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

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CRL.M.C. 7914/2024

STATE

.....Petitioner

Through: Mr. Aman Usman, APP with SI
Akash, SI Dharmveer Singh.

versus

AKASH

.....Respondent

Through: Mr. Pradeep Kumar Arya, Mr.
Aditya Kumar, Mr. Gaurav
Chaudhary, Mr. Vishal
Sheoran, Ms. Arunima Singh,
Mr. Anubhav Rathi, Mr.
Vaibhav Chaudhary, Advs.

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CRL.M.C. 7927/2024

STATE

.....Petitioner

Through: Mr. Aman Usman, APP with SI
Akash, SI Dharmveer Singh.

versus

SHILPA

.....Respondent

Through: Mr. Pradeep Kumar Arya, Mr.
Aditya Kumar, Mr. Gaurav
Chaudhary, Mr. Vishal
Sheoran, Ms. Arunima Singh,
Mr. Anubhav Rathi, Mr.
Vaibhav Chaudhary, Advs.

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CRL.M.C. 7984/2024



STATE

.....Petitioner

Through: Mr. Aman Usman, APP with SI
Akash, SI Dharmveer Singh.

versus

SEEMA

.....Respondent

Through: Mr. Pradeep Kumar Arya, Mr.
Aditya Kumar, Mr. Gaurav
Chaudhary, Mr. Vishal
Sheoran, Ms. Arunima Singh,
Mr. Anubhav Rathi, Mr.
Vaibhav Chaudhary, Advs.**CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. These three petitions are filed by the State/petitioner under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 ["Cr.P.C."], seeking cancellation of bail and setting aside of the impugned orders dated 15.06.2024, 25.06.2024 and 12.07.2024 passed by the learned ASJ/Vacation Judges, Shahdara District, Karkardooma Courts ["trial court"], whereby the accused persons/appellants namely Seema, Shilpa and Akash respectively were granted regular bail in case FIR No. 407/2024, registered at Police Station Nand Nagri under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ["NDPS Act"].



2. Since the three petitions emanate from a common set of facts and pertain to the same FIR, they are being disposed of together by this common judgment.

Factual Matrix

3. Briefly stated, the facts of the present case are that on 07.06.2024, at about 1:20 PM, the Investigating Officer received secret information that Akash, resident of D Block, Nand Nagri, who was allegedly involved in supply of heroin, would arrive near Kali Mata Mandir between 3:00-3:30 PM. The information was reduced into writing as DD No. 7, forwarded to the senior officers, and directions were issued to constitute a raiding team.

4. Around 3:10 PM, the raiding party reached the spot and noticed a person matching the informer's description. On seeing the police, the person (later identified as Akash), allegedly threw a polythene packet on the road and ran toward his residence (House No. D-1/45, Nand Nagri). He was apprehended at the stairs of the said house. The packet thrown by Akash was found to contain 120.25 grams of heroin.

5. Upon interrogation, he disclosed that he had received the contraband from his mother Seema, who was inside the house. The raiding team entered the house and found Seema (mother of Akash) and Shilpa (sister of Akash) present inside. The search, conducted by



W/HC Pooja in the presence of ACP Nand Nagri, led to recovery of 266.70 grams of heroin from Seema and 73.60 grams of heroin from Shilpa.

6. Subsequently, based on Akash's disclosure, co-accused Naim was also arrested, and 12 grams of heroin were recovered from him. The total recovery amounted to 472.55 grams of heroin, which constitutes 'commercial quantity' under the NDPS Act. Consequently, FIR No. 407/2024 was registered at PS Nand Nagri under Sections 21/29 NDPS Act, and all accused persons were taken into custody.

7. The accused persons preferred bail applications. The trial court vide orders dated 15.06.2024, 25.06.2024 and 12.07.2024 granted bail to the accused persons namely Seema, Shilpa and Akash respectively within 08 days, 18 days and 30 days of their arrest respectively. Being aggrieved by the orders of the trial court, the State has preferred the petition seeking cancellation of their bails.

Submissions on behalf of the State

8. Learned Additional Public Prosecutor for the State submitted that the impugned bail orders are ex facie illegal, perverse, and contrary to the statutory mandate contained in Section 37 of the NDPS Act, inasmuch as the learned trial court granted regular bail to



the accused persons/respondents without even satisfying the twin conditions of Section 37(1)(b) of NDPS Act. It was argued that the orders under challenge display a complete disregard of the legislative intent behind the stringent restrictions on the grant of bail in cases involving 'commercial quantity'.

9. It was submitted that the recoveries from all three accused form part of a single, continuous and inseparable transaction, arising from the same raid, the same premises and pursuant to a common design disclosed during the apprehension of Akash. Consequently, the total seized quantity of 472.55 grams of heroin falls within the category of 'commercial quantity'. Learned APP relied upon the law laid down in *Awadhesh Yadav v. State, Bail Appl. 1692/2023*, to contend that where the prosecution invokes Section 29 NDPS Act, or where the factual matrix reveals joint possession or a composite criminal act, the recoveries must be aggregated/totaled, and the case must be treated as one involving commercial quantity.

10. It was further submitted that the learned trial court has doubted the recovery on the ground that a lady constable was part of the raiding team. This, according to the State, is an irrelevant consideration, since the NDPS Act does not envisage any prohibition on lady personnel being made part of a raiding or search team. On the contrary, Section 50(4) NDPS Act makes the presence of a female



officer mandatory in case of search of female accused, and the lady officer's presence in the present case was entirely in accordance with statutory prescription.

11. It was further urged that the learned courts failed to consider material and relevant factors, particularly the criminal antecedents of respondent Seema, who has twelve previous involvements, including seven under the NDPS Act, as reflected from the SCRB report placed on record. It was submitted that these antecedents were highly relevant to the second limb of Section 37(1)(b), i.e., whether the accused is likely to commit an offence while on bail, yet they were wholly ignored. Reliance is placed on *Union of India v. Rattan Malik @ Habul, (2009) 2 SCC 624*, wherein the Supreme Court held that if a bail order suffers from perversity, it is liable to be cancelled where relevant considerations have been ignored, irrelevant factors have been relied upon, or where the order is contrary to settled legal principles.

12. Further reliance is placed on *Union of India v. Ajay Kumar Singh @ Pappu, [Criminal Appeal No. 952 of 2023 (Arising out of SLP (Crl.) No. 2351 of 2023)]*, decided on March 28, 2023 where the Supreme Court reiterated that the non-compliance of Section 37 NDPS Act renders the grant of bail unsustainable, and that courts cannot dilute the statutory mandate by engaging in premature



evaluation of the evidence at the bail stage. The State submits that the ratio of this judgment squarely applies to the present case, where the learned Vacation Judges overlooked the statutory bar and treated the matter as though it pertained to intermediate quantity. It was contended that the learned courts below engaged in a premature appreciation of evidence, including casting unwarranted doubt on the recovery proceedings, which is erroneous at the stage of considering bail in NDPS cases, particularly those involving commercial quantity.

13. Learned APP concluded that the impugned orders suffer from manifest error, are contrary to the statutory bar, and are therefore liable to be set aside thereby cancelling the bail granted to the accused persons/respondents.

Submissions on behalf of the Respondents/accused persons

14. Learned counsel for the respondents, on the other hand, contended that the recoveries from the three accused persons were separate and independent and therefore cannot be clubbed to artificially convert what are otherwise intermediate quantities into a commercial quantity. It was argued that Section 29 NDPS Act has been wrongly invoked, and the prosecution has failed to establish prima facie material demonstrating a shared intention or conspiracy among the accused persons.



15. It was further submitted that no public witnesses were joined in the proceedings despite their alleged availability. The non-joining of public persons, it was urged, casts serious doubt on the credibility of the recovery and the prosecution case as a whole. It was also submitted that section 50 notices were defective, and there were procedural irregularities, thereby weakening the prosecution's version. Learned counsel argued that the trial court was justified in granting bail upon noticing these infirmities, and such evaluation falls well within the ambit of judicial discretion at the pre-trial stage.

16. It was further argued that bail granted, can be curtailed only when there is demonstrable misuse of liberty, supervening circumstances, or if the bail order is shown to be perverse in the sense recognised by law and that the trial court has passed reasonable orders granting bail to accused persons/respondents after proper appreciation of the facts and evidence.

17. Learned counsel submits that the respondents have abided by the conditions of bail, have not misused liberty in any manner, and their continued incarceration is not warranted, particularly when the trial is likely to take considerable time. It is therefore prayed that the petitions be dismissed and the bail orders be sustained.



Court Reasoning and Analysis

18. I have heard learned counsel for the parties and perused the record. The material placed before this Court reveals that the case arises from a single, coordinated raid and a continuous transaction in which all three respondents were apprehended in close proximity of time, from the same premises, and in circumstances indicative of a common design and shared participation.

19. The prosecution's narrative presents a sequence of events showing that, acting on secret information, the raiding team first intercepted co-accused Akash on 07.06.2024. He allegedly threw away a polythene packet containing 120.25 grams of contraband on the road and tried to flee towards his house. Based on the disclosure made by Akash, the same raiding team then detained co-accused Seema and Shilpa from the same premises/house, where they were found carrying 266.70 grams and 73.60 grams of heroin respectively. All the recoveries were made in a single operation by the same raiding party, indicating a connected sequence of events and common intent.

20. In this backdrop, the contention of the State that the total recovery of 472.55 grams of heroin must be treated as a single aggregated quantity merits acceptance. The recoveries from accused persons/respondents are not detached or isolated events, rather they form part of a single continuing sequence, attracting Section 29 NDPS



Act. In the present case, the cumulative recovery amounts to 472.55 grams of heroin, which is well above the commercial quantity.

21. The petitioners' primary contention that recoveries made from co-accused persons/respondents cannot be clubbed and that the recoveries must be viewed in isolation as "intermediate quantity" cannot be accepted at this stage. The law on clubbing of recoveries is now well settled. In *Awadhesh Yadav v. State (2023:DHC:8529)*, this Court exhaustively reviewed the statutory framework and precedents and culled out the principles governing when quantities recovered from multiple accused may be combined for purposes of Section 37.

The relevant extract of the judgment reads as under:

"49. From the provisions of law and the essence of case-laws, as discussed above, following principles can be culled out governing clubbing of the quantity of contraband recovered from two or more co-accused, at the stage of bail:

i. invocation of offence of abetment and/or conspiracy under Section 29 of the Act is must for clubbing of quantity. However, there cannot be a straight jacket formula for clubbing the quantity of contraband recovered from all the accused, merely on the basis of invocation of offence under Section 29 of the Act. It will depend on the factual backdrop of each case and the incriminating material available against the accused persons.

ii. the incriminating material relied upon to invoke the offence of abetment and/or conspiracy under Section 29 of the Act, has to be cogent and convincing against each one of the accused charged with the offence of abetment and/or conspiracy.

iii. in a case where joint recovery of contraband has been effected from two or more co-accused, the recovered contraband cannot be



equally divided amongst the number of accused to determine whether the quantity of contraband recovered in “commercial quantity” or not.

iv. where accused persons are travelling together in the same private vehicle individually carrying contraband, it will not be proper to consider the alleged recovery to be an individual recovery and the contraband recovered from all persons can be clubbed.

v. if an accused is a habitual offender, it gives rise to an inference that he knows the tricks of the trade. In such a situation, previous involvement of the accused in the case(s) under the NDPS Act, is an additional factor which could be considered, besides other incriminating circumstances, for adding the quantities of contraband recovered from two or more co-accused.”

22. The law on clubbing of recoveries is not to be applied mechanically. Where prima facie evidence suggests that the accused are acting in concert through sequential recoveries or coordinated movements, then recoveries cannot be compartmentalized merely to evade Section 37 NDPS Act. The reliance placed by the State on the decision of this Court in *Awadhesh Yadav v. State* (supra) is well-founded wherein this Court clearly held that where multiple recoveries are effected in the course of a single transaction, and where the prosecution alleges conspiracy or joint participation under Section 29 of the NDPS Act, the recoveries cannot be segregated, instead they must be clubbed to determine whether the case involves small, intermediate, or commercial quantity. Once the case is found to involve ‘commercial quantity’, the statutory bar contained in Section 37 NDPS Act is directly attracted. The law is well settled that bail



cannot be granted unless the Court records its satisfaction regarding the twin requirements.

23. The decisive question at this stage is whether there are reasonable grounds to infer that the recoveries pertain to a joint scheme. The secret information leading to the apprehension of Akash and his subsequent disclosure leading to further apprehension of Seema and Shilpa by the same raiding team points to a single sequence of recoveries and is a cogent indication of a single supply chain.

24. Once Section 37 NDPS Act comes into play, the legal position is well settled that the Court cannot enlarge an accused on bail unless it records its satisfaction regarding the twin conditions- that the accused is not prima facie guilty of the alleged offence and that he/she is not likely to commit an offence while on bail. As repeatedly emphasised by the Supreme Court in *State of Kerala v. Rajesh* (2020) 12 SCC 122, *Union of India v. Niyazuddin* (2018) 13 SCC 738, and *Union of India v. Shiv Shanker Kesari* (2007) 7 SCC 798, these conditions are mandatory. They impose a statutory embargo which must be expressly considered and satisfied before bail can be granted.

25. A careful examination of the impugned orders shows that the trial courts did not make even a passing reference to Section 37, much less recorded the mandatory satisfaction. There is no discussion on the



nature of the quantity, the twin conditions, the prima facie involvement of the accused, or the likelihood of reoffending. The orders proceed as though the case pertains to an intermediate quantity and not a commercial one. This omission is not a mere irregularity; it renders the orders legally unsustainable, as a bail order passed in breach of the statutory mandate is perverse.

26. The impugned orders have expressed doubt upon the recovery proceedings merely because a lady constable was part of the raiding team and that the presence of public witnesses could not be secured. The NDPS Act does not contain any prohibition on female officers participating in raids. Rather, Section 50(4) requires that search of a female accused must be conducted by a female officer. The chance recovery from Seema and Shilpa cannot be doubted merely because of presence of a lady police official in the raiding team. Merely because recovery was from the person of Shilpa and Seema, while being present at home and non-search of house would not render the recovery doubtful. Such an observation while considering the bail application was undesirable.

27. The argument concerning the absence of public witnesses, especially in NDPS cases, does not by itself render the recovery doubtful. The law is well-settled that non-joining of public witnesses, while desirable, absence of independent public witnesses does not



automatically vitiate the prosecution case if the testimony of official witnesses is reliable and credible. [*Ajmer Singh v. State of Haryana*, (2010) 3 SCC 746]. At the stage of bail, the Court is not to conduct a roving or meticulous analysis of evidence. Yet the trial court indulged in premature appraisal of factual aspects such as the alleged absence of public witnesses, despite the record showing that public persons were requested to join but declined due to personal reasons.

28. The trial court also disregarded material facts which ought to have been given due weight. Accused Seema's SCRB report shows twelve prior criminal involvements, including seven under the NDPS Act. The SCRB report of Akash and Shilpa also reflect their prior criminal involvement. These antecedents were unambiguously available in the record before the trial court. However, the learned trial court failed to consider the same, despite the fact that history of previous involvement in NDPS cases goes directly to the heart of the second requirement under Section 37(1)(b) of NDPS Act. In particular, the antecedents of Seema, which show persistent involvement in NDPS offences, made it imperative for the trial court to consider the statutory embargo with heightened scrutiny. The complete omission to consider this material reflects a clear non-application of judicial mind to a mandatory statutory requirement. The Supreme Court in *Union of India v. Ajay Kumar Singh @ Pappu* (supra) set aside the order of High Court granting bail to the accused involved in supply of



commercial quantity of contraband under NDPS Act. The Court stated that bail cannot be granted without proper application of the statutory twin conditions of Section 37 NDPS Act. The relevant portion of the judgment reads as under:-

“14.This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, inter alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely,(i)the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

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16.In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

17.The quantity of “ganja” recovered is admittedly of commercial quantity. The High Court has not recorded any finding that the respondent-accused is not prima facie guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.”

29. The Supreme Court in ***Puran v. Rambilas (2001) 6 SCC 338***, held that a bail order that is perverse, passed in disregard of statutory



provisions, or founded on irrelevant considerations is liable to be set aside and bail may be cancelled. The present case falls squarely within that category. The trial courts misconstrued the nature of the case, failed to apply Section 37, mischaracterised recoveries that were part of a single transaction, ignored relevant material, and relied on considerations that are legally untenable.

30. On an overall conspectus, this Court is of the view that the impugned orders dated 15.06.2024, 25.06.2024 and 12.07.2024 granting bail to the accused persons/respondents are manifestly illegal, perverse, and contrary to binding precedent as well as statutory mandate. Therefore, they cannot be sustained and are liable to be set aside. The respondents are directed to surrender before the Superintendent Jail within three days.

31. The petitions are accordingly allowed.

RAVINDER DUDEJA, J.

DECEMBER 01, 2025/AK