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

+ **BAIL APPLN. 4480/2024**

AKRAM @ RAJU

.....Petitioner

Through: Mohd. Shamikh and Mr. Absar
Ahmad, Advs.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP for the State

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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22.01.2025

1. The present application has been filed seeking regular bail in FIR No. 222/2021 dated 16.11.2021 registered at P.S. Crime Branch, Delhi under Sections 20/25 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). The charge-sheet stands filed and the trial has commenced, wherein three (3) witnesses have been examined and eighteen (18) witnesses remained to be examined.

2. The Applicant has been in custody since 08.09.2022.

3. The case of the prosecution is that on 15.11.2021, Crime Branch, Delhi received a call from one Zakir Hussain ('truck driver') who informed that he was the driver of a TATA truck bearing vehicle registration number UP-25-DT-2874 and is accompanied by helper Shahnwaz Khan ('helper') and a person named Shahzeb, who has hired the truck from Bareilly to Odisha. The truck driver further informed that Shahzeb had loaded gunny bags



containing goods in the truck, which goods seemed like *Ganja* and that they would be reaching Majnu ka Tila between 12:30 AM to 01:30 A.M. and would be climbing down Wazirabaad Bridge towards Burari, Delhi, where the goods would be unloaded and further stated that some persons, who had gone to Balangir, Odisha along with this TATA truck by car bearing number DL-9C-AS/AC-1936 to bring the goods back to Delhi, are also accompanying this TATA truck in their car.

3.1. It is stated that based on the aforesaid information, Crime Branch, Delhi conducted a raid near Wazirabad Bridge, Delhi and the aforesaid TATA truck was intercepted by the raiding team. Upon enquiry, the identity of the driver was revealed as Zakir and the other person was Shahnawaz. The third person was Shahzeb Chaudhary. During the search of the truck, total 300kg, *Ganja* was recovered, which was packed in 12 white plastic bags hidden underneath plastic crates.

3.2. Shahzeb Chaudhary was taken into custody and during investigation, he disclosed that one Sushil alias Sonu, one Akram alias Raju i.e., the Applicant herein and one Mahesh had gone to Odisha on directions of one Abrar alias Bale; and got *Ganja* loaded in the truck.

3.3. It is stated that raids were conducted at the residential address of the Applicant as well as Mahesh and Abrar, but they were not present.

3.4. It is stated that Notice under Section 67 of the NDPS Act was pasted outside the Applicant's house asking him to join the investigation; however, since the Applicant did not join the investigation, therefore, Non-Bailable Warrants (NBW) were issued against the Applicant. It is stated that the Applicant failed to join investigation and, therefore, proceedings under



Section 82 of the Code of Criminal Procedure, 1973 were initiated against the Applicant.

3.5. Later the Applicant was arrested on 08.09.2022 in the present case, as he was in judicial custody in another FIR No. 280/2022 registered at P.S. Special Cell for offences under Sections 186/353 of the Indian Penal Code, 1860 ('IPC') and Sections 25/27 of the Arms Act, 1959 ('Arms Act').

3.6. It is stated that charge-sheet against co-accused Sushil and Shahzeb Chaudhary has already been filed in the Trial Court. It is stated that supplementary charge-sheet in respect of the Applicant/Akram as well as co-accused Mahesh was filed on 28.01.2023.

3.7. It is stated that charges have been framed against all accused on 22.12.2023 and three (3) out of twenty-one (21) prosecution witness have been examined.

4. Learned Counsel for the Applicant/Akram states that there is no direct evidence against the Applicant in the present case. He states that admittedly, as per the prosecution's case the Applicant was neither present in the truck nor was he present at the spot, where the main accused Shahzeb Choudhary was arrested by the police on 15.11.2021 along with 300 kgs of *Ganja*.

4.1. He states that apart from the disclosure statement made by Shahzeb Choudhary, there is no evidence on record which could connect the present Applicant with the commission of the present offence.

4.2. He states that as per the prosecution, the Applicant was in contact with other co-accused through Applicant's mobile number 7064009512; however, there are no evidence on record which could prove that the said mobile number belongs to the Applicant.



4.3. He states that similarly placed co-accused Mahesh has already been granted bail by a Co-ordinate Bench of this Court vide judgement dated 08.10.2024 passed in Bail Appl. No. 1221/2024 titled as **Mahesh v. The State (NCT of Delhi)**. He states that so also, co-accused Sushil, who is similarly placed has been granted bail by a Co-ordinate Bench of this Court vide order dated 03.12.2024 passed in Bail Appl. No. 3989/2024 titled as **Sushil v. The State (NCT of Delhi)**. Therefore, the Applicant herein is also entitled for grant of bail on the ground of parity.

4.4. He states that there are no public witnesses to be examined and, therefore, there is no possibility that the Applicant may influence the witnesses if the Applicant is released on bail by this Court.

4.5. He states that the Applicant has already spent about 2 years and 3 months in judicial custody as on 06.01.2025 and Trial of the present case will take a long time and, therefore, no purpose shall be served by keeping the Applicant behind bars. He states that the jail conduct of the Applicant has been satisfactory and the said fact is evident from the Nominal Roll of the Applicant filed by the State.

5. Learned APP for the State opposes the regular bail application of the Applicant/accused. He states that the Applicant herein has been accused of indulging in the offence of contraband supply. He states that the CDR location of the mobile phone no. 7064009512 of the Applicant/accused and disclosure statements of the other accused persons show that the Applicant was involved in the commission of the crime.

5.1. He states that the location of the mobile phone of the Applicant shows that he was present with the co-accused on 07.11.2021 for loading empty crates in the truck.



5.2. He states that quantity of contraband *Ganja* recovered in the present case is commercial in nature as per NDPS Act.

5.3. He states that the Applicant/accused is a habitual criminal and he has previously found involved in four (4) cases of murder, dacoity, Arms Act and NDPS Act.

5.4. He states that if bail is granted to the Applicant, the Applicant may involve in the crime of similar nature.

6. In response, learned counsel for the Applicant states that in FIR No. 160/2011 filed under Sections 302/396/397/412/34 IPC and Sections 25/27 Arms Act, Applicant has been acquitted on 19.09.2023 and the State has not filed any appeal against the acquittal.

7. This Court has considered the submission of the parties.

8. The case of the prosecution against the Applicant is substantially similar to the case against co-accused Mahesh and co-accused Sushil, who have already been enlarged on regular bail. There is admittedly no recovery of contraband *Ganja* effected from the Applicant and the Applicant has been apprehended only on the disclosure statement of the co-accused Shahzeb Chaudhary.

9. The prosecution has relied upon CDR of the mobile number i.e. 7064009512 alleged to have been used by the Applicant and the co-accused Abrar to contend that the accused were present together on 07.11.2021 when empty crates were loaded in the truck. The prosecution has relied upon the CDR of the mobile numbers of the Applicant to allege that the Applicant had gone to Odisha between 09.11.2021 to 13.11.2021. The Applicant has denied that the mobile number 7064009512 belongs to him or is used by him. The Status Report fails to set out the evidence available with the prosecution to



prove that the mobile number 7064009512 belongs to the Applicant or was being used by the Applicant during the relevant period.

10. The supplementary charge-sheet records that the said mobile number indeed stands in the name of a third person and not the Applicant herein. The said third person has denied obtaining the said mobile number and the prosecution would have to lead unimpeachable evidence to show that the said mobile number was being used by the Applicant to prove his presence and participation at the place of loading of the crates and in Odisha.

11. Thus, the evidence available with the prosecution against the Applicant is only the CDR analysis with respect to a mobile number which is admittedly not issued in the name of the Applicant and until the usage of the said mobile number is proven by the prosecution, the Applicant's participation in the offence does not stand proven beyond reasonable doubt.

12. In light of the above facts, since the investigation is complete and trial in the matter is likely to take some time, as 18 witnesses are left to be examined, it would not be prudent to keep the Applicant/accused-Akram alias Raju behind bars for an indefinite period. The remaining 18 witnesses are all official witnesses and therefore there is no threat of tampering. Accordingly, this Court finds it to be a fit case for grant of bail to the Applicant.

13. Thus, considering the overall facts, this Court is of the opinion that the Applicant/co-accused-Akram alias Raju ought to be enlarged on bail. The Applicant is, therefore, admitted to regular bail in FIR No. 222/2021 dated 16.11.2021 registered at P.S. Crime Branch, Delhi under Sections 20/25 of NDPS Act and is directed to be released on furnishing a personal bond in the sum of Rs. 1,00,000/- with one (1) surety of the like amount



subject to the satisfaction of the learned Trial Court and subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Trial Court.
- (ii) Applicant shall provide his permanent address at Delhi and Bijnaur, U.P. to the Trial Court, which will be verified by the concerned IO. Additionally, the Applicant shall intimate the said Court and to the IO by way of an affidavit regarding any change in residential address.
- (iii) Applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
- (iv) Applicant shall join investigation as and when called by the IO concerned.
- (v) Applicant shall provide all mobile numbers to the IO concerned, which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- (vi) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses.
- (vii) The Applicant will not tamper with the evidence of the case.
- (viii) The Applicant will physically mark his presence before the concerned I.O. at P.S. Crime Branch, Delhi once in two (2) weeks. The Applicant will mark presence on the 01st and 03rd Tuesday of every month at 02:00 PM; and the concerned I.O is directed to release



him by 02:30 PM after recording his presence and completion of all formalities.

14. The Applicant is stated to be a permanent resident of Delhi and his in-laws are resident of Village Khuri, P.S. Seohara, Distt. Bijnaur, U.P.-246746.

15. In the event of there being any FIR/DD-entry/Complaint lodged against the Applicant during the period of bail, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

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

17. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

18. Accordingly, this bail application is disposed of. Pending applications (if any) are disposed of, as infructuous.

19. 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 the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

JANUARY 22, 2025/mt/MG

Click here to check corrigendum, if any