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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4437/2024**
LAXMAN BACHHAR @ LAKHANPetitioner

Through: Mr. Aditya Aggarwal, Mr. Naveen Panwar, Ms. Kajol Garg, Mohd. Yasir, Mr. Manas Agarwal and Ms. Manvi Gupta, Advocates.

versus

STATE GOVT. OF NCT OF DELHIRespondent
Through: Mr. Yudhvir Singh Chauhan, APP.
SI Vikas, ISC/ Crime Branch.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
21.02.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in proceedings arising from FIR No. 293/2022 dated 20th December, 2022 registered under Section 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Crime Branch, Delhi.

Prosecution's Case

2. Briefly stated, the case of the Prosecution is as follows:

2.1. On 20th December, 2022, a secret informer provided information to SI

¹ "BNSS"

² "CrPC."

³ "NDPS Act"



Naresh Kumar at the Inter State Cell, Crime Branch, Chanakyapuri, stating that a person named Allaudin, involved in the smuggling of Cannabis (Ganja), would be coming to Dwarka in a taxi to supply the contraband. The information was conveyed to senior officers, and a raiding team was formed accordingly.

2.2 The raiding party, accompanied by the secret informer, reached the location, where the informer identified the suspect, who was loading plastic bags into his car. The suspect was apprehended along with the four plastic bags and the taxi, and was identified as Allalu Din @ Noor.

2.3 A search of the suspect and the four suspected plastic bags, along with taxi was conducted, resulting in the recovery of around 100 kg of Cannabis (Ganja) from the four plastic bags recovered from the possession of Allalu Din @ Noor. As a result, the impugned FIR was registered against Allalu Din @ Noor, who was arrested, and his police custody remand was obtained.

2.4 On 23rd December, 2022, one Sunil @ Sunny @ Mama was arrested at the instance of Allalu Din @ Noor, and was identified as a receiver of the contraband. 5 kg of Ganja was recovered from his house.

2.5 Subsequently, on 31st December, 2022, the present Applicant, Laxman Bachhar @ Lakhan @ Sagar, was arrested at the instance of Allalu Din @ Noor. A recovery of 27 kg of Ganja was made from his house. The Applicant has previously been involved in 17 cases and is a known BC (Bad Character) of the Shakarpur area. He was connected to Allalu Din @ Noor through CDR and bank transactions.

2.6 On the same day, a carrier named Mithun Shaw was also arrested with a recovery of 20 kg of Ganja. Mithun had travelled to Delhi from



Murshidabad to deliver 20 kg Ganja to the Applicant.

2.7 The Applicant is the main supplier of Ganja, well-connected with sources in remote areas of West Bengal, Andhra Pradesh, and Odisha. He procures illegal Ganja from rural areas and transports it to Delhi with the help of carriers through public transport.

2.8 The CDR records and bank transactions of the Applicant indicate that his primary suppliers are Satya Rao Pangi of Andhra Pradesh and Maan Singh Ghosh of Azim Ganj, West Bengal. The Applicant frequently contacts these persons through WhatsApp calls. Additionally, analysis of WhatsApp chats and screenshots of payments found on the mobile phones of the accused persons reveals numerous transactions between them and their sources in West Bengal, Odisha, and Andhra Pradesh.

2.9 The main charge-sheet in the present case stands filed, and the case is currently at the stage of arguments on charges, with the next date of hearing before the Trial Court on 6th March, 2025.

ARGUMENTS ADVANCED

Applicant's Case

3. Against this backdrop, counsel for the Applicant makes the following submissions:

3.1 The Applicant was arrested on 31st December, 2022, and has already undergone a substantial period of incarceration of more than 2 years and 1 month. The trial is at the stage of framing of charges, with 23 witnesses cited by the Prosecution. Therefore, it is likely that the conclusion of the trial would take considerable amount of time.

3.2 According to the Prosecution, the Applicant was apprehended from a public place. Despite this, no independent witnesses have been produced to



corroborate the alleged recovery of contraband from the Applicant. This, coupled with the absence of videographic or photographic evidence of the alleged recovery, raises substantial doubts regarding the legitimacy of the seizure.

3.3 The Applicant has no prior NDPS antecedents to his credit. As for the other cases against him, it is noted that he has either been acquitted, released on bail, or the cases have been disposed of.

3.4 The procedural requirement under Section 52A of the NDPS Act has not been complied with. While the Prosecution moved a common application under Section 52A for the two recoveries from co-accused Allalu Din @ Noor and Sunil @ Sunny, no such application was filed for the recovery made from the Applicant. Furthermore, the samples were not sent to the FSL for examination within 72 hours of seizure, thereby violating the provisions of Standing Order 1/88.

3.5 The alleged contraband weighing 27.410 kg was recovered from the bags, which also contained leaves, stalks and stems, which parts do not fall within the definition of the alleged contraband, *i.e.*, Ganja.

Respondent's Case

4. On the other hand, Mr. Yudhvair Singh Chauhan, APP for the State, strongly opposes the bail application, on the following grounds:

4.1 The quantity of the contraband recovered from the Applicant falls under the category of commercial quantity. Therefore, the Applicant must fulfil the twin conditions stipulated under Section 37 of the NDPS Act.

4.2 The Applicant is a Bad Character of Shakarpur area, and has prior involvements in 17 criminal cases.

4.3 The Applicant is the kingpin of the syndicate, who procures illegal



narcotics substance, *i.e.*, Cannabis (Ganja) from West Bengal, Odisha and Andhra Pradesh.

4.4 They delay in trial is attributed to co-accused Allalu Din @ Noor, who was granted interim bail on medical illness of his wife. However, he jumped the bail and did not surrender before the jail authorities, resulting in the issuance of NBWs against him. Given the conduct of the co-accused, there is a reasonable apprehension, that the present Applicant, if released, will jump the bail.

ANALYSIS

5. The Court has considered the facts of the case and the contentions advanced by the parties. While evaluating a bail application, the Court must consider several factors, including whether there is a *prima facie* case or reasonable grounds to believe the accused has committed the offence, the likelihood of the accused repeating the offence, the nature and seriousness of the accusation, the severity of the potential punishment upon conviction, the risk of the accused absconding or fleeing if granted bail and the reasonable apprehension of witnesses being intimidated by the accused.

6. In the instant matter, the contraband recovered from the Applicant comprises ganja weighing 27 kg. As a result, the provisions of Section 37 of the NDPS Act are attracted, which impose two conditions for the grant of bail: (i) that there are reasonable grounds to believe that the accused is not guilty of the offence, and (ii) that the accused is not likely to commit any offence while on bail. Accordingly, the Court proceeds to examine the grounds raised by the Applicant to determine whether the conditions under Section 37 are satisfactorily met.



Absence of Independent Witnesses

7. The Applicant has pointed out the Prosecution's failure to include independent witnesses during the search and seizure operations, despite the Applicant being apprehended in a public place. The Applicant argues that the lack of independent witnesses casts doubt on the fairness and credibility of their case. In this regard, it is crucial to note that the Applicant was arrested at the instance of co-accused Allalu Din @ Noor, 8 days after Allalu Din's arrest, indicating that there was sufficient time for the police to secure independent witnesses before conducting the raid.

8. This Court in ***Bantu v. State Government of NCT of Delhi***,⁴ has observed that the absence of independent witnesses, especially in crowded public places, undermines the transparency of the seizure procedure and weakens the evidentiary value of the recovery in NDPS cases. In the present case, the failure to include independent witnesses, despite the raid occurring in a public location, indicates a procedural irregularity in the search process. While such procedural omissions may not outrightly invalidate the Prosecution's case, they significantly undermine the transparency and credibility of the search and seizure process. This is particularly relevant at the stage of grant of bail, as it is essential to ensure that the rights of the accused are not unjustly curtailed.

Omission of Videography and Photography

9. The Applicant has also highlighted the Prosecution's failure to produce any videographic or photographic evidence of the alleged recovery.

10. The Supreme Court has consistently reiterated the significance of video recording the recovery process especially in cases involving

⁴ 2024 SCC OnLine Del 4671.



commercial quantities of narcotic substances, emphasising that the video or photographic documentation of such recoveries ensures.⁵

11. In the present case, the Prosecution has failed to provide any justification for not undertaking videography or photography during the recovery process. The absence of this safeguard leaves the recovery process open to question, as there is no independent evidence to corroborate the police's account. This omission, coupled with the lack of independent witnesses, casts a shadow over the credibility of the evidence and increases the potential for prejudice against the Applicant.

12. Consequently, the non-compliance with the aforesaid safeguards, *i.e.*, non-joinder of witnesses and absence of videography undermines the Prosecution's case and *prima facie* satisfies the first condition set out under Section 37(1)(b)(ii), in favour of the Applicant.

Criminal antecedents

13. As regards the second condition of Section 37(1)(b)(ii), it is imperative for the Court to be satisfied that the Applicant is not likely to commit an offence while on bail. This condition also serves as a critical safeguard to ensure that granting bail does not result in any potential risk to public safety or impede the administration of justice.

14. In the instant case, it has been submitted that the Applicant has no prior criminal antecedents pertaining to the NDPS Act. However, the Prosecution in contradiction, has highlighted the Applicant's involvement in prior criminal cases, although none of them are relating to NDPS, and relate to offences under the Delhi Excise Act, 2009, for which the Applicant has either pleaded guilty or has been acquitted. Counsel for the Applicant has

⁵ Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311.



asserted that the Applicant has already been enlarged on bail in those cases. Thus, although the Applicant exhibits propensity to disobey law keeping into consideration the nature of present offence, grant of bail cannot be withheld solely on the basis of his past antecedents.

Co-accused jumping bail

15. As regards the co-accused who jumped bail after being released on interim bail, it is noted that while this can be a factor for consideration in deciding the grant of bail, it must also be acknowledged that the actions of the co-accused cannot be used to reflect upon the conduct of the present Applicant. In this regard, reliance is placed on the judgment of the Supreme Court in ***Sebil Elanjimpally v. State of Odisha***,⁶ wherein the Court held that the fact that a co-accused, who was released on bail, has not surrendered, cannot be a germane factor to deny bail to the applicant. Therefore, the Court is of the view that the actions of the co-accused should not influence the decision regarding the present petition for bail.

16. Resultantly, both essential requirements under Section 37(1)(b)(ii)—are *prima facie* met.

Delay in Trial

17. Pertinently, it must also be noted that as per the nominal roll, as on 12th January, 2025, the Applicant had been in incarceration for 2 years and 12 days. Therefore, as on date, the Applicant has been in custody for approximately 2 years and 1 month. Considering the aforementioned circumstances, and the fact that the trial is at the stage of framing of charges, it is likely that the trial would take a considerable amount of time to reach its conclusion.

⁶ 2023 SCC OnLine SC 677.



18. In such circumstances, the Court must strike a balance between the fundamental right to a speedy trial, an integral aspect of the right to life and liberty under Article 21 of the Constitution of India, and the stringent requirements of Section 37 of the NDPS Act.⁷ While the rigours of Section 37 must be applied, they cannot override the constitutional mandate for timely justice. The right to life and personal liberty cannot be undermined by unwarranted delays in the judicial process, particularly when such delays are neither attributable to the accused nor adequately justified by the Prosecution with compelling reasons.

CONCLUSION

19. In view of the foregoing discussion, this Court is of the opinion that the Applicant has satisfied the statutory conditions for grant of bail on the grounds of absence of witnesses, failure in conducting videography, and prolonged delay in trial. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of INR 50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court, on the following conditions:

- a. The Applicant shall not indulge in any criminal activity. He 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;
- b. The Applicant shall cooperate in further investigation, if as and when directed by the concerned IO;
- c. The Applicant shall under no circumstance leave the country without the permission of the Trial Court;

⁷ Mohd. Muslim v. State (NCT of Delhi), 2023 SCC OnLine SC 352.



- d. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The Applicant shall appear before the Trial Court as and when directed;
- f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
- g. 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.
20. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.
21. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.
22. The bail application is disposed of in the aforesaid terms.

SANJEEV NARULA, J

FEBRUARY 21, 2025

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