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

% *Date of Decision: 2nd May, 2024*

+ **BAIL APPLN. 320/2024**

SULIAMAN AGHA SAIHOON Applicant

Through: Adv. Aditya Aggarwal, Adv.
Naveen Panwar & Adv. Yasir.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Senior
Standing Counsel for NCB with
Mr. Shashwat Bansal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in Crime No. VIII/52/DZU/2020, for offences under Sections 8, 21(c), 23(c), 9A/25A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. The brief facts of the present case are as follows:

2.1 It is alleged that on 05.11.2020, on the basis of secret information, accused Ahmad Jan Sediqi was intercepted when he was coming with his mother from Kabul, Afghanistan at the IGI Airport. It is alleged that accused



Ahmad admitted that he had swallowed 87 capsules, however, his mother was not aware of the same.

- 2.2 It is alleged that accused Ahmad was taken to the Safdarjung Hospital for proper medical treatment for expulsion of the ingested capsules. On 10.11.2020, the NCB team reached the Hospital and was informed that accused Ahmad had passed out the capsules containing Heroin through stool, the weight of which was found to be 918 grams.
- 2.3 It is alleged that accused Ahmad in his disclosure statement stated that he had come to India to deliver the contraband to an Afghani national in Lajpat Nagar who used mobile number 837786XXXX.
- 2.4 On 11.11.2020, on the basis of the disclosure statement of accused Ahmad, the NCB team conducted a search at the house of the applicant. A recovery of 30 grams of Charas, 10 grams of Heroin, 5 grams of Cocaine and 25 grams of Ephedrine was made from there.
- 2.5 Pursuant to the same, the applicant was arrested on 11.11.2020.
- 2.6 The applicant preferred BAIL APPLN 4188/2022 before this Court which was dismissed *vide* order dated 22.09.2023 with liberty to the applicant to file a bail application before the learned Trial Court.
- 2.7 The learned Additional Sessions Judge, Patiala House



Courts, New Delhi dismissed the bail application of the applicant by order dated 09.01.2024.

3. The learned counsel for the applicant submits that the applicant has clean antecedents and has been falsely implicated in the present case.

4. He submits that as per NCB, small quantity of Charas, intermediate quantities of Heroin and Cocaine and 25 grams of Ephedrine, which is a controlled substance, were recovered from the house of the applicant. He submits that since the recovery from the applicant is of small and intermediate quantities, therefore, the rigours of Section 37 of the NDPS Act are not attracted in the present case.

5. He submits that there is no CDR or monetary transaction that links the applicant to the accused Ahmad.

6. He submits that the applicant has been in custody for more than three years and the trial is likely going to take considerable amount of time to conclude.

7. *Per contra*, the learned senior standing counsel for the respondent strongly opposes the grant of any relief to the applicant. He submits that the learned Trial Court has rightly dismissed the applicant's bail application by order dated 09.01.2024. He states that all the grounds of the applicant, have been effectively dealt by the learned Trial Court and requires no interference.

8. He submits that the applicant was using the mobile number that was given as a mark of identification to accused Ahmad to deliver the concealed capsules. He submits that the chats of the accused persons



also corroborate their involvement in the illegal drug-trafficking activities.

9. He submits that recovery of different varieties of contraband and controlled has been effectuated directly from the applicant.

10. He submits that there is a recovery of commercial quantity of contraband in the present case from the applicant and accused Ahmad, whereby it is not open to the applicant to seek benefit of the fact that the direct recovery from him was of small or intermediate quantity.

11. I have heard the learned counsel for the parties and perused the record.

12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

13. It is relevant to note that the case of the prosecution is essentially based upon the disclosure statement of the accused Ahmad and some unverified chats that allegedly establish that the applicant was involved in illegal drug trafficking. It is relevant to note that while the veracity of the disclosure statement of the co-accused and the chats



is to be tested at the time of the trial. This Court cannot lose sight of the decision in the case of *Tofan Singh v. State of Tamil Nadu* : (2021) 4 SCC 1, where the Hon'ble Apex Court held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration.

14. It has been argued by the learned counsel for the applicant that the bar under Section 37 of the NDPS Act would not be attracted in the present case as only intermediate quantity of the contraband has been recovered from the applicant. On the other hand, the learned APP has contested that the rigours of Section 37 of the NDPS Act will be attracted as the total amount of the recovered contraband is more than the threshold of commercial quantity.

15. *Prima facie*, at this stage, the contraband recovered from the accused Ahmad cannot be attributed to the applicant to attract the rigours of Section 37 of the NDPS Act.

16. It is not denied that 30 grams of Charas, 10 grams of Heroin, 5 grams of Cocaine and 25 grams of Ephedrine were recovered from the house of the applicant, which are all small and intermediate quantities, whereby rigours of Section 37 of the NDPS Act would not apply in the present case.

17. There is no cavil that only because the bar under Section 37 of the NDPS Act is not attracted, the accused would be entitled for bail automatically. In such circumstances, the Court has to consider the parameters as enshrined in relation to grant of bail.

18. It is not disputed that only 4 out of the 13 witnesses have been



examined till now. Speedy trial in such circumstances does not seem to be a possibility. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

19. The applicant is in custody since 11.11.2020. The Hon'ble Apex Court in the case of ***Man Mandal & Anr. v. The State of West Bengal : SLP(CRL.) No. 8656/2023*** had granted bail to the petitioner therein, in an FIR for offences under the NDPS Act, on the ground that the accused had been incarcerated for a period of almost two years and the trial was likely going to take considerable amount of time.

20. It is not disputed that the applicant has clean antecedents, and is thus not likely to commit any offence whilst on bail.

21. In view of the facts of the case, in the opinion of this Court, the applicant has *prima facie* established a case for grant of bail.

22. However, keeping in mind the fact that the applicant is a foreigner, appropriate conditions have to be imposed while granting bail.

23. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹1,00,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant will not leave the boundaries of the



National Capital Region without prior permission of the Court, and will deposit his passport with the learned Trial Court;

- b. The applicant shall provide the details of his permanent address to the learned Trial Court and intimate the Court, by way of an affidavit, as well as the IO about any change in his residential address;
- c. The applicant shall, upon his release, give his mobile number to the concerned IO and shall keep his mobile phone switched on at all times;
- d. The applicant shall appear before the learned Trial Court on every date of hearing;
- e. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- f. The learned Trial Court is directed to ensure that the certificate of assurance, from the Embassy/ High Commission of the applicant's native country, that is, Afghanistan, that the applicant shall not leave the country and shall appear before the learned Trial Court as and when required, is placed on record.

24. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.



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25. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

26. The bail application is allowed in the aforementioned terms.

MAY 2, 2024

AMIT MAHAJAN, J