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

+ BAIL APPLN. 1305/2023  
MOHD. ALI NAWAZ

..... Petitioner

Through: Mr. Aditya Aggarwal, Ms. Kajol  
Garg & Mr. Naveen Panwar,  
Advocates.

versus

STATE

..... Respondent

Through: Mr. Aman Usman, APP for the State  
with SI Suresh Bhatia, Anti Narcotics  
Squad.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT SHARMA**

**ORDER**

**17.08.2023**

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1. The present application under Section 439 of the CrPC read with Section 36A(3) of the NDPS Act seeks regular bail in case FIR No. 456/2021 under Sections 20/61/85 of the NDPS Act registered at PS Badarpur.

2. The case of the prosecution is that based on secret information, a raid was conducted during which the applicant, alongwith co-accused Ismail was apprehended. It is the case of the prosecution that after complying with the necessary provisions of the NDPS Act, search was conducted and the applicant was found to be carrying a bag which allegedly contained 15 kg of *ganja*. It is further alleged that from a bag that co-accused Ismail was carrying, alleged contraband weighing 13 kg was recovered.

3. Learned counsel for the applicant submits that the present case involves recovery of an intermediate quantity. It is submitted that the

investigation in the present case is complete and the charge sheet stands filed. It is further submitted that the applicant has been in judicial custody since 09.08.2021 and no purpose will be served by keeping the applicant in custody any further.

4. Learned APP for the state submits that contraband was recovered from the applicant. It is submitted he was involved in another FIR under the NDPS Act being FIR No.217/2021 under Sections 20/25/29 of the NDPS Act registered at PS Saket.

5. *Per contra*, learned counsel for the applicant submits that in the said FIR, the latter has been granted bail. Be that as it may, it is submitted that since the present case involves recovery of an intermediate quantity, rigors of Section 37 of the NDPS Act will not apply. In support of the said contention, reliance is placed on an order dated 20.07.2022 passed by a coordinate bench of this Court in BAIL APPLN. 1538/2022 titled 'Anita v. State (NCT of Delhi), wherein it has been held that in case of intermediate quantity, rigors of Section 37 of the Act will not apply.

6. Heard learned counsel for the parties and perused the record.

7. The present case involves recovery of 15 kg of *ganja* from the applicant, which is admittedly an intermediate quantity. The investigation in the present case is complete and the charge sheet stands filed. The learned Trial Court has framed charges for commission of offences involving an intermediate quantity and the trial is underway. As per the nominal roll dated 11.05.2023, the applicant has been in custody for 01 year 09 days and 02 days and no useful purpose will be served by keeping the applicant in custody any further.

8. In totality of the facts and circumstances of the case, the present

application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
  - ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
  - iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
  - iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
  - v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
9. The application is allowed and disposed of accordingly.
10. Pending application, if any, also stand disposed of.
11. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.
12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this court *forthwith*.

**AMIT SHARMA, J**

**AUGUST 17, 2023/bsr**