



2025:DHC:5795



\$~4

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

% Date of decision: 17.07.2025

+ BAIL APPLN. 817/2025

ZAKY AHMED

.....Petitioner

Through: Mohd. Suza Faisal, Mohd.
Kashif, Mr. Rashid Ali, Advs.

versus

STATE OF NCT DELHI & ANR.

.....Respondents

Through: Mr. Aman Usman, APP for the
State with SI Shailendra
Tiwari, ER-II, Crime Branch.

CORAM:-

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT (ORAL)

RAVINDER DUDEJA, J.

1. The present application has been filed under Section 439 Cr. PC and 438 BNSS for the grant of regular bail in FIR No. 60/2024, under Section 21/25/29 NDPS Act, registered in Crime Branch, East.

2. The case of the prosecution, in brief, is that on 13.03.2024, secret information was received regarding two individuals, Zakey Ahmad and Hasib, allegedly involved in drug supply, who were expected to deliver narcotics near SVN Public School, Kabir Nagar, Delhi during the early hours of 14.03.2024. The information was



2025:DHC:5795



relayed by ASI Satendra to Inspector Ashish Dahima and subsequently conveyed to ACP Arvind Kumar, following which a DD entry was recorded and a raiding team was constituted. Acting upon the said intelligence, the raiding party laid a trap and apprehended Zakey Ahmad and Hasib around 3:30 AM, and upon further disclosure, one Rashid was also apprehended on their instance. While a notice under Section 50 of the NDPS Act was served on Rashid, no contraband was recovered from his personal search and a nil recovery memo was prepared. Thereafter, FIR No. 60/2024 under Section 21 of the NDPS Act was registered at the Crime Branch, East Delhi.

3. Learned counsel for the applicant has submitted that the procedural safeguards mandated under Section 42 of the NDPS Act have not been duly complied with. It is contended that the initialy secret information was received by ASI Satendra Kumar, but was reduced into writing not by him, but by Inspector Ashish Dahima, which is contrary to the express mandate of law. Furthermore, it is argued that the grounds of belief were not contemporaneously reduced to writing, nor was prior authorization obtained from a superior officer before proceeding with the search and seizure, thereby vitiating the process.

4. Learned counsel has also drawn attention to the delay of nearly six hours in depositing the seized contraband in the malkhana, submitting that such delay raises serious doubts about the integrity and sanctity of the recovered material. Reliance has been placed upon the



2025:DHC:5795



decision in *Gulab Rai @ Chetan v. State (NCT of Delhi)* Bail Appln. 3840/2023 decided on 19.01.2024, wherein a Coordinate Bench of this Court granted relief on the ground of non-compliance with the mandatory requirements of Section 42 of the NDPS Act.

5. It is further submitted that the entire case rests upon circumstantial evidence and disclosure statements, which are inadmissible in evidence under settled law, particularly in the absence of independent corroboration. No recovery has been made at the instance of the applicant and the chain of events relied upon by the prosecution is stated to be incomplete and incapable of ruling out the possibility of innocence. The applicant is a first-time offender, has clean antecedents, and is the sole breadwinner for his family, which is stated to be in a state of economic distress. It is argued that the applicant is not a flight risk and there is no apprehension of tampering with evidence or influencing any witness.

6. The learned APP for the State vehemently opposes the grant of regular bail to the applicant, on the ground that he was apprehended red-handed on 13.03.2024 in possession of a red backpack containing 310 grams of heroin, which is a commercial quantity under the NDPS Act. It is submitted that the FSL report confirms the substance recovered is heroin, and further investigation has revealed a well-organized chain of narcotics trafficking involving multiple accused across states, including the present applicant. The prosecution emphasizes that the applicant was in constant communication with co-



2025:DHC:5795



accused Hasib and Rashid on the day of the offence, as established through detailed CDR records, which corroborate the allegations of his active involvement in procurement and distribution.

7. In light of the seriousness of the offence, recovery of commercial quantity, and the organized nature of the syndicate, it is contended that release of the applicant at this stage may prejudice the ongoing proceedings and pose a threat to public interest.

8. Furthermore, reliance has been placed upon *Karnail Singh v. State of Haryana* (2009) 11 SCR 470, wherein the Supreme Court held that while total non-compliance with the requirements of Section 42(1) and (2) of the NDPS Act is impermissible, delayed compliance with a satisfactory explanation may be accepted, depending on the facts of the case. It was clarified that if the officer receives information while on the move and immediate action is necessary, compliance may follow thereafter, but in ordinary circumstances, the information must first be reduced into writing and forwarded to the immediate superior before taking any action. It is submitted that, in view of this judgment, the ASI was justified in telephonically conveying the information to Inspector Dahima, who reduced the information in the DD entry in the CCTNS Crime Branch.

9. The Court has heard the rival submissions and perused the record. Compliance of section 42 NDPS Act is mandatory and that is a relevant fact which should engage the attention of this court while



considering the bail application and therefore it is appropriate to first set out the mandate of Section 42 of the NDPS Act, which is as under;

“42. Power of entry, search, seizure and arrest without warrant or authorisation.—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:



1[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

10. It is not in dispute that the secret information was initially received by ASI Satendra, however, he failed to reduce the same into writing as required under Section 42 of the NDPS Act, 1985. Instead, the information was subsequently reduced into writing by Inspector Ashish Dahima and conveyed to the ACP, raising serious concerns regarding adherence to the statutory procedure. In ***Directorate of Revenue and Another v. Mohammed Nisar Holia***, (2008) 2 SCC 370, the Supreme Court categorically held that the officer who first receives the information is mandatorily required to reduce it into writing, and this duty cannot be delegated. The Court deemed non-compliance with this statutory mandate as fatal to the prosecution case. Furthermore, in ***Sarija Banu and Another v. State through inspector of police***, 2004 SCC OnLine SC 264, the Supreme Court reiterated that strict compliance with Section 42 is mandatory and must be examined carefully while considering bail applications.



11. In *Gulab Rai* (supra), this Court held that compliance with the mandate of Section 42 of the NDPS Act is compulsory and cannot be bypassed. It was emphasized that the officer who first receives the secret information must himself reduce it into writing. Any deviation from this statutory requirement undermines the procedural safeguards and renders the action non-compliant.

12. In view of the binding precedents, this Court finds merit in the applicant's submission that the mandate of Section 42 of the NDPS Act has not been duly complied with. Although ASI Satendra was the first to receive the secret information, it was Inspector Ashish Dahima who reduced it into writing based on hearsay. Such deviation contravenes the settled legal position laid down in *Mohammed Nisar Holia* (supra) and *Gulab Rai* (supra), where strict compliance was held to be mandatory.

13. Undoubtedly, delayed compliance with satisfactory explanation is accepted, depending upon the facts of the case, but present is a case of total non-compliance of Section 42 NDPS Act, inasmuch as, ASI Satendra failed to make the mandatory compliance.

14. In light of the aforesaid circumstances, coupled with the fact that, chargeheet has already been filed, the trial may take time to conclude and the applicant being in custody for more than 1 year, the application is allowed and applicant is directed to be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.30,000/- with one surety of the like amount to the satisfaction of



2025:DHC:5795



the learned Trial Court and further subject to the following conditions:-

- i) Petitioner will not leave the country without prior permission of this Court and would surrender his passport, if any;
- ii) In case of any change in the applicant's mobile number(s) or address, the applicant shall immediately inform the Investigating Officer (IO) about such change;
- iii) He shall not indulge in any criminal activity or communicate with or come in contact with the witnesses and/or any other person associated with the present case;
- iv) He shall report to concerned IO once a month; and
- v) He shall appear on every date of hearing before the Trial Court unless exemption is sought and granted by the Court on any given date.

15. Application stands disposed of.

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

RAVINDER DUDEJA, J

JULY 17, 2025/NA