all the accused persons. The plea of the Applicant that they are cloth merchants and the transactions between them are pertaining to the trade of cloth is a bald plea unsubstantiated from the record.

10. Both the Applicant/Varis and co-accused Arif were travelling on the same train using a train ticket bearing the common PNR number. Similarly, the co-accused Javed, Irfan and Akil were travelling together on a train ticket with a common PNR number. Both the tickets were purchased by co-accused Javed and were booked by co-accused Irfan. Thus, the link between the travel of the 5 co-accused is discernible.

11. Keeping in view the aforesaid facts and circumstances, this Court is of the opinion that the material placed on record by the prosecution, indicates that all the accused persons—the Applicant/Varis, Arif, Mohd. Khushi, Javed, Irfan and Akil were conspiring to commit the alleged offence under the NDPS Act.

12. In this case, the recovery of *Ganja* at Nizamuddin Railway Station is 33.5 kgs and the recovery at Agra is 54 kgs. These quantities are admittedly commercial under the NDPS Act.

13. Since, the accusation in the present case is regarding the recovery of commercial quantity of contraband *Ganja* therefore, the rigors of Section 37 of the NDPS Act are attracted. It is settled law that in NDPS matters, where



there is a recovery of commercial quantity, 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. The said twin conditions are (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.

14. The seizure and recovery of the contraband from the Applicant/Varis is duly supported by photographs bearing GPS logs and the independent witnesses i.e., officials of RPF at the Nizamuddin Railway Station. The recovery of the contraband from the two parcels identified on the basis of the booking slips recovered from the pocket of the Applicant/Varis has not been reasonably explained away by the learned counsel for the Applicant.

15. The plea of the Applicant regarding discrepancy in the weight of the seized contraband compared to the weight recorded on the parcel/parcel slip has been reasonably rebutted by the prosecution. The learned APP has clarified that the total weight of the parcel includes the weight of the speakers in which the contraband *Ganja* was concealed. The said explanation of the prosecution is cogent and negates the Applicant's contention regarding discrepancy in the weight of the contraband seized.

16. The Applicant's submission as regards non-compliance of Section 50 of NDPS Act is also not discernible from the record. The prosecution has contended that notice under Section 50 was duly served on the Applicant, who waived of his right to be searched in the presence of the Gazetted Officer/Magistrate. In these disputed facts, any finding on the issue of non-compliance of the procedure laid down under Section 50 of NDPS at the stage of bail will be premature as, the same is matter of trial [Re. **Praveen**



Khatri v. State (NCT of Delhi)²].

17. In these facts, this Court is of the considered opinion that the Applicant has not been able to satisfy this that the Applicant is not guilty of the alleged offence. Thus, no reasonable ground is made out for seeking regular bail in the present matter.

18. Accordingly, this Application is dismissed.

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

20. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 13, 2025/mt/MG

Click here to check corrigendum, if any

² 2023:DHC:7042