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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4834/2024**
SANJAY KUMARPetitioner

Through: Mr. Suraj Prakash, Advocate.
versus

CBN CENTRAL BUREAU OF NARCOTICSRespondent
Through: Mr. Satish Aggarwala, Senior
Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
17.03.2025

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1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from CBN Delhi Case No P&I/Del/Seizure/05/23 under Sections 8, 15, 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985³. Subsequently, a chargesheet was filed and the Applicant has been charged with offences under Sections 8, 15 and 18 of the NDPS Act.

2. Briefly, the case of the prosecution is as follows:

2.1 On 3rd September, 2023, the Preventive & Intelligence Cell, Central Bureau of Narcotics⁴, received specific intelligence that two persons – namely Sanjay (the Applicant) and Suresh were engaged in the sale of opium and opium poppy straw. The information suggested that they were

¹ “BNSS”

² “Cr.P.C.”

³ “NDPS Act”



processing the contraband using a flour grinder (“*chakki*”) at a rented premises in DCM Colony, Sai Vatika, Ibrahimpur, Nathupura, New Delhi. The informer asserted that a substantial quantity of narcotics could be seized if timely action were taken.

2.2 This information was recorded in CBN-1 and the Asstt. Narcotics Commissioner, CBN, Gwalior was duly notified. Following instructions from the Superintendent (Preventive), a specialised team was constituted to conduct the raid.

2.3 On the same day – i.e., 3rd September, 2023 at 13:30 Hrs, the raiding team arrived at the DCM Colony, Ibrahimpur, Nathupura. Efforts were made to enlist independent public witnesses from among the passersby, but none agreed to participate, citing various reasons. Given the urgency of the situation, two CBN personnel, Shri Manoj Narwal and Shri Shubham (Hawaladars), were included as independent witnesses.

2.4 Upon reaching the house in question, the team found the main door locked. After repeated knocks, two individuals, later identified as the Applicant, Sanjay Kumar, and co-accused Suresh Chand answered the door. They disclosed that they had rented the premises from one Pawan Kumar, who was contacted over the phone and asked to come to the location.

2.5 The officers apprised the suspects of the intelligence received, necessitating a search of their persons and the premises. A written notice under Section 50 of the NDPS Act was served, informing them of their statutory right to be searched in the presence of a Gazetted Officer or Magistrate. Both individuals provided written consent for the search.

2.6 Upon searching the premises, the team found 19 white coloured

⁴ “CBN’



gunny bags full of a substance, later identified as opium poppy husk with cumulative weight of 297.34 Kgs. The bags were then opened, and it was confirmed by the smell and appearance of the substance, that the same was indeed opium poppy husk. Upon inquiry, both accused persons revealed that they have hoarded the substance for the purpose of further sale, and they do not have any valid document authorizing the possession.

2.7 Upon further inquiry, both accused persons stated that there is another room where they grind the opium poppy husk into a powder form and for this purpose, they hired a daily wage labourer. Upon reaching the second room, the team found a person named Omprakash, who disclosed that he had come to the house that day at the behest of the Applicant -Sanjay Kumar, who hired him to operate the flour grinder (*chakki*) on a daily wage.

2.8 During the search of the second room, two plastic bags containing opium poppy husk powder weighing 26.730 Kgs and 18.900 Kgs respectively, were seized. Further, the team also found a white-coloured transparent polythene which had three small plastic containers. Both accused persons disclosed that the said plastic containers contained opium, and the said opium is sold by them in the illicit market. The said plastic containers were examined and were found to contain 178 grams of a substance which was confirmed to be opium as per its appearance and smell.

2.9 All of the recovered substance was seized. Moreover, the flour grinder used to grind the poppy husk into a powder form, electric weighing machine, empty gunny bags, packing polythene and other equipment used by the accused persons were also seized and sealed as per law.

2.10 During the initial investigation, the Appellant – Sanjay Kumar revealed to the team that his house is a few kilometres away from the spot.



Therefore, some of the members of the preventive team went along with the Applicant and the co-accused Suresh Chand to search the house of the Applicant, however, during the search, nothing incriminating was found.

2.11 The total weight of the opium poppy straw recovered from the spot was found to be 342.97 Kgs, whereas the opium recovered was found to be 178 grams. After completion of all legal procedures and documents related to seizure of the narcotic substances, the possession of the subject house was handed over to the landlord – Pawan Kumar.

2.12 During investigation, the Applicant and the co-accused were examined Section 67 of NDPS Act, wherein they voluntarily admitted to the recovery and seizure of the narcotic substance as well as other incriminating facts, including actively engaging in the illegal trade of opium. Thus, since there were ample reasons to believe that the Applicant and co-accused Suresh Chand were actively and consciously indulging in the sale, purchase and stocking of narcotic drug opium and opium poppy hush, they were arrested under Sections 8, 15, 18 and 29 of the NDPS Act on 4th September, 2023.

2.13 On 23rd November, 2023, proceedings under Section 52A of the NDPS Act were conducted before the Metropolitan Magistrate, New Delhi. During the proceeding, the seized case property of 21 gunny bags said to be containing opium poppy straw and one gunny bag containing opium (*wajah-e-sabot*) was produced and representative samples were taken after creating three bunches of the seized bags. All of the said representative samples were then sent to the Central Revenues Control Laboratory, New Delhi for chemical analysis, which confirmed that the samples were poppy straw and opium.



3. Counsel for the Applicant seeks bail on the following grounds:

3.1 The Applicant has does not have any criminal antecedents and has never been convicted in relation to any case. The allegations levelled on the Applicant in the present case are baseless, false and frivolous.

3.2 As per the case of the prosecution, when the preventive team went to the house of the Applicant which was a few kilometres away from the subject house, nothing incriminating was found and no recovery was made from the said house. Further, there is no corroborative proof that the subject house in DCM Colony was allegedly taken on rent by the Applicant from the owner - Pawan Kumar. Thus, it cannot be said that the recovery has been made from the conscious possession of the Applicant.

3.3 Further, there has been a violation of Section 10, Chapter III of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, while collecting the samples before the Magistrate under Section 52A of the NDPS Act. The samples taken by the Magistrate were not taken from each gunny bag which was recovered by the raiding team. Therefore, there has been a statutory non-compliance of the proper procedure for sampling prescribed under Section 52A of the NDPS Act. As such the recovery is vitiated and Section 37 of the NDPS Act does not get attracted in the present case.

3.4 In the landmark decision of *State of Rajasthan v. Balchand*⁵, the Supreme Court has categorically held that bail is the rule and incarceration is an exception on the basis of the principle of liberty enshrined under Article 21 of the Constitution of India. In the present case, the Applicant belongs to a poor family and he has been in custody since 3rd September,



2023. Further, since the custodial interrogation of the Applicant is already over, no fruitful purpose would be served by prolonging his custody.

4. On the other hand, Mr. Satish Aggarwala, Senior Standing Counsel for CBN opposes the present application and urges the following grounds:

4.1 The recovery of contraband is of a very large scale. The raiding team has recovered a total of 342.97 Kgs of poppy straw at the instance of the accused persons, whereas the prescribed commercial quantity of poppy straw is 50 Kgs under the NDPS Act. Thus, the strict rigours of Section 37 are attracted in the present case.

4.2 During the raid, the Applicant admitted himself to be the tenant of the subject house from which the contraband was recovered. The owner of the subject house - Pawan Kumar confirmed to CBN in his statement that he had given the subject house on rent to the Applicant. Furthermore, when he and the co-accused were examined under Section 67 of the NDPS Act, the tendered their voluntary statements, admitting the recovery, seizure and other incriminating facts related to the illegal opium trade. On the basis of these voluntary statements further investigation was conducted which has revealed monetary transactions, WhatsApp conversations and other incriminating evidence to show that the Applicant and the co-accused were actively engaged in the illegal trade of opium.

4.3 As regards alleged non-compliance of Section 52A, it has been held by this Court in *Somdutt Singh @Shivam v. NCB*⁶, that there is no mandatory time duration prescribed for the compliance of Section 52A and the accused will have to show that prejudice was caused to him on account

⁵ *State of Rajasthan vs. Balchand*, (1977) 4 SCC 308

⁶ 2023 SCC OnLine Del 7580



of the delayed compliance of Section 52A. Furthermore, in the present case, the entire procedure of sampling was done in the presence of the Magistrate, by following the procedure prescribed in the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022. In this regard, 3 lots were made of the 21 gunny bags recovered by the raiding team and then from these lots, representative samples were taken.

4.4 Lastly, as regards the long period of incarceration, the same by itself is not a ground for granting bail to the Applicant, especially considering the large quantity of contraband recovered and the active role of the Applicant in the illegal trade, as has been admitted by him.

5. The Court has considered the submissions urged by the Applicant but finds no merit in them. The contraband recovered in the present case is of an exceptionally large scale. The preventive team seized a total of 342.97 Kgs of opium poppy straw, whereas the prescribed threshold for commercial quantity under the NDPS Act is 50 Kgs. Given that the recovery far exceeds the statutory threshold, the stringent twin conditions of Section 37 of the NDPS Act are automatically triggered. The Applicant, therefore, bears the onus of demonstrating (i) that there are reasonable grounds to believe that he is not guilty of the alleged offence, and (ii) that he is not likely to commit any offence if released on bail.

6. The equipment seized and the evidence gathered during the raid indicates large scale operations, rather than mere possession. The use of a flour grinder, electronic weighing machines, packaging material, and pre-arranged storage facilities suggests a well-orchestrated operation rather than mere custodial possession. Courts have consistently held that drug trafficking, particularly on such a large scale, is an aggravated economic



offence with far-reaching societal consequences.

7. Pertinently, when the raiding team arrived at the subject premises—specifically identified in the secret information as the hub of the illegal drug operation, it was the Applicant and co-accused Suresh Chand who personally opened the door. Pawan Kumar, owner of the subject premises, in his statement to CBN, has also confirmed that he rented out the subject house to the Applicant. The Applicant's attempt to deflect liability by asserting that no contraband was recovered from his other house does little to weaken the prosecution's case. Possession, under the NDPS Act, is not restricted to physical custody but extends to dominion and control. This is reinforced by the fact that the Applicant was not merely a passive occupant of the premises, he actively engaged in processing the narcotics by hiring daily wage labourers to grind the poppy straw into powder. The law on conscious possession has been unequivocally laid down in *Mohan Lal v. State of Rajasthan*⁷, where the Supreme Court held that an accused cannot evade liability merely by denying physical possession if the surrounding circumstances establish his knowledge and control over the contraband. In the present case, the Applicant's direct involvement in the procurement, storage, and processing of the narcotic substance prima facie reveals culpability under the NDPS Act.

8. As regards non-compliance of Section 52A of the NDPS Act, it must be emphasised that the Courts have examined the effects of such non-compliance, and has held that the procedure for drug sampling under the NDPS Act is a '*requirement in law*' which must be followed⁸. However, it

⁷ (2015) 6 SCC 222

⁸ *Union of India v. Bal Mukund & Ors* (2009) 12 SCC 161, *Santini Simone v. Department of Customs*,



has also been consistently held that the effects of such non-compliance and any possible prejudice faced by the accused due to improper sampling is a matter to be considered during trial and not at the stage of grant of bail⁹. Thus, at this nascent stage, the Court is not making any comment on whether the proper procedure for sampling was followed in the present case or not.

9. In light of the foregoing, on a *prima facie* appreciation of the facts of the case and considering that the Applicant was indeed in conscious possession of commercial quantities of narcotic substances, the Court is of the opinion that the first condition of Section 37(1)(b) is not fulfilled.

10. As regards the Applicant's contention seeking enforcement of his right under Article 21 of the Constitution, it is to be noted that the Applicant was arrested on 3rd September, 2023 and till today he has only spent a period of approximately 1 year and 6 months in custody, whereas the minimum prescribed punishment under Section 18 of the NDPS Act for possession, sale, purchase, transportation etc. of commercial quantity of opium poppy and opium is 10 years, extendable up to 20 years. Furthermore, the charges in the present case have only recently been framed and the trial is at its nascent stage.

11. Therefore, in light of the above discussion, the Court does not find merit in the present application, and the same is dismissed.

SANJEEV NARULA, J

MARCH 17, 2025/as

2020 SCC OnLine Del 2128, *Laxman Thakur v. State (Govt. of NCT of Delhi)*, 2022 SCC OnLine Del 4427.

⁹ *Shailender v. State of NCT of Delhi*, 2022 SCC OnLine Del 4896, *Bipin Bihari Lenka v. NCB*, 2022 SCC OnLine Del 1160.