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

\+ BAIL APPLN. 4589/2024

PRADEEP @ CHINTU .....Petitioner

Through: Ms.Nandita Rao, Sr. Adv. Mr.Hirein Sharma, Adv Vimal Tyagi, Adv. Balaji Pathak, Adv. Saurabh Goel, Adv. Paras Sharma, Adv.

versus

THE STATE GOVT. OF NCT OF DELHI .....Respondent

Through: Mr. Manoj Pant, APP for the State

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% 03.02.2025

1. By way of the present bail application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter '*BNSS*'] read with Section 439 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], the applicant/accused seeks regular bail in case FIR No. 267/2023, registered at Police Station Crime Branch, Delhi for offences punishable under Sections 21/25/29 of the The Narcotic Drugs and Psychotropic Substances Act, 1985 [hereafter '*NDPS Act*'] and Section 174A of Indian Penal Code, 1860 [hereafter '*IPC*'].

2. The present case arises from an operation conducted by the Crime Branch, Delhi, on 04.11.2023, aimed at preventing narcotic drug trafficking. A police team led by ASI Jitender Singh, under directions

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from Inspector Lichhman and ACP Arvind Kumar, was deployed for surveillance near TR Sawhney, Maruti Showroom, North-East Delhi, following information received from a secret informer regarding a drug deal involving one Sanjay, resident of Nand Nagri, Delhi, and his associates Pradeep @ Chintu and Paras. The informer stated that the accused would supply heroin near Pratibha School wall, D-block, Nand Nagri, between 01:00 PM to 02:00 PM that day. The information was recorded under Section 42 of the NDPS Act *vide* GD No. 102A dated 04.11.2023. A trap was laid, and at 01:40 PM, co-accused Sanjay was apprehended along with his Scooty, based on the secret informer's signal. He was served with a notice under Section 50 of NDPS Act, and his legal rights were explained, but he refused to be searched before a Magistrate or Gazetted Officer. A cursory search yielded no recovery from his person, and a nil recovery memo was prepared. However, upon searching his Scooty's storage compartment, one black polythene containing two transparent polythene packets with pink powder was recovered. The powder tested positive for heroin on a field testing kit. The packets were marked "A" (200 grams) and "B" (300 grams), totaling 500 grams of heroin. The contraband was sealed, and a seizure memo was prepared. The case was registered at PS Crime Branch, and compliance with Sections 42, 50, 52, 55, and 57 of the NDPS Act was ensured.

3. During interrogation, co-accused Sanjay disclosed that he had procured: 100 grams of heroin from the applicant Pradeep @ Chintu, 100 grams from Paras, and 300 grams from Chandani, all residents of Nand Nagri, Delhi. He further revealed that he had supplied heroin to

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one Sunita @ Sonu and he offered to lead the police to their residences. On 09.11.2023, a raid was conducted at the applicant's residence in Nand Nagri, Delhi, which was identified by accused Sanjay. The raid, conducted in the presence of the applicant's mother, resulted in the recovery of an electronic weighing machine with heroin paste on its weighing plate. The paste tested positive for heroin using a field testing kit. The machine was sealed (Parcel Mark 'D') and deposited in PS Malkhana, after compliance with Section 55 of NDPS Act. A site plan and house identification memo were prepared, and photographs of the recovery were taken. Additionally, the applicant's OPPO mobile phone (OPPO) was produced by his mother and seized for FSL examination. Subsequently, proceedings under Section 52A of NDPS Act were conducted before the concerned Court, and the electronic weighing machine was sent to FSL Rohini, where it tested positive for heroin. The heroin paste was weighed at 0.05 grams. During investigation, electricity records from BSES Yamuna Power Ltd. confirmed that the premises were registered in the name of the applicant's wife, Mrs. Jyoti. Despite being served with three notices under Section 67 of NDPS Act, the applicant failed to join the investigation. Consequently, the petitioner was declared a Proclaimed Offender (PO) by the learned Trial Court on 18.04.2024, following issuance of NBWs and proceedings under Section 82 Cr.P.C. The applicant was ultimately arrested on 25.05.2024 by the Special Cell, Delhi. During further interrogation, he had disclosed the names of his associates Aakash @ Vicky and Vikas, both residents of Nand Nagri, Delhi. A follow-up raid on 22.12.2024

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led to the recovery of 50 grams of heroin from co-accused Aakash @ Vicky.

4. The applicant herein was charge-sheeted under Sections 21/25/29 of NDPS Act and Section 174A of IPC. By way of order on charge dated 07.12.2024, charges under Sections 21(a) and 29 read with 21(c) of NDPS Act, and Section 174A of IPC, were framed against the applicant/accused.

5. The learned senior counsel for the applicant/accused submits that the applicant has been in judicial custody since May, 2024, and the investigation in the case has already been completed; therefore, no useful purpose would be served by keeping him behind bars any further. It is contended that the applicant's name surfaced solely in the disclosure statement of co-accused Sanjay, from whom a commercial quantity of heroin was recovered. It is argued that a disclosure statement alone, without any corroborative evidence, is insufficient to establish the applicant’s involvement in the offence. The learned senior counsel further submits that, as per the FSL report, the weight of the heroin paste found on the weighing machine recovered from the applicant’s residence was only 0.050 grams, which constitutes a small quantity. Therefore, the embargo under Section 37 of the NDPS Act is not attracted, as the case against the applicant pertains only to a small quantity of contraband. The learned senior counsel also argues that the charge of conspiracy under Section 29 of the NDPS Act has been framed solely on the basis that a weighing machine was recovered from the applicant’s residence. However, the recoveries from the applicant

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and co-accused Sanjay were made on different dates and from different locations, with no evidence suggesting any connection or conspiracy between them. The prosecution has failed to produce any material, such as Call Detail Records (CDR), WhatsApp chats, or monetary transactions, to establish a conspiracy between the applicant and the co-accused and thus, the ingredients of Section 29 of the NDPS Act are not made out against the applicant. It is stated that since the investigation is complete and the case is now at the stage of prosecution evidence, continued custody of the applicant serves no purpose. Therefore, it is prayed that the applicant be released on bail.

6. On the other hand, the learned APP for the State opposes the present bail application, and submits that a commercial quantity of heroin (500 grams) was recovered from co-accused Sanjay, and the applicant's name had surfaced during his interrogation, linking him to the drug supply network. The learned APP argues that during a raid at the applicant's house, an electronic weighing scale with heroin residue was recovered, which directly connects the applicant with the alleged offence, justifying the invocation of Section 29 of NDPS Act. It is contended that the applicant had absconded during the investigation and was subsequently declared a Proclaimed Offender, which also reflects his attempt to evade the legal process. It is also stated that applicant has a previous involvement in a similar offence i.e. FIR No. 400/2022, under Sections 21/29 of NDPS Act, registered at P.S. Nand Nagri, Delhi. Therefore, it is argued that taking into account the embargo under Section 37 of the NDPS Act, the present bail application be dismissed.

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7. This Court has heard the learned counsel appearing for both the parties and has perused the material placed on record.

8. Having heard arguments and examined the records, this Court is of the opinion that the applicant herein was implicated in this case on the basis of a disclosure statement made by co-accused Sanjay. The allegations against the present accused/applicant are confined to the recovery of a weighing scale from his residence, which was allegedly used by him for the purpose of weighing the narcotic and psychotropic substances, since some heroin paste was found as residue on the weighing scale. As per FSL report, the weight of said heroin paste is 0.05 grams i.e. small quantity. Though it is contended by the State that commercial quantity was recovered from co-accused Sanjay and that the charges stand framed against the present accused, it is apposite to note that concededly, the prosecuting agency is not in possession of any other corroborative evidence, such as CDR, WhatsApp chats, bank transactions, etc. to connect the present applicant with the co-accused Sanjay or any other co-accused.

9. Insofar as the twin conditions under Section 37 of the NDPS Act are concerned, this Court is satisfied that there are reasonable grounds to believe that the applicant is not guilty of committing the alleged offence, after taking a broad and *prima facie* view of the case, and particularly the fact that the recovery made from the applicant's house was of a small quantity as well as the absence of any other corroborative evidence connecting the applicant with the co-accused persons.

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10. Even otherwise, since charges in this case have been framed by the learned Trial Court, the role of the present accused/applicant and his culpability can only be decided after a full-fledged trial. Thus, considering the aforesaid facts and circumstances, the evidence available with the prosecuting agency against him, and the fact that the applicant has been in judicial custody since May, 2024, this Court is inclined to release the applicant on regular bail, on his furnishing a personal bond in the sum of Rs. 30,000/- with one surety of the like amount, subject to the satisfaction of the learned Trial Court / Duty MM / Link MM, on the following conditions:

11. The applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

(i) The applicant shall surrender his passport before the learned Trial Court and under no circumstance, leave the country without the permission of the concerned Court;

(ii) The applicant shall appear before the learned Trial Court as and when directed;

(iii) The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SHO;

(iv) The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

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12. The bail application is disposed of in the aforementioned terms.

13. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

14. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 03, 2025/A

Click here to check corrigendum, if any

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