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

+ **BAIL APPLN. 4689/2024**

SANJEEV KUMAR

.....Petitioner

Through: Mr. Chetan Singh and Ms. Sukriti
Jha, Advocates alongwith Parokar

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the State

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

20.03.2025

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1. By way of the present application, applicant is seeking grant of regular bail in FIR No. 29/2024, registered at the Police Station New Delhi Railway Station, New Delhi for offence punishable under Section 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter '*NDPS Act*').

2. Briefly stated, the facts of the present case are that on 16.04.2024, at 07:50 p.m., two Police Officials, namely, Gaurav and Jaibir while patrolling in civil clothes at New Delhi Railway Station, had suspected the applicant herein to be carrying narcotic substance. Later, he was found carrying a trolley bag and thereafter on search, the trolley bag was found to contain 12.250 kg *Ganja* in two polythene bags. Thereafter, the present FIR was registered against the accused/applicant herein. During investigation, the applicant herein disclosed that the aforementioned trolley bag was handed over to him by one Sudhir, the co-accused, at Dimapur Railway Station (Nagaland), which he had to deliver to a person named, Amarjeet at New



Delhi Railway Station. The Forensic Science Laboratory (hereafter 'FSL') report later confirmed that the recovered substance is *Ganja*.

3. The learned counsel appearing on behalf of the applicant submits that the applicant herein has been falsely implicated in the present case and that the accused/applicant is in judicial custody since last eleven months. It is further submitted that the contraband seized is of intermediate quantity. It is further contended that the case property in this case was tampered with and that there has been non-compliance of Section 50 of the NDPS Act, delay in compliance of Section 52A of the NDPS Act as the contraband seized was sent to FSL after more than seventy-two hours, delay in lodging of present FIR, and no independent or public witness(es) had been joined in any of the proceedings. It is further argued that since the co-accused Sudhir has already been released on bail, on ground of parity. Hence, it is prayed that the accused/applicant be released on bail.

4. The learned APP for the State, opposes the present bail application and submits that the roles of the accused/applicant herein and the co-accused Sudhir are different in nature and the charges against the applicant are serious in nature. It is further argued that during the investigation, the CCTV footage of the cameras of Dimapur Railway Station (Nagaland) reveals that the concerned trolley bag containing *Ganja* was provided to the applicant by the co-accused, Sudhir in the train.

5. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

6. In the present case, the applicant herein was apprehended at the spot by the Police Officials while patrolling in civil clothes, and a trolley bag containing 12.250 kg *Ganja* was recovered from him. Concededly, the



quantity of narcotic substance recovered in this case from the trolley bag of the applicant herein is intermediate quantity, i.e. about 12.250 kg of *Ganja*. FSL report has already been received which supports the case of prosecution.

7. As far as the argument of learned counsel for the applicant, that provisions of Section 50 and 52A of the NDPS Act, were not followed or sending of the sample was delayed by the Police Officials and therefore bail should be granted to the applicant is concerned, this Court finds the same unmerited. In this regard, this Court is of the opinion that, the fact that the samples were not sent to FSL immediately after proceedings under Section 52A of the *NDPS Act*, cannot be the sole ground to grant bail to an accused. In this regard, it shall be apposite to note that the Hon'ble Supreme Court in *Narcotics Control Bureau v. Kashif*: 2024 SCC OnLine SC 3848 has held that any procedural irregularity or illegality found to have been committed in conducting the search or seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during investigation, inadmissible, and any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The relevant extract of the decision is as under:

“39. The upshot of the above discussion may be summarized as under:

- (i) The provisions of NDPS Act are required to be interpreted keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.
- (ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act



which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

8. Therefore, at this stage, no case for grant of bail is made out on this ground. Needless to state, the accused will be at liberty to raise all the issues pertaining to notice under Section 50 and 52A of NDPS Act at an appropriate stage before the learned Trial Court.

9. In view thereof, when this Court considers the material placed on record, specifically the fact that the accused/applicant herein was apprehended on spot, and recovery of 12.250 kg of *Ganja*, which is a intermediate quantity, was made from him, and the charges are yet to be framed in the present case, this Court finds no ground to grant regular bail to the applicant, at this stage.

10. The present bail application is accordingly dismissed.

11. Nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.



12. The order be uploaded on the website forthwith.

MARCH 20, 2025/ns

DR. SWARANA KANTA SHARMA, J

Click here to check corrigendum, if any