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

+ **BAIL APPLN. 4620/2024**

RASHID KHAN

.....Petitioner

Through: **Mr. U.A. Khan and Mr. Tushar
Upadhyaya, Advocates**

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: **Mr. Aman Usman, APP for the State
with SI Monu Chauhan, PS Crime
Branch**

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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04.03.2025

1. The present petition has been filed seeking regular bail in connection with FIR No. 60/2024 under Sections 21/25/29 of NDPS Act, registered at Police Station Crime Branch, Delhi.
2. The case of the prosecution is that on 13.03.2024, a secret informer came at the office of Crime Branch and provided the information that two persons, namely Zaki Ahmad and Hasib who used to supply drugs would come at 2.30 a.m. near SVN Public School, Welcome, Kabir Nagar, Delhi to supply drugs to an unknown person. On the basis of secret information, co-accused Zaki Ahmad and Hasib were apprehended and heroine weighing 310 grms and 200 grams, respectively was recovered from their possession.
3. As per the prosecution, the present petitioner was named by the co-accused Zaki Ahmad and co-accused Hasib in their disclosure statements.
4. Learned counsel appearing for the petitioner submits that petitioner was neither named in the secret information nor any recovery, whatsoever, has been made from the petitioner. The name of the petitioner has only



surfaced on the basis of the disclosure statements of co-accused Zaki Ahmad and co-accused Hasib, which are not admissible in view of the law laid down by the Hon'ble Supreme Court in ***Tofan Singh v. State of Tamil Nadu: (2021) 4 SCC 1.***

5. He further invites the attention of the Court to the chargesheet to contend that after their arrest, when co-accused Zaki Ahmad and Hasib were being taken by the police to the office of Crime Branch at Police Station Krishna Nagar, Delhi, on the way, the present petitioner was found, who was then apprehended.

6. He submits that in the disclosure statements of co-accused Zaki Ahmad and Hasib, which were recorded after the registration of aforesaid FIR, it is stated by the said co-accused that they were to hand over the sale proceeds of the contraband to the present petitioner at Welcome Cremation Ground where he would be waiting for them.

7. He submits that since the petitioner had already been arrested prior to the recording of the disclosure statements, therefore, there was no occasion for them to state that the petitioner would be waiting for them. According to him, this itself falsify the time and place of petitioner's arrest.

8. He further contends that in so far as the banking transactions being relied upon by the prosecution are concerned, the same are not between present petitioner and co-accused Zaki Ahmad and Hasib from whom the contraband was allegedly recovered.

9. He submits that the CDRs indicating the connectivity between the present petitioner and co-accused Zaki Ahmad and Hasib which are being relied upon by the prosecution would not be sufficient to hold the petitioner guilty of the alleged offence, when no recovery has been made from the



petitioner.

10. He further submits that petitioner is in custody since 14.03.2024 and it is not the case of the prosecution that the petitioner has any other involvement. He, therefore, urges that the petitioner may be granted bail.

11. *Per contra*, learned APP for the State has argued on the lines of the status report. He submits that the CDRs showing the connectivity between the present petitioner and other co-accused from whom the contraband was recovered is of the same day on which the said co-accused was arrested along with contraband. In support of his contention, learned APP has invited attention of the Court to the status report wherein all the call details have been enumerated. He submits that there is a banking transaction between the petitioner and mother of one CCL through whom the petitioner had procured the contraband from Shahbaz @ Nanhe.

12. Elaborating on his submission, he submits that an amount of Rs.50,000/- was deposited by the petitioner in the bank account of the mother of CCL who in turn deposited the same in the account of the brother of Shahbaz @ Nanhe. Thereafter, the brother of Shahbaz had transferred the said amount to Shahbaz. He, therefore, vehemently opposes the ground of bail to the petitioner.

13. I have heard the learned counsel for the petitioner, as well as, learned APP for the State and have perused the record.

14. It is the case of the prosecution itself that in the secret information, only the names of two co-accused namely, Zaki Ahmad and Hasib were provided by the secret informer and the petitioner was not named or suspected in such secret information.

15. The recovery of commercial quantity of heroin was also made from



co-accused Zaki Ahmad and Hasib.

16. Concededly, no recovery of contraband has been made from the present petitioner. The name of the present petitioner has surfaced only in the disclosure statements of co-accused Zaki Ahmad and Hasib recorded under Section 67 of NDPS Act. The Hon'ble Supreme Court in **Tofan Singh (Supra)** has held that such statements are not admissible in law.

17. Apart from disclosure statements of co-accused Zaki Ahmad and Hasib, other incriminating material against the present petitioner is the CDRs connectivity and a banking transaction between the petitioner and the mother of one CCL whereby an amount of Rs.50,000/- was transferred by the petitioner.

18. The CDRs connectivity can only be used as a supporting or corroborative piece of evidence and cannot form the sole basis of conviction.¹ Reference in this regard may be had to a decision of a co-ordinate bench of this Court in **Azad v. State of GNCT of Delhi**², wherein it has been held that “*CDR data can only be taken as supporting or corroborative piece of evidence and conviction cannot be made solely on basis of CDR data*”. Likewise, the evidentiary value of the CDRs can be seen only at the time of trial and not at the stage of considering the bail application. Reference may advantageously be had to the decision of the Supreme Court in **State (By NCB) Bengaluru v. Pallulabid Ahmad Arimutta**³, the relevant paragraph of which reads as under:-

“12. ...*The CDR details of some of the accused or the*

¹ Ramesh Kakkar Vs. State of NCT of Delhi; 2024 SCC OnLine Del 2.

² 2023 SCC OnLine Del 1769.

³ 2022 12 SCC 633.



allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage trial.”

19. Therefore, merely because the petitioner was having telephonic conversation with co-accused would not be sufficient to establish petitioner's involvement when there is no recovery made from the petitioner.

20. The bank transaction of transfer of Rs. 50,000/- is not between the petitioner and the co-accused Zaki Ahmad and Hasib, from whom commercial quantity contraband was recovered nor the said transfer of funds have indirectly reached the said co-accused.

21. This Court cannot be unmindful of the fact that twin conditions which need to be satisfied under Section 37 of the NDPS Act for the offence involving commercial quantity are very stringent, therefore, the incriminating material must be cogent and convincing before the petitioner may be called upon to satisfy the said twin conditions.

22. In the facts and circumstances of the present case, this Court is of the opinion that the embargo in Section 37 of the NDPS Act does not come in the way of granting bail to the petitioner.

23. Also, on a query posted by the Court the learned APP, on instructions from the IO fairly states that the petitioner does not have any criminal antecedents. The chargesheet has already been filed and the investigation in relation to the petitioner is stated to be complete.

24. In view of the aforesaid facts and circumstances, this Court is of the view that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail subject to his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the learned Trial Court/JMFC/Duty JM,



further subject to the following conditions:

- (a) Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- (b) Petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number without prior intimation to the Investigating Officer concerned.
- (c) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses or any family members of the witnesses.

25. It is clarified that the observations made herein above are only for the limited purpose of deciding the present bail application and the same shall not be construed as an expression of opinion on merits of the case.

26. The application is disposed of.

27. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance.

28. Order *dasti* under signatures of the Court Master

MARCH 4, 2025
'rs'/N.S. ASWAL

VIKAS MAHAJAN, J