



\$~8

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

+ **BAIL APPLN. 4788/2024**

JUNAID KHAN

.....Petitioner

Through: Ms. Drishti Juneja, Mr. Rahul
Sharma, Mr. Atul Sharma and Mr.
Saurabh Dwivedi, Advs.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Laksh Khanna, APP
SI Dev Kumar, ANTF, Crime Branch

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

27.01.2025

%

1. The present application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of regular bail to the Applicant in FIR No. 133/2023 registered under Section 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) at Police Station (PS) Crime Branch.

2. The case of the prosecution is that ASI Neeraj Rana along with HC Deepak, HC Pramod and HC Nihal were present at Wazirabad Flyover, Delhi. It is stated that the officials were informed by a secret informer that accused persons namely Toheed and applicant/Junaid both residing at Gali Sitara, Ajmeri Gate, Delhi are involved in supply of Heroin in Delhi and NCR Region, with their associate Ayaaz. Further information was received



that the said persons would be coming at Ring Road ahead of Yamuna Bazar under LIC Hoarding, Delhi between 6:30 to 7:00 PM. The said information was noted by the ASI Neeraj for compliance under Section 42 of the NDPS Act. It is stated that ASI Neeraj got permission from the higher officials to take necessary action and in this regard GD entry No. 0202A dated 07.06.2023, PS Crime Branch was lodged by inspector Jai Bhagwan, ANTF, Crime Branch. It is stated that the police team thereafter went to the designated spot and apprehended both the persons namely Toheed, who was holding black and yellow colour polythene bag in his left hand and Junaid/Applicant, who was standing besides Toheed. It is stated that both the individuals were identified by the secret informer.

3. It is stated that both the persons were apprehended by the leading team led by ASI Neeraj. It is stated that on enquiry the persons who was holding black and yellow colour polythene ('polythene') was identified as Toheed and the second person identity was revealed as Junaid Khan/Applicant. It is stated that the police team requested some public persons to join the raid as well as the proceedings but none of them agreed citing reasons. It is stated that a search of polythene held by Toheed was carried out and on search 340 grams of Heroin was recovered from a zip-lock kept in the said polythene.

4. It is stated that after serving a notice under Section 50 NDPS Act, the police team also searched Junaid/Applicant and nothing incriminating was recovered from him and Nil recovery was prepared in this regard. It is stated thereafter, the captioned FIR No. 133/2023 was registered on 07.06.2023.

5. It is stated that during investigation both the accused revealed that they along with one Ayaas used to procure Heroin from one Sakeb and



supply it to one Guddu. On the said revelation both Ayaas and Sakeb were arrested on 10.08.2023 by the Investigation Officer (IO).

6. It is stated that chargesheet in the present case was filed on 17.11.2023 and the matter is now listed for framing of charge on 19.03.2025.

7. Learned counsel for the Applicant states that no recovery had been made from the Applicant herein and therefore, the rigors of Section 37 of the NDPS Act would not be applicable. He states that as on 21.01.2025 the Applicant has been incarcerated in jail for 1 Year, 07 Months and 6 Days. He states that the Applicant had been earlier enlarged on interim bail from 03.02.2024 to 12.02.2024. He states that the Applicant's conduct as per the latest Nominal Roll is satisfactory and he has not been named/involved in any other case. He states that on these facts the Applicant herein moved two applications for grant of regular bail before the Trial Court which was dismissed on 10.08.2023 and 20.10.2023 respectively. He states that the third bail application was moved but was later withdrawn. He states that lastly, the fourth bail application was moved before the Trial Court which was dismissed vide the impugned order dated 04.12.2024.

8. He states that in the facts of the present case admittedly no recovery has been affected from the Applicant and the sole basis on which the prosecution case is being made against the Applicant herein is the CDRs between the Applicant, co-accused Toheed and co-accused Ayas. He relies upon the judgment of coordinate bench of this Court in **Deepak Nangiya v. GNCTD**¹ to contend that CDRs can only be looked into at the stage of Trial and cannot be a ground to deny bail to the Applicant. He states that the Applicant undertakes to appear before the Court or the Police Station as



directed by this Court. He states that since there is no public witness in the present case, therefore, there is no chance of influencing of witness, tampering of evidence and/or fleeing from justice. He states that Applicant is a young man and has roots in the society.

9. Learned APP states that the contraband in the present case recovered from co-accused Toheed is commercial quantity and therefore the bar of Section 37 of the NDPS Act would be applicable to the facts of the present case. He states that as per the CDRs and WhatsApp connectivity of the Applicant, it is evident that Applicant was in constant communication with other co-accused and was actively involved in the crime. He states that the Applicant was identified by the secret informer on 07.06.2023.

10. This Court has heard the learned counsels for the parties and perused the record.

11. In the facts of the present case CDRs and disclosure statement(s) are the only material relied upon by the prosecution against the Applicant herein. The probative value of the said evidence would have to be analyzed during trial by the Court and by itself it is not sufficient to bring home the guilt of the Applicant/accused. (**Re: Azad alia Gourav v. GNCTD & Anr.²**).

12. It is a well settled proposition that an individual cannot be held responsible for the quantity recovered from the possession of the co-accused and an individual can be held responsible only for the quantity received from his person. Reference can be made upon the judgments in **Amar Singh**

¹ 2023: DHC:6596.

² 2023:DHC:2166, para 16.1.



Ramji Bhai Barot v. State of Gujarat³ and Bhupinder Singh alias Bhinda v. State of Punjab⁴. In the facts of the present case admittedly no recovery is made from the Applicant and the recovery made from the co-accused cannot be ascribed to Applicant in view of the above-mentioned judgments.

13. Considering that no contraband was recovered from the Applicant/Junaid herein, there is absence of any financial dealing between the applicant and co-accused, investigation is complete, no public witness is to be examined at trial, the Applicant has already been in custody for last more than 1 Year and 7 Months with satisfactory jail record and the fact that the Applicant has no previous criminal antecedents, in the opinion of this Court, the Applicant is entitled to bail. The trial is likely to take some time and therefore, it would not be prudent to keep the Applicant behind the bars for an indefinite period.

14. Accordingly, Applicant is granted bail and is directed to be released on bail on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- (i) Applicant will not leave the country without prior permission of the Court.
- (ii) Applicant shall provide permanent address to the Trial Court. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.

³ (2005) 7 SCC 550.

⁴ 2005 (1) RCR (CrL.) 168.



- (iii) Applicant shall appear before the Court as and when the matter is taken up for hearing.
 - (iv) Applicant shall join investigation as and when called by the IO concerned.
 - (v) Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
 - (vi) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
 - (vii) During the period the Applicant remains out on bail, the applicant shall report to the concerned IO at 10:00 AM on every 1st Monday of the month and the Applicant shall not be kept waiting for more than an hour.
15. With the aforesaid directions, the present application is disposed of.
16. Pending applications (if any) stands disposed of.
17. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.
18. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
19. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated



as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

JANUARY 27, 2025/sk/hp

Click here to check corrigendum, if any