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

+ BAIL APPLN. 4710/2024
AKIL

.....Petitioner

Through: Mr. Sunnirudh Kumar and Ms. Ruby
Rani, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Laksh Khanna, APP for the State

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+ BAIL APPLN. 90/2025
IRFAN

.....Petitioner

Through: Mr. K.P. Sharma and Mr. Tushar
Talwar, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Laksh Khanna, APP for the State

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **13.02.2025**

1. The present applications under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed seeking regular bail in FIR No. 0044/2024 dated 26.02.2024 registered at Police Station (P.S.) Crime Branch, Delhi for offences under Section 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
2. The co-accused Akil is the Applicant in BAIL APPLN. 4710/2024, whereas, the co-accused Irfan is the Applicant in BAIL APPLN. 90/2025.
3. Since these two bail applications arise out of the same FIR and there



is similitude of facts as well, therefore, both these applications are heard together and decided by this common order.

4. As per the case of the prosecution, on 26.02.2024, an official of P.S. Crime Branch, Delhi received an information from a secret informer that two persons, who are travelling in Duranto Express coming from Andhra Pradesh to Nizamuddin Railway Station, Delhi, are bringing contraband *Ganja* to Delhi. It is stated that on basis of the said information, a raid was conducted at Nizamuddin Railway Station and two persons, namely, Varis and co-accused Arif were apprehended by the police.

4.1. It is stated that co-accused Varis was carrying a bag on his shoulder and co-accused Arif was carrying a suit case with him.

4.2. It is stated that thereafter, the accused persons were served upon with the notice under Section 50 of the NDPS Act and the contents of the said notice were read out and explained to the them. It is stated that since the accused persons waived of their right to be searched in front of any nearest Gazetted Officer or the Magistrate, a cursory search of the accused persons was made.

4.3. It is stated that in the meanwhile, co-accused Varis herein received a call from one person, who informed that the said person is standing under the bridge on Sarai Kale Khan side and asked co-accused Varis to quickly bring both the parcels. It is stated thereafter, the police officials arrested the said person and after interrogation, the said person was found to be Mohd. Khushi; and he was arrayed as co-accused in the subject FIR.

4.4. It is stated that upon searching the suitcase carried by co-accused Arif, 17.5 Kgs of the contraband *Ganja* was recovered.

4.5. It is stated that upon searching the co-accused Varis, two (2) slips



were recovered from him. It is stated that on one slip 'LR No. 54199013', Kakinanda to Hyderabad' was mentioned and on another slip 'PW Bill LT No. 4270519' was mentioned.

4.6. It is stated that PW Bill LT No. 4270519 was issued by Railways and related to two (2) parcels which were kept on the platform. It is stated that when these two parcels were opened and checked, 7 pairs of sound boxes (speakers) were found inside the cardboard sheets, out of which 1/1 packets wrapped in khaki tape were recovered inside 5 pairs. It is stated that upon checking, 16 Kgs of *Ganja* was recovered from these sound boxes. The contraband had been concealed in the speakers.

4.7. It is stated that while these proceedings were being conducted, co-accused Varis and co-accused Mohd. Khushi received many phone calls. It is stated that upon interrogating, co-accused Varis said that one of the call was from a person named Javed who along with Irfan/Applicant and Akil/Applicant was coming to Delhi in Andaman Express carrying *Ganja*.

4.8. It is stated the upon recovery of the contraband *Ganja* from co-accused Varis and co-accused Arif, and the fact that co-accused Mohd. Khushi had connived with them, the subject FIR under Sections 20/25/29 of NDPS Act was registered at P.S. Crime Branch, Delhi against Varis, Arif and Mohd. Khushi.

4.9. It is stated that the prosecution apprehended that suspect Javed, Irfan and Akil may deboard at Agra and therefore, police officials including Head Constable (HC) Mintu were sent off to Agra Railway Station.

4.10. It is stated that subsequently, on the same day 26.02.2024 at 9:38 PM, HC Mintu inform the IO that the other three suspects namely, Javed, Irfan/Applicant and Akil/Applicant about whom co-accused Varis and co-



accused Mohd. Khushi had informed the police, have been found near a hotel in Agra. It is stated that police was able to locate the suspects by tracking their mobile phone location. HC Mintu asked the IO to come to Agra.

4.11. It is stated that police officials reached the Hotel Taj Prince at Agra at about 02:30 AM. It is stated that thereafter, Javed, Irfan/Applicant and Akil/Applicant as well were interrogated and arrested from Agra on the intervening night of 26.02.2024 and 27.02.2024.

4.12. It is stated that thereafter, suspects Javed, Irfan-Applicant and Akil-Applicant were served upon with the notice under Section 50 of the NDPS Act and the contents of the said notice were read out and explained to them. It is stated that since they waived of their right to be searched in front of any nearest Gazetted Officer or the Magistrate, a cursory search was conducted on them; however, no contraband was recovered from their body.

4.13. It is stated that on basis of the disclosures made by suspects Javed, Irfan and Akil, 54 Kgs of *Ganja* was recovered from room no. 104 of Hotel Taj Prince, Agra, where they were staying before they got arrested.

4.14. It is stated that during the investigation, the train tickets on which the accused persons were travelling in the trains were found and seized. It is stated that relevant information obtained from Indian Railway Catering and Tourism Corporation (IRCTC) is as under: -

- (i) Accused persons – Javed, Irfan/Applicant and Akil/Applicant were travelling from Tenali, Andhra Pradesh to Delhi in Andaman Express on the ticket bearing PNR No. 4816739550.
- (ii) Accused persons – Varis and Arif were travelling from Secunderabad, Hyderabad to Delhi in Duranto Express on the



ticket bearing PNR No. 4816750252.

4.15. It is stated that during the investigation it was further revealed that both the aforesaid tickets were booked at the behest of Irfan/Applicant and the money for the same was paid by co-accused Javed.

4.16. It is stated that the booking and travel by all the accused on the aforesaid train tickets obtained by co-accused Javed and Irfan/Applicant shows that they were all acting in conspiracy and therefore the recovery of contraband from all of them is joint.

4.17. It is stated the aforesaid facts and circumstances proves the planning and execution of the conspiracy by all the accused persons of committing the alleged crime under the NDPS Act.

4.18. It is stated that the charge-sheet in the subject FIR has already been filed on 06.08.2024. It is stated that the matter before the Trial Court is at the stage of arguments on charge and the next date of hearing is 18.03.2025. It is stated that there are 31 witnesses in the present matter.

Arguments on behalf of the Applicant/Akil

5. Mr. Sunnirudh Kumar, learned counsel for the Applicant/Akil states that the Applicant/Akil has not committed any offence and has been falsely implicated in the present matter.

5.1. He states that there are various contradictions in the testimonies of witnesses that have come on record and states that these contradictions create a major doubt on the case of the Prosecution. He points out that as per the statement of Sh. Pawan Chauhan i.e., owner of the Hotel Taj Prince, Agra recorded under Section 161 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), room no.104 was allotted to all accused, namely, Arif, Irfan, Akil at 5.45 PM on 26.02.2024. However, HC Mintu in his statement



recorded under section 161 Cr.P.C has stated that all the three accused person (Javed, Akil, Irfan) were standing with suitcases in front of Hotel Taj Prince, Agra at 09:38 PM.

5.2. He states that despite prior information with the police, search was not conducted in the presence of the Gazetted Officer or Magistrate as per the requirement given under Section 50 of the NDPS Act. He states that Section 50 of the NDPS Act is a mandatory provision and non-compliance thereof renders the recovery suspicious and effectively vitiates the trial and therefore, the Applicant/Akil is entitled to be released on bail.

5.3. He further states that the Applicant/Akil and all co-accused persons are salesmen (clothes hawkers) and all the financial transaction shown in the charge-sheet filed in the subject FIR are not in any way related to the alleged offence in the present matter. He states that the transaction does not indicate purchase or sale of any contraband.

5.4. He states that there is discrepancy in weight of the contraband since as per the consignment track details filed in the charge-sheet it shows that the 3 units having total weight of 130 kgs were booked, however, as per the raid conducted at Agra only 54 kg of the contraband *Ganja* has been recovered from the Applicant/Akil and other accused persons, who are apprehended at Agra. He states that therefore, there are various lapses and infirmities in the investigation conducted in the present matter.

5.5. He states that no public witnesses have been examined by the prosecution and this certainly raises doubt on the credibility of the seizure of the contraband.

5.6. He states that the Applicant/Akil has clean antecedents, and has never been convicted in any case of any kind prior to registration of the subject



FIR or thereafter.

5.7. He states that as per the Nominal Roll the Applicant has been in judicial custody since 27.02.2024. He states that investigation has already been completed, charge-sheet has been filed and since the trial is likely to take a considerable amount of time; therefore, no useful purpose would be served for keeping the Applicant in judicial custody.

5.8. He further states that the Applicant/Akil undertakes to make himself available as and when directed by this Court or as required by the police officials.

6. Mr. K.P. Sharma, learned Counsel for the Applicant/Irfan in BAIL APPLN. 90/2025 states that his submissions are similar to the submission made by Mr. Sunnirudh Kumar in BAIL APPLN. 4710/2024.

Arguments on behalf of the Respondent/State

7. In reply, Mr. Laksh Khanna, learned APP states that since the total quantity recovered in the present matter is 87.5 Kgs of *Ganja*, which is more than the commercial quantity of 20 Kgs and hence the bar under Section 37 of the NDPS Act would be attracted and the Applicants should not be released on bail.

7.1. He states that the contention raised by the learned counsel for the Applicants that in the present matter, there was non-compliance of Section 50 of NDPS Act, as the Applicant's search was not conducted in the presence of a Gazetted Officer or a Magistrate is incorrect. He states that the notice under Section 50 of NDPS Act was duly served upon the Applicants, however, the Applicants waived off their right to be searched in presence of the Gazetted Officer. He states that therefore, there cannot be any issue and/or dispute in regard to compliance of Section 50 of NDPS Act.



7.2. He states the that the contention raised by the Applicant that with respect to discrepancy in weight of the contraband is without any merits. He states that the total weight of the parcel includes the weight of the contraband *Ganja* as well as the material in which the contraband *Ganja* was concealed. He states that therefore, the difference in weight of the parcel and the weight of the contraband seized is clearly discernible. He states that the contraband was recovered from the cupboard in the room. He states that the contraband was kept in 27 packets and the total weight of the 27 packets were 54 kgs. He states that weight of each packet was approximately 2 kgs.

7.3. He states that the contention raised by the Applicants that no independent witness has been examined in the present matter and thereby casting doubt qua the credibility of the seizure of the contraband is factually incorrect. He states that there is an independent witness to the seizure carried out at Hotel Taj Prince, Agra. He states that the said witness is the proprietor of Hotel Taj Prince, Agra.

7.4. He states that the raiding party has taken photographs of the seizure at the Hotel room. He states that the photographs have GPS logs which duly substantiate the search and seizure.

7.5. He states that the connection of the Applicants with the co-accused persons is established from the calls and financial transaction exchanged between the Applicants and the other co-accused persons.

7.6. He states that during course of investigation, CDRs of all the five (5) accused persons were analysed and it was found that 22 calls were exchanged between the Applicant/Akil and Applicant/Irfan. And, further 31 calls were exchanged between Applicant-Irfan and co-accused Varis from 01.01.2024 till 28.02.2024. He states that there are several financial



transactions between the Applicants herein and other co-accused persons Arif, Javed and Varis.

7.7. He states therefore, in view of the aforesaid facts, circumstances and gravity of the offence, the present bail application of the Applicant be dismissed by this Court.

Finding and Analysis

8. This Court has considered the submissions of the parties and perused the records.

9. It is the case of the prosecution, that 33.5 kgs of contraband *Ganja* was recovered from co-accused Arif and co-accused Varis at Nizamuddin Railway Station on 26.02.2024. It is stated that co-accused Varis disclosed that his other three (3) companions namely, Javed, Applicant/Irfan and Applicant/Akil were also coming to Delhi and travelling in Andaman Express carrying *Ganja* with them. Since accused persons Varis, Mohd. Khushi and Arif were caught, the police officials had an apprehension that suspects Javed, Irfan and Akil might disembark at Agra Railway Station. Therefore, as per plan, a police team was sent to Agra Railway Station. During search at Agra, it is stated that suspects Javed, Applicant/Akil and Applicant/Irfan were to be found near a hotel in Agra. Thereafter, the said three persons were apprehended and arrested from room no. 104 of Hotel Taj Prince, Agra. It is stated that, 54 kgs of *Ganja* was recovered from the cupboards in room no. 104 of Hotel Taj Prince, Agra.

10. The prosecution has asserted that recovery of *Ganja* from Nizamuddin Railway Station and Hotel Taj Prince, Agra in the present case is a joint recovery. On basis of detailed analysis of CDRs and financial transactions between all the accused persons, the prosecution alleges that the



accused persons were acting in conspiracy with each other to bring *Ganja* to Delhi on 26.02.2024. And, therefore the quantity recovered have to be clubbed together making it a commercial quantity. The prosecution has placed on record the web of financial transactions and CDRs between all the accused which show that they all are connected with each other.

11. The Applicants have not denied their connection with the co-accused Varis and Arif, apprehended at Nizamuddin Railway Station, Delhi. The train tickets on which the two accused apprehended at Delhi and three accused apprehended at Agra were booked together by the same individual and the parcel collected by co-accused Varis at Nizamuddin Railway Station, Delhi and LR slip was in the name of the Applicant/Irfan, though he was arrested at Agra.

12. At this juncture it would be apposite to refer to the judgment in **Awadhesh Yadav v. State Govt. of NCT of Delhi**¹, wherein a Coordinate Bench of this Court while deciding on the issue of clubbing of the quantities of contraband recovered from individual accused at the stage of bail, noted as under: -

“49. From the provisions of law and the essence of case-laws, as discussed above, following principles can be culled out governing clubbing of the quantity of contraband recovered from two or more co-accused, at the stage of bail:

- i. invocation of offence of abetment and/or conspiracy under Section 29 of the Act is must for clubbing of quantity. However, there cannot be a straight jacket formula for clubbing the quantity of contraband recovered from all the accused, merely on the basis of invocation of offence under Section 29 of the Act. It will depend on the factual backdrop of each case and the incriminating material

¹ 2023:DHC:8529



- available against the accused persons.
- ii. the incriminating material relied upon to invoke the offence of abetment and/or conspiracy under Section 29 of the Act, has to be cogent and convincing against each one of the accused charged with the offence of abetment and/or conspiracy.
 - iii. in a case where joint recovery of contraband has been effected from two or more co-accused, the recovered contraband cannot be equally divided amongst the number of accused to determine whether the quantity of contraband recovered in “commercial quantity” or not.
 - iv. where accused persons are travelling together in the same private vehicle individually carrying contraband, it will not be proper to consider the alleged recovery to be an individual recovery and the contraband recovered from all persons can be clubbed.
 - v. if an accused is a habitual offender, it gives rise to an inference that he knows the tricks of the trade. In such a situation, previous involvement of the accused in the case(s) under the NDPS Act, is an additional factor which could be considered, besides other incriminating circumstances, for adding the quantities of contraband recovered from two or more co-accused.”

(Emphasis Supplied)

13. The prosecution has placed on record in the status report crucial facts which clearly establish a connection between the Applicant/Akil and Applicant/Irfan with co-accused persons Varis, Arif, Mohd. Khushi and Javed. There are financial transactions and CDRs establishing connection between accused persons. The plea of the Applicants that they are salesmen (clothes hawkers) and the transactions between them are pertaining to the trade of cloth is a bald plea unsubstantiated from the record.

14. Furthermore, the Applicant/Akil and Applicant/Irfan, as well as Javed were travelling on the same train on a train ticket having same PNR number.



Similarly, the co-accused Varis and Arif were travelling together on a train ticket with a common PNR number. Both the tickets have been purchased by co-accused Javed and was booked by Applicant-Irfan. Thus, the link between the travel of the 5 co-accused is discernible.

15. Keeping in view the aforesaid facts and circumstances, this Court is of the opinion that the material placed on record by the prosecution, prima facie indicates that all the accused persons—Applicant/Akil, Applicant/Irfan, Varis, Arif, Mohd. Khushi, and Javed were conspiring to commit the alleged offence under the NDPS Act.

16. In this case, the recovery of *Ganja* at Hotel Taj Prince, Agra is 54 kgs and the recovery at Nizamuddin Railway Station is 33.5 kgs. These quantities are admittedly commercial under the NDPS Act.

17. Since, the accusation in the present case is regarding the recovery of commercial quantity of contraband *Ganja* therefore, the rigors of Section 37 of the NDPS Act are attracted. It is settled law that in NDPS matters, where there is a recovery of commercial quantity, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of NDPS Act are satisfied in addition to the usual requirements for the grant of bail. The said twin conditions are (i) the Court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (ii) that the person is not likely to commit any offence while on bail.

18. The seizure and recovery of the contraband from the Applicant/Akil, Applicant/Irfan and co-accused Javed is documented by photographs bearing GPS logs and the independent witness i.e., proprietor of Hotel Taj Prince, Agra. The Applicants have been prima facie unable to make any dent in the submissions of the prosecution with respect to recovery effected from



room no. 104.

19. The plea of the Applicants regarding discrepancy in the weight of the contraband seized from the room no. 104 vis-à-vis the weight mentioned in the parcel slip is not persuasive as at Agra, the prosecution has alleged that it found 27 packets weighing 2 kgs each kept in the cupboard of the room. The Applicants have been unable to explain the connection between parcel slip LR No 54199013 and recovery of the 27 packets containing contraband from Agra.

20. The Applicants' submission as regards non-compliance of Section 50 of NDPS Act is also not discernible from the record. The prosecution has contended that notice under Section 50 was duly served on the Applicants, who waived of his right to be searched in the presence of the Gazetted Officer/Magistrate. In these disputed facts, any finding on the issue of non-compliance of the procedure laid down under Section 50 of the NDPS Act at the stage of bail will be premature as, the same is matter of trial [Re. **Praveen Khatri v. State (NCT of Delhi)**²].

21. In these facts, this Court is of the considered opinion that the Applicants have not been able to satisfy that the Applicants are not guilty of the alleged offence. Thus, no reasonable ground is made out for seeking regular bail in the present matter.

22. Accordingly, these bail applications are dismissed.

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

24. The digitally signed copy of this order, duly uploaded on the official

² 2023:DHC:7042



website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 13, 2025/mt/MG

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