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

+ **BAIL APPLN. 4120/2024 & CRL.M.A. 5524/2025**

BIMLA DEVI

.....Petitioner

Through: Mr. Amit Saxena, Mr. Sachin Hitkari,
Mr. Naveen Kumar Parashar, Ms.
Saguna Gupta, Ms. Pinki Aggarwal,
Mr. Mohsin Alam, Mr. Kaavish
Alam, Mr. Shakti Saini, Mr. Abhishek
Sharma and Mr. Tarun Saini,
Advocates

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the State

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

20.03.2025

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1. By way of the present the application, the applicant is seeking grant of regular bail in FIR No. 244/2024, registered at the Police Station, Shalimar Bagh, New Delhi for offences punishable under Sections 25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter '*NDPS Act*').
2. Briefly stated, facts of the present case are that on 08.05.2024, at about 07:10 pm, an information was received vide DD No. 90A at Police Station Shalimar Bagh, that while patrolling near the railway track Fatak No. 7, Shalimar Bagh, Delhi, a person named Roshan, who was carrying a white polythene, had been apprehended. The said polythene contained a substance



that appeared to be *Ganja*, as indicated by the presence of leaves and seeds. The weight of the substance was approximately 700 grams. During interrogation, co-accused Roshan disclosed that he and his aunt, i.e present applicant Bimla Devi @ *Mousi*, were involved in the sale of *Ganja*. He also disclosed that a larger quantity of *Ganja* could be recovered from the present applicant's *jhuggi*. Thereafter, a raiding team was formed and a raid was conducted at the applicant's *jhuggi*, where 37 kgs and 130 grams of *Ganja* was recovered. Consequently, co-accused Roshan was arrested in relation to the present case. The present applicant/accused had remained absconded for about 38 days and was taken into police custody on 15.06.2024, wherein she disclosed that she had obtained *Ganja* from a person namely Deva.

3. The learned counsel for the present applicant argues that the applicant has been falsely implicated in the present case, and that neither was she arrested at the spot of recovery, nor was the contraband found in her conscious/immediate possession. It is contended that the seals on the exhibits were not clearly visible, and there was a notable difference in the weight of the contraband allegedly seized from the applicant's *Jhuggi* between the time of recovery and the time of sampling of contraband. The learned counsel for the applicant further argues that the chargesheet clearly states that there were small dried leaves with leaves and stems attached to the substance inside, however, the legal definition of '*Ganja*' does not encompass seeds, stems, or leaves. In this regard, the learned counsel has placed reliance on the definition of '*Ganja*' in Section 2(iii) (b) of NDPS Act. Furthermore, there was a delay of 51 days in the sampling of the contraband, despite the fact that the building of the Forensic Science Laboratory (FSL) is in close proximity to the Rohini Court, which indicates



that the contraband may have been tampered with. Therefore, it is prayed that the applicant be granted regular bail.

4. The learned APP for the state, on the other hand, opposes the bail application and argues that the *jhuggi* from where the contraband in question was recovered belongs to the present applicant/accused. It is stated that due to the substantial weight of the seized contraband, it was placed in a large jute sack, which led to the seals becoming loose when the sack was lifted. He further argues that the dryness of the contraband is because of lapse of time between the recovery, and the filing of the chargesheet, and the subsequent drying process. The learned APP for the State also submits that the variation in weight of the contraband is due to the change in climatic conditions and loss of moisture and dryness of *Ganja*. It is also contended that bar under Section 37 of NDPS Act is also attracted in this case. It is thus prayed that the present bail application be dismissed.

5. This Court has heard arguments advanced on behalf of both the parties, and has perused the case file.

6. In the present case, a raid was conducted at the *jhuggi* of the present applicant, pursuant to receipt of information by way of a disclosure statement of co-accused, who had disclosed that he and his aunt i.e. applicant herein were involved in sale of *Ganja*.

7. Concededly, the quantity of narcotic substance recovered in this case from the house of present applicant is commercial quantity i.e. more than 37 bags of *Ganja*. Therefore, the twin conditions under Section 37 of the NDPS Act will have to be satisfied by the applicant so as to be entitled to grant of bail. Section 37 of the NDPS Act is set out below:



"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -

a) every offence punishable under this Act shall be cognizable;

b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

8. The Hon'ble Supreme Court in ***Narcotics Control Bureau v. Mohit Aggarwal***: 2022 SCC Online SC 891, while explaining the meaning of 'reasonable grounds' under Section 37(1)(b) of NDPS Act, has held as under:

"14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail."

9. In the case of ***Union of India v. Prateek Shukla***: (2021) 5 SCC 430 as well as ***State v. Lokesh Chadha***: (2021) 5 SCC 724, it was held by the Hon'ble Supreme Court that the provisions of Section 37 of NDPS Act have to be applied strictly at the time of deciding bail application of an accused.

10. It is also material to note that the present applicant had been



previously convicted in case bearing FIR No. 200/2014, P.S. Shalimar Bagh, Delhi, for offence under Section 20 of NDPS Act.

11. The learned counsel for the applicant had argued that there was a delay in sending samples of seized contraband for sampling before the concerned Court and later to FSL and thus, there was no compliance of Section 52A of the NDPS Act. In this regard, it shall be apposite to note that the Hon'ble Supreme Court in *Narcotics Control Bureau v. Kashif*: 2024 SCC OnLine SC 3848 has held that any procedural irregularity or illegality found to have been committed in conducting the search or seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during investigation, inadmissible, and any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The relevant extract of the decision is as under:

“39. The upshot of the above discussion may be summarized as under:

- (i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.
- (ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.
- (v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.
- (vi) Any lapse or delay in compliance of Section 52A by itself



would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

12. Insofar as the argument of the learned counsel for the applicant regarding reduction/variation in weight of seized contraband is concerned, the learned APP for the State had drawn the attention of this Court to the fact that minor reduction or variation in weight of seized contraband would have been caused due to change in climatic conditions and drying of contraband due to loss of moisture. It is relevant to note that contraband was seized in the month of May and further proceedings related to sampling was carried out in the month of June and thus, due to high temperatures, the contraband would have dried up, resulting in minor reduction of weight. Thus, this argument can be of no help to the applicant at this stage.

13. As regards the argument that the seized substance would not fall in the definition of ‘ganja’, since only leaves and stems were recovered in this case, this Court notes that the FSL report has clearly opined that the substance seized from the *jhuggi* of the present applicant was *Ganja*. Needless to state, the applicant shall be at liberty to raise this argument before the learned Trial Court at appropriate stage of trial or at the stage of charge.

14. Thus, considering the severity of the allegations, the quantity of contraband involved, the statutory embargo under Section 37 of the NDPS Act, and the fact that charges are yet to be framed against the applicant herein, this Court finds no ground to grant bail to the applicant at this stage.

15. Accordingly, the present bail application alongwith pending



application is dismissed.

16. The order be uploaded on the website forthwith.

MARCH 20, 2025/ns

DR. SWARANA KANTA SHARMA, J

Click here to check corrigendum, if any