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

+ **BAIL APPLN. 4776/2024**

NIRPAL

.....Petitioner

Through: Ms. Sakshi Sachdeva, Mr. Gajraj
Singh and Ms. Ritika Rajput,
Advocates.
Petitioner in-person.

versus

THE STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Sita Ram, P.S.: Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

15.01.2025

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By way of the present petition filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks regular bail in case FIR No. 0174/2022 dated 17.08.2022 registered under sections 15/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S.: Crime Branch, Delhi.

2. Notice on this petition was issued on 09.01.2025; pursuant to which Status Report dated 10.01.2025 has been filed on behalf of the State.
3. Nominal Roll dated 14.01.2025 has also been received from the concerned Jail Superintendent.
4. Though there was no order for his production, the court is informed that on some mistaken impression, the petitioner has been produced from judicial custody from District Jail Chittorgarh, Rajasthan.



5. The court has heard Ms. Sakshi Sachdeva, learned counsel appearing on behalf of the petitioner; as well as Mr. Utkarsh, learned APP appearing on behalf of the State at length.
6. Ms. Sachdeva argues, that the petitioner's name has been included in the subject FIR based solely on the disclosure statement of one Sanjay, from whom the prosecution is alleged to have recovered 197 kgs. of poppy straw found in a godown. It is argued, that admittedly no recovery has been made from the petitioner.
7. Learned counsel argues, that the prosecution is citing telephonic connectivity between the petitioner and the above-named Sanjay, without any cellphone having been recovered from the petitioner; and though the prosecution claims that the petitioner was using 03 cellphone numbers, only 01 of the cellphone numbers has been investigated and the other 02 cellphone numbers have not even been inquired into.
8. Ms. Sachdeva submits, that even in relation to the 01 cellphone number which has been investigated, the prosecution cites that number as an incriminating circumstance against the petitioner by alleging that the said cellphone number is linked with the petitioner's bank account; without however citing any monetary transaction in that bank account that could be linked to trade in contraband.
9. It is further pointed-out, that no transcript of any conversation of the petitioner with Sanjay or with any of the other co-accused persons has been produced; nor has the cellphone itself been recovered.
10. It is submitted that the prosecution has cited a total of 26 witnesses in the chargesheet and the supplementary chargesheet, of which only 07



prosecution witnesses have so far been examined; and that trial in the matter will take along time to conclude.

11. Learned counsel argues, that in any case, since almost all prosecution witnesses are police officials and other official persons, there is no risk that the petitioner would be able to suborn or influence any of them.
12. Ms. Sachdeva points-out, that though the allegation against the petitioner is that Sanjay and other co-accused persons used to sell contraband, which was supplied to them by the petitioner, there is no proper investigation as to where the petitioner himself acquired the contraband. It is argued, that though the prosecution alleges that the petitioner used to source the contraband from one Jugraj, the said Jugraj has been placed in column No. 12 of the supplementary chargesheet and has not been sent-up for trial.
13. In this backdrop Ms. Sachdeva argues, that the petitioner has been in judicial custody from the time of his arrest *i.e.* 16.09.2023 for about 16 months as an undertrial; and though he has been implicated in 02 other cases under the NDPS Act, one in Rajasthan and the other in Punjab, the petitioner has already been admitted to regular bail in one of those matters.
14. In this regard, learned counsel has handed-up a copy of order dated 19.12.2024 passed by a Single Bench of the Rajasthan High Court in S.B. Criminal Miscellaneous Bail Application No. 6106/2024, whereby the petitioner has been granted regular bail in case FIR No. 157/2021 registered under sections 8/15/29 of the NDPS Act at P.S.: Chittorgarh, Rajasthan.



15. Upon being queried as to the recent view taken by the Supreme Court in *Narcotics Control Bureau vs. Kashif*,¹ in which the Supreme Court has said that in NDPS matters negation of bail is the rule and grant of bail is an exception, Ms. Sachdeva submits, that at least some foundational evidence or material which would lead to conviction must be cited by the prosecution to support the negation of bail; and if no such foundational evidence is forthcoming, an accused would be entitled to bail.
16. Opposing the grant of bail, Mr. Utkarsh, learned APP appearing on behalf of the State submits, that the petitioner was in telephonic contact with co-accused Sanjay as well as with other co-accused persons, who (latter) have been conducting nefarious activities on the petitioner's instructions and instance.
17. Learned APP submits, that it is for this reason that the learned trial court has framed charge against the petitioner *inter-alia* under section 29 NDPS Act, namely for abetment and criminal conspiracy to commit the offence under the NDPS Act, which charge has not been challenged by the petitioner.
18. In these circumstances, it is argued on behalf of the State, that the petitioner must be held liable for the acts of the other co-accused persons, unless he is able to prove otherwise in the course of trial.
19. Upon an overall conspectus of the facts and circumstances of the case, what prevails with the court at this stage are the following considerations :

¹ 2024 SCC OnLine SC 3848



- 19.1. Admittedly, no recovery of any contraband has been made from the petitioner nor has any other incriminating material been cited against the petitioner;
- 19.2. The petitioner has been implicated in the matter based on the disclosure statement of co-accused Sanjay, who has alleged that he was acting on the instructions of the petitioner. However, other than that disclosure statement, there is no other material that has come forth in the course of investigation to support the allegation that the petitioner was involved in the drug trade;
- 19.3. Though the prosecution has cited a certain cellphone number, which is alleged to be linked to the petitioner's bank account, to allege that the petitioner was in telephonic contact with Sanjay as well as other co-accused persons, there is nothing on record to show the content or the context of the alleged conversations, since neither any transcript nor any text or WhatsApp messages have been collected in the course of investigation;
- 19.4. Upon a perusal of the nominal role, it is seen that the petitioner has spent about 16 months in judicial custody as an undertrial while only 07 of the 26 prosecution witnesses have so far been examined. It is therefore evident that trial in the matter will take a long time to conclude; and
- 19.5. It is also noticed that the nominal roll records the petitioner's jail conduct as being 'satisfactory'; and though it is true that the petitioner has been implicated in 02 other cases under the NDPS Act, in the case registered in Chittorgarh, Rajasthan he has now been enlarged on regular bail by the Rajasthan High



court *vide* order dated 19.12.2024. In any event, mere involvement in other offences cannot be the *sole* ground for denial of bail in the present case, especially since no unimpeachable material has come on record in the investigation in the present case.

20. As a sequitur to the above, the court is persuaded to grant to the petitioner – ***Nirpal s/o Mahinder Singh*** – *regular bail* pending trial subject to the following conditions :

- 20.1. The petitioner shall furnish a personal bond in the sum of Rs. 50,000/- (Rs. Fifty Thousand Only) with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court;
- 20.2. The petitioner shall furnish to the Investigating Officer a cellphone 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;
- 20.3. If the petitioner has a passport, he shall surrender the same to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;
- 20.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial; and



- 20.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Officer in writing.
21. Since the petitioner is facing trial and is therefore appearing before the learned trial court from time-to-time, it is not considered necessary to impose a reporting requirement as a condition of regular bail.
22. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
23. A copy of this order be sent to the concerned Jail Superintendent at Central Jail, Tihar, Delhi *forthwith*.
24. In the meantime, since the petitioner is also in custody in other cases, he is directed to be taken back to custody of the concerned jail authorities at the District Jail Chittorgarh, Rajasthan.
25. The petition stands disposed-of in the above terms.
26. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 15, 2025

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