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

+ **BAIL APPLN. 4134/2024 & CRL.M.A. 34070/2024**

SOCHIMA

.....Petitioner

Through: Ms. Sushma Sharma, Mr. Girish Kumar Sharma, Mr. Dhruv Kumar Sharma, Ms. Aayushi Gaur, Ms. Stuti Aggarwal & Mr. R. Sahil, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Rahul Tyagi, ASC (Crl.) for Mr. Anand V. Khatri, ASC(Crl), Ms. Priya Rai, Mr. Sangeet Sibou, Mr. Amit Rohilla & Mr. Aniket Kumar Singh, Advs. for State.
SI Satnarayan, PS ANS/SED.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

17.01.2025

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1. The present application under Section 483 read with Section 528 of the Bharatiya Nagarika Nayaya Sanhita, 2023, (for short, 'BNSS') has been filed seeking regular bail in case FIR No. 72/2024, under Section 21 of the Narcotic Drug and Psychotropic Substances Act, 1985, (for short, 'NDPS') and Section 14 of the Foreigners Act, 1946, registered at PS Amar Colony.
2. The case of the prosecution against the present applicant is that on 05.03.2024, HC Dharmender and HC Karamvir had gone to Garhi, Amratpuri area to obtain information regarding the drug paddlers from their informer.



There, they noticed that an African person, later on identified as present applicant, was riding on a scooty bearing No. DL 5S-BB-3704 and on seeing them, he tried to flee away, after which the scooty slipped and he fell down. Both the police officers tried to control him, after which, he took out a white polythene from the left pocket of his jacket, which he tore and threw away on the road and on the basis of suspicion that the same might be a narcotics substance, they informed the IC/ANS.

3. On the basis of this information a raiding team of ANS/SED was constituted and called to the spot, i.e., Jaggi Wali Gali, Amratpuri Garhi Amar Colony, New Delhi. HC Dharmender and HC Karamvir produced the present applicant to them. Thereafter, notice under Section 50 of the NDPS Act was served to the present applicant, and further, search of the applicant was conducted, upon which, two white coloured polythene packets consisting of powder substance was recovered from the left pocket of the grey coloured jacket which he was wearing. Further, upon checking the white coloured substance with the help of the field testing kit it was found to be '*heroin*'. Upon checking the weight of the recovered substance with the help of an electronic weighing machine it was found to be 52 grams and 50 grams respectively. Further, the recovered substance was seized and the same were marked as Mark 'A' and 'B'. The white powder thrown by the applicant was collected from the road in a glass tube and the same was found to be 4 gms and was seized and marked as 'C'. Subsequently, the applicant was taken on police remand and during his search at his residence 25 gms of *heroin* was recovered which was marked as 'E'. An electronic weighing machine was also recovered from his residence. Thereafter, the seized narcotics drugs were produced before the Court for sampling under Section 52A of the NDPS Act.



Four samples marked as S1, S2, S3 and S4 were drawn from the aforesaid seized narcotic drugs and marked as Exhibits A, B, C and E. Investigation in the present case was conducted and chargesheet was filed on 06.03.2024 for the offences punishable under Section 21 of the NDPS and Section 14 of the Foreigners Act. Subsequently, as per the FSL report only sample Exhibit- 'S4' which was drawn from packet E (weighing 25 gms) was found to be positive for *heroin*. Thus, the present applicant is facing trial for possession of 25 gms of *heroin*.

4. Learned counsel for the applicant submits that the contraband seized in the present case falls in the intermediate quantity, and thus, the rigors of Section 37 of the NDPS Act are not applicable in the present case.

5. *Per contra*, learned APP for the State submits that the applicant is foreign citizen and he was residing in India without a valid visa and was indulged in illegal trade of narcotic substances. He further submits that it would be difficult to secure the presence of the applicant during the course of the trial, in case he is released on bail.

6. Heard learned counsel for the parties and perused the record.

7. It is a matter of record that the contraband seized in the present case is of intermediate quantity. Rigors of the Section 37 of the NDPS are not attracted in the present case. Chargesheet has been filed before the Court of competent jurisdiction for the offence punishable under Section 21 of the NDPS Act. The guilt of the applicant would be considered at the stage of the trial after the recording of the evidence before the learned Trial Court. No useful purpose would be served, at this stage, in keeping the applicant under incarceration as the completion of trial is likely to take time.

8. Nominal roll dated 10.01.2025, shows that the applicant, as on



08.01.2025, has undergone incarceration for a period of 10 months and 3 days and his conduct during the said custody period was satisfactory.

9. In the totality of the facts and circumstances of the present case, the present application is allowed and the applicant is directed to be released on bail on his furnishing personal bond in the sum of Rs. 50,000/- alongwith one surety of the like amount to the satisfaction of the learned Trial Court/Link Court further subject to the following conditions: -

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
 - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
 - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
 - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
 - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
10. The present application is allowed and disposed of accordingly.
11. Pending applications, if any, also stand disposed of accordingly.
12. Needless to state that, nothing stated hereinabove, is an opinion on the merits of the case and any observations made herein are only for the purpose of the present bail application.
13. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.



14. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

JANUARY 17, 2025

Click here to check corrigendum, if any