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

+ **BAIL APPLN. 4602/2024**

SAKIR KHAN

.....Petitioner

Through: Mr. Alamine, Adv.

versus

THE STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Aashneet Singh, APP with SI
Rahul, PS Crime Branch

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
24.01.2025

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1. This is a petition seeking regular bail in the FIR No. 92/2024 dated 01.05.2024 registered at PS Crime Branch under section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 ("**NDPS Act**") PS Crime Branch, New Delhi. After completion of investigation, chargesheet was filed under section 21/25/29 of NDPS Act.
2. As per the prosecution, based on the secret information, Rizwan was apprehended with 280 grams of heroin from his possession and hence the FIR was lodged. During interrogation, Rizwan in his disclosure statement disclosed the name of Munish and Salim. On the next day with the help of Rizwan, co-accused Salim was apprehended with 21 grams of heroin from his possession.



3. During further investigation, Munish was also apprehended with 44 grams of heroin, 1 kg of white powder. He disclosed the name of the petitioner and thereafter the petitioner was also arrested 15.05.2024 from his residence and 50 grams of heroin was recovered from his bike.
4. After completion of investigation, chargesheet was filed against all the aforementioned persons under section 21, 25 and 29 of NDPS Act.
5. Mr. Alamine, learned counsel appears for the petitioner and states that in the present case, the petitioner has been arrested only on disclosure statement of the co-accused Munish which is not admissible in the eyes of law.
6. He further states that the recovered quantity is an intermediate quantity and hence, the rigors of section 37 will not apply. Further the petitioner is in custody since 15.05.2024 and the trial is yet to start and will take considerable time to conclude.
7. Mr Singh, learned APP vehemently opposes the petition and states that the offences are serious in nature. All the accused persons in the present FIR are running a syndicate and are in the process of selling the drugs.
8. I have heard learned counsel for the parties and perused the material available on record.
9. In the present case, admittedly, the name of the petitioner has been disclosed by a co-accused namely Munish in his disclosure statement recorded under section 67 of NDPS Act. The same is not admissible in the eyes of law without corroborating evidence.
10. It is settled law that statements recorded under section 67 of NDPS Act are not admissible in evidence and conviction cannot be based on the



statements recorded under section 67 of NDPS Act. Reference be made to *Tofan Singh v. State of Punjab, (2021) 4 SCC 1*.

11. It is only the disclosure statement of the co-accused Munish who has named the petitioner as a supplier. However, there is no corroborating evidence showing the relationship between Munish and the petitioner. Further, the main accused i.e. Rizwan from whom a recovery of 280 grams of heroin was made has also not named the petitioner and the same has been done in the second disclosure made by co-accused Munish.
12. Further, the twin conditions of section 37 of NDPS Act will not be attracted against the petitioner as in the present case, the contraband recovered from the petitioner is 50 grams of heroin which is only an intermediate quantity whereas the commercial quantity is 250 grams.
13. The petitioner is in jail since 15.05.2024 i.e. more than 8 months in custody. The charge sheet has already been filed and the learned Trial Court has took the cognizance of the same and the matter is listed on 07.05.2025 for framing of charges. On perusing the chargesheet, total 17 witnesses are cited by the prosecution to be examined.
14. Also on perusing the nominal roll of the petitioner, the petitioner has clean antecedent and there are no other criminal cases against the petitioner and his jail conduct has been satisfactory. The petitioner is still an under trial prisoner and has *prima facie*, made out a case for grant of bail.
15. For the foregoing reasons, the petitioner herein is released on bail subject to the following terms and conditions:-
 - a) The petitioner shall furnish a personal bond in the sum of



- Rs 10,000 (Rupees ten thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned trial court;
- b) The petitioner shall not leave the country without the permission of the concerned court and if the petitioner has a passport, he shall surrender the same to the concerned trial court;
 - c) The petitioner shall furnish to the IO concerned the cell phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched on at all times;
 - d) The petitioner will furnish his permanent address to the concerned IO and in case he changes his address, he will inform the IO concerned;
 - e) The petitioner shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;
 - f) The petitioner shall appear in Court on every date of hearing unless exempted;
 - g) The petitioner shall not communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.
- 16.** A copy of this order be communicated to the concerned jail authorities for necessary compliance.
- 17.** All the observations made herein above are only for the purpose of deciding the present petition and will have no effect on the merits of



the case pending.

18. The status report handed over in Court today is taken on record.
19. The petition along with pending applications, if any, are disposed of.

JASMEET SINGH, J

JANUARY 24, 2025 / (MS)

[Click here to check corrigendum, if any](#)