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

+ **BAIL APPLN. 4166/2024**

AMIR

.....Petitioner

Through: Mohd. Zahid and Mr. Mukul Kumar,
Advs.

versus

STATE GNCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP for the State
with SI Ramkishan, ANTF Crime
Branch.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
30.04.2025

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1. This is an application under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 ['BNSS'] read with Section 538 of BNSS filed on behalf of the applicant seeking regular bail in case arising out of FIR No. 231/2023, under Sections 21/29 NDPS Act, registered at PS Crime Branch.
2. The main argument of learned counsel for the applicant is that there is no public witness of the recovery. No effort was made to join any public witnesses in the recovery. All the recovery witnesses cited by the police are only police officials who are only interested in the success of their case. He



further submits that during investigation, the Investigating Officer did not seize CCTV Footage of the area. It is also submitted that co-accused Azam has since been granted bail. The investigation is complete and charge sheet has already been filed. The applicant has been in custody for a period of 01 year and 07 months and trial is not likely to conclude soon.

3. The application has been opposed by learned APP for the State arguing that the applicant was served notice under Section 50 of the NDPS Act offering him to get his search conducted before the Gazetted Officer but he refused. He submits that as per Section 50(5) of NDPS Act, only in such eventuality when it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate, that Section 100 of Cr.P.C. will come into play. He further submits that the absence of any public witnesses at the time of search does not vitiate the proceedings. With regard to the CCTV Footage, it is submitted that applicant himself also did not move any application for preservation of the CCTV Footage. It is further submitted that long detention in custody is not a ground for grant of bail. According to learned APP, the allegations of recovery of 260 gms of heroin from the possession of the present applicant is a commercial quantity, and therefore, the bar of Section 37 of NDPS Act shall come into play, and therefore, he is not entitled for grant of bail.

4. I have considered the rival submissions.

5. As per the prosecution version, based on secret information, a raid was conducted and two persons whose names were later revealed as Amir (applicant) and Mohd. Azam were apprehended and on their search 260 grams of heroin was recovered from the possession of the present applicant while 40 grams of heroin was recovered from the co-accused Azam.



6. The perusal of the FIR reveals that 4-5 passerby were apprised of the secret information and were requested to join the raiding party but that they left expressing their inability. It is settled law that absence of independent witness does not vitiate the recovery and there is no presumption that police officials being the public officials would depose falsely before the Court. There is nothing on record at this stage to show that there was any CCTV Camera installed near the place of incident, and therefore, the argument that CCTV Footage was not seized is of no consequence at this stage.

7. Admittedly, co-accused Azam has been granted bail, but his role is different, inasmuch as, the recovery from his possession was only 40 grams of heroin and therefore the applicant cannot claim parity in the matter of grant of bail with the co-accused.

8. The recovery from the present applicant is of 260 grams of heroin which is a commercial quantity, and therefore the rigors of Section 37 NDPS Act shall apply.

9. In my view, the narrow parameter of bail available under Section 37 NDPS Act has not been satisfied in the facts of the present case. The applicant has not been able to overcome the twin hurdle of Section 37. The length of the period of his custody or filing of the charge sheet and commencement of the trial by itself is not a consideration that can be treated as a persuasive ground for granting relief to the petitioner under Section 37 of the NDPS Act.

10. The allegations, no doubt, are grave and serious in nature. Hence, keeping in view the entire facts and circumstances and the nature and gravity of allegations and in view of bar under Section 37 NDPS Act, I am not inclined to grant bail to the applicant. The application is therefore



dismissed.

11. However, it is made clear that observations made in this order are only for the purpose of disposal of the bail application and shall not come in the way while deciding the case on merits.

RAVINDER DUDEJA, J

APRIL 30, 2025
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