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

+ **BAIL APPLN. 3224/2023**

BILAL

..... Applicant

Through: Mr.Aditya Aggarwal,
Mr.Naveen Panwar, Mr.Manas
Agarwal, Mohd. Yasir, Advs.

versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Mr.Aman Usman, APP with
ASI Sanjeev.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

19.01.2024

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1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') seeking the release of the applicant on regular bail in FIR no.376/2022 registered at Police Station: Timarpur, Delhi under Sections 18/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act').

2. It is the case of the prosecution that on secret information received on 06.12.2022 that one Shabana Khatoon would come to supply Opium (Afeem) to one of her contacts, that is, the applicant herein, near old Wazirabad Bridge, Delhi, a raiding party was prepared. The co-accused namely Shabana Khatoon arrived at the spot and handed over one plastic box to the applicant and when they tried to leave the spot, they were apprehended by the raiding party. On



search, Opium weighing 3.1 kg was recovered from the co-accused Shabana Khatoon, and 500 gms was recovered from the accused herein.

3. It is further alleged that they disclosed that one Beeru was the main supplier. He was also apprehended and on search, 270 gms of Opium was recovered from his possession.

4. The learned counsel for the applicant submits that the quantity recovered from the applicant is only 500 gms, which is an intermediate quantity and, therefore, rigours of Section 37 of the Act would not be applicable. He further submits that the applicant has been falsely implicated in this case and has been in judicial custody for more than a year. He further submits that the co-accused, namely Mohd.Tahir, has already been enlarged on bail by the order dated 21.07.2023 passed by the learned Trial Court.

5. On the other hand, the learned APP for the State submits that in the present case as both the co-accused, that is, Shabana Khatoon and the applicant, were found together, Section 29 of the NDPS Act would become applicable and, therefore, the quantity recovered would be clubbed together and shall be considered as commercial. He further submits that there is no case made out for releasing the applicant on bail at the present stage.

6. I have considered the submissions made by the learned counsels for the parties.

7. In the present case, barring the alleged recovery made from the accused, there is no other evidence of there being any conspiracy between the accused persons. In any case, this will be a matter of trial



and shall be considered at that stage. It is also the own case of the prosecution that the co-accused- Shabana Khatoon had come to the spot to make delivery of opium to the applicant and after making such delivery, they were leaving the spot. Presently, therefore, the case of the prosecution is that only 500 gms of Opium was recovered from the applicant, and that too, with the main accused being Shabana Khatoon. The quantity recovered from the applicant is intermediate and therefore, special conditions stipulated under Section 37 of the NDPS Act shall not be attracted. Coupled with this is the fact that the applicant has already been in custody for more than one year.

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

- i. Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. Applicant shall provide his permanent address to the learned Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in the residential address.
- iii. Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. Applicant shall provide his mobile numbers to the IO concerned, which shall be kept in a working condition at all times and shall not be switched off or changed without



prior intimation to the IO concerned. The mobile location shall also be kept on at all times.

- v. Applicant shall report before the concerned IO every 15 days.
- vi. Applicant shall not communicate with or come in contact with any of the prosecution witnesses, the victim or any member of the victim's family or tamper with the evidence of the case while being released on bail.
- vii. Applicant shall not indulge in any criminal activity. In case the applicant is again found to be involved in any case relating to the NDPS Act, it will be open to the prosecution to move an appropriate application seeking cancellation of his bail.

9. Needless to state, 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 the merits of the matter.

10. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

11. The Bail Application is disposed of in the above terms.

NAVIN CHAWLA, J

JANUARY 19, 2024
RN/AS

Click here to check corrigendum, if any