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

% *Date of decision: 25.04.2025*

+ BAIL APPLN. 1170/2025

CHAND

.....Petitioner

Through: Mr. Nitin Kumar, Mr. Devraj,
Mr. Pankaj & Mr. Jitender
Kumar, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Meenakshi Dahiya, APP
for State.
SI Manoj Kumar AEKC Crime
Branch.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J. (ORAL)

1. The present petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed seeking Regular Bail in FIR No.206/2023 dated 22.08.2023, for the offences punishable under Section 15,18,25 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) registered at Police Station Crime Branch, Delhi.

BRIEF FACTS

2. As per the prosecution, the present case arises from information received by the Anti-Extortion and Kidnapping Cell



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(AEKC) of the Crime Branch, Delhi, on the morning of 22.08.2023. At approximately 07:15 AM, a special informant appeared at the AEKC, Sunlight Colony, and provided credible information that one Pappu (the co-accused), allegedly involved in the smuggling of a narcotic substance colloquially known as Opium Doda, was present in Delhi. The informant further disclosed that Pappu procures the said contraband through the parcel service of the Indian Railways and supplies it to various local smugglers within the Delhi region. On the said day, he was expected to take delivery of the contraband from the parcel office at Old Delhi Railway Station and, thereafter, transport it via tempos through the Kodia Pul for further distribution.

3. Upon receiving the aforesaid information, the Duty Officer made preliminary inquiries with the informant and on being satisfied as to the authenticity of the intelligence received, directed the information to be conveyed to Inspector Rajeev Bamal at about 07:25 AM. Thereafter, vide Daily Diary Entry No. 2, recorded at 07:45 AM, proceedings under Section 42 of the NDPS Act were initiated.

4. A raiding party was accordingly constituted under the leadership of SI Naresh Kumar, comprising HC Tej Pratap, HC Yunus, and Constable Anuj, and the team was briefed about the operation. The raiding team, accompanied by the informant, departed from the AEKC office at 08:15 AM, in two private vehicles: one, bearing registration number DL-3CCX-3275, driven by ASI Md. Talim and carrying the informant and HC Tej Pratap; the other,



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bearing number DL-3CCX-3230, driven by HC Gurvinder Singh and occupied by SI Naresh Kumar, HC Yunus, HC Somesh and Constable Anuj.

5. The raiding party proceeded to Raj Ghat, where, in an effort to secure public witnesses, 4/5 persons standing near the traffic signal were apprised of the impending raid and requested to accompany the team. All such individuals, however, citing personal constraints, declined to join the operation and departed without disclosing their identities. Given the urgency of the operation, no notice could be served upon them.

6. The team reached Kodia Pul, near Old Delhi Railway Station, at approximately 09:10 AM. There too, a similar attempt was made to enlist public witnesses, but with identical results—those approached refused to join the raiding party and left the location without furnishing any details.

7. The vehicles were discreetly stationed near the spot. SI Naresh Kumar deployed the raiding party accordingly, while the informant and the undersigned officer remained in the car in surveillance. At approximately 12:10 PM, two tempos bearing registration DL-1-LU-9094 and DL-1-LU-9784 were observed arriving from the direction of the Old Delhi Railway Station. The informant identified the person seated beside the driver in tempo DL-1-LU-9094 as Pappu, the target of the raid.

8. A pre-arranged signal was given to the raiding team, and both tempos were intercepted. Upon interception, the individuals were



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informed of the identity of the police personnel. The man driving tempo DL-1-LU-9094 identified himself as Chand (the petitioner), S/o Irfan, resident of G-5, Gali No. 8, Sonia Vihar, Delhi, aged 39 years. The person seated beside him confirmed his identity as Pappu Kumar, S/o Ram Sajiwan, resident of E-10-A-218, T-Huts, Garhi Mendu, Seelampur, Delhi, aged 37 years.

9. The driver of the second tempo DL-1-LU-9784 identified himself as Sonu, S/o Rajender Singh, resident of H. No. A-11, Gali No. 1, Part-2, Sonia Vihar, Karawal Nagar, Delhi, aged 33 years.

10. The three individuals were apprised of the information received and informed of their legal rights under Section 50 of the NDPS Act, including the right to be searched before a Magistrate or a Gazetted Officer. Written notices under Section 50 of the NDPS Act were served upon them. The co-accused Pappu Kumar and Sonu declined to exercise the said right and recorded their refusal in writing. In the case of the petitioner, who was unable to write, his refusal was recorded on his behalf and read over to him, upon which he affixed his signature.

11. Thereafter, a personal search of the three individuals was conducted under the supervision of SI Naresh Kumar, but no incriminating article was found on their persons. The search then proceeded to the vehicles.

12. From the rear compartment of tempo DL-1-LU-9094, two white sacks, tied with plastic ropes, were recovered. Upon opening the first sack marked "Sky", a white cardboard carton containing



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another white sack was found, which, when opened, revealed a flowery, grass-like substance.

13. By its appearance, texture, and odour, the substance was suspected to be *Opium Doda*. The sack was resealed, tied with white cloth, and marked A-1. It was weighed on an electronic scale and found to be 42.600 kg.

14. The second sack from the same tempo, similarly marked “Sky”, contained the same substance, which was also suspected to be *Opium Doda*. This sack, marked A-2, was found to weigh 37.650 kg.

15. In tempo DL-1-LU-9784, two similar white sacks were found. The first, again marked “Sky”, contained a carton with a white sack, which was found to contain the same grass-like, flowery substance suspected to be *Opium Doda*. This sack was marked A-3 and weighed 43.350 kg. The second, marked “Vikas”, similarly contained the suspected substance and was marked A-4, weighing 37.200 kg.

16. Thus, from the two tempos, four sacks of suspected *Opium Doda*, collectively weighing 160.800 kg, were recovered. A Seizure Memo was prepared, the sacks were sealed with the “RB” seal, and Constable Anuj was entrusted with the seal after the proceedings. Both tempos, along with their keys, were seized as case property.

17. The petitioner and the co-accused Pappu and Sonu—were arrested. The articles seized were forwarded to the Crime Branch with a forwarding letter and sealed samples, and directions were



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issued that the case property be deposited in the Malkhana in accordance with Section 55 of the NDPS Act.

18. The case was registered upon the receipt of the rukka and seizure documents at the police station. The investigation was entrusted to SI Naresh Kumar, AEKC/Crime Branch, Delhi, in terms of the direction of senior officers. The incident is stated to have occurred on 22.08.2023 at 12:10 PM, at Lal Batti, near Kodia Pul, Old Delhi Railway Station, and the recovered articles were sent to the police station at 05:20 PM the same day.

19. The co-accused, Pappu, in his disclosure statement stated that he had been engaged, since the year 2008, in the business of facilitating transportation of parcels through the Railway Parcel system in Delhi, functioning in the capacity of a broker. According to him, in or around January 2023, he was approached by one individual named Birju, who instructed him to undertake the task of packing parcels. Pursuant to these instructions, Birju caused certain consignments, referred to as "Doda Post" to be sent under the name of the accused for delivery to one Farukh. On the basis of this, the co-accused Farukh and Birju came to be arrested.

20. The petitioner moved an application before the learned Special Judge, NDPS-02, seeking a grant of Regular Bail, which came to be dismissed *vide* the Order dated 07.03.2025, thereby leading to the filing of the present petition.

21. The learned counsel for the petitioner submits that the as per the prosecution, the only role attributed to the petitioner is that he is



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the driver of the tempo and there is no material on record to show that the petitioner had any conscious or constructive possession of the contraband. Further, there is nothing to show that the petitioner was involved in the said conspiracy.

22. The learned counsel submits that the co-accused, namely Farukh, was granted bail by this Court vide the Order dated 22.01.2025 and similarly, the co-accused Sonu, who had an identical roll as of that of the petitioner in the present case, has been granted Regular Bail by a Judgment of this Court dated 15.04.2025. In light of these facts, he submits that he be granted Regular Bail.

23. *Per contra*, the learned APP for the State, while opposing the bail application, submits that a total quantity of *Opium Doda* weighing 160.80 Kgs was recovered in the present case and a total of 80.25 Kgs were recovered at the instance of the petitioner, from the tempo he was driving. It was contended that the seized contraband falls within the category of 'commercial quantity'.

24. The learned APP further submits that the given the recovery of huge quantity of the Narcotic substance, the Petitioner cannot claim ignorance or deny conscious possession thereof.

25. Having heard the learned counsel for the petitioner, the learned APP for the state and perused the record, at this stage, the question that arises for consideration pertains to whether the Petitioner was in a conscious possession of the alleged contraband i.e. *Opium Doda*, recovered from the Tempo driven by him.



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26. It is not disputed that the consignment in question had arrived through the Old Delhi Railway Station. The Petitioner was neither the consignor nor the consignee of the consignment alleged to contain the said contraband. Rather, the consignment was received at the Old Delhi Railway Station by Pappu, who had received it against a Parcel Booking Receipt and thereafter, the consignment was loaded in two separate Tempos, one of which the Petitioner had driven for delivering it to the given destination. Moreover, the loading of the consignment was carried out by the Railway workers/laborers

27. The learned counsel for the Petitioner had contended that the prosecution has failed to present any evidence to show that the Petitioner had any knowledge of the consignment containing any contraband and as the goods were received through the services of Indian Railways having undergone various security checks, there was no occasion for the Petitioner to reasonably believe that the same would contain any illegal substance/contraband.

28. This Court does not find merit in the submission of the learned APP that since a large quantity of the contraband was seized from the vehicle driven by the Petitioner, the said contraband was in the conscious possession of the Petitioner.

29. Needless to say, the question of the fact regarding the possession of the contraband with the Petitioner being conscious or not, is a matter of Trial to be decided by the learned Trial Court at an appropriate stage, based on the evidence led during the proceedings.



30. As per the Nominal Roll, the Petitioner has undergone custody period of 1 year, 8 months and 3 days as on today and his overall Jail Conduct is stated to be 'Satisfactory' and he has no criminal antecedents.

31. Having noted the above, it would be apposite to note the observations of the Coordinate Bench in the case of *Najir Hussain vs State Through SHO Special Cell* in Bail Appln. 3810/2024, decided on 25.03.2025, relevant extracts whereof read as under:

"11. Likewise, in Naeem Ahmed Alias Naim Ahmad vs. Govt. of NCT of Delhi, 2024 SCC OnLine SC 220, the Hon'ble Supreme Court granted Bail to the accused from whom commercial quantity of contraband was recovered, having regard to his custody of 01 year and 11 months, the fact that the accused had no criminal antecedents and that the conclusion of Trial would take time. The relevant paras of the decision reads as under:

"8. It is informed by learned counsel for the parties that the appellant has, as on date, spent more than 01 year and 11 months in custody. The investigation is complete but framing of the charges is yet to be done. The conclusion of Trial will thus take time. There are no criminal antecedents.

9. It is a seriously debatable question of fact whether the appellant was also found in the conscious possession of the contraband (smack). But such a question of fact will obviously be determined by the Trial Court at an appropriate stage. That being so, it seems to us that as of now, the twin test of Section 37 of the Act, need not be invoked against the appellant.

10. Taking into consideration the totality of the circumstances, especially the period of custody undergone by the appellant however, without expressing any views on the merits of the case, the appeal is allowed. Accordingly, the appellant is ordered to be released on Bail



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subject to his furnishing the Bail bonds to the satisfaction of the Trial Court." (emphasis supplied)"

32. In view of the foregoing discussion, facts and circumstances, coupled with the facts that the Trial is likely to take time in its conclusion as the Charges in the present case have not been framed and the Petitioner has undergone incarceration for a period of 20 months, the Petitioner is admitted to Regular Bail pending Trial in the subject FIR, on his furnishing a personal bond in the sum of ₹50,000/- with one surety bond of the like amount, subject to the satisfaction of the learned Trial Court / CMM / Duty Magistrate and further subject to the following conditions:

- I. The Petitioner shall not leave NCT of Delhi without prior permission of the Learned Trial Court.
- II. The Petitioner shall report at P.S. Crime Branch, Delhi every Saturday at 4:00 P.M. The concerned officer shall release the Petitioner after recording his presence and after completion of all the necessary formalities.
- III. The Petitioner shall immediately intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change of residential address.
- IV. The Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- V. The Petitioner is directed to give his mobile number to the Investigating Officer and keep it operational at all times.



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- VI. The Petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the Prosecution witnesses or other persons acquainted with the facts of case.
- VII. The Petitioner shall also not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending Trial.
33. A copy of this Order be sent to the Jail Superintendent concerned for information and necessary compliance.
34. It is made clear that observations made hereinabove shall not tantamount to be an expression on the merits of the Petitioner's case and have been made for the consideration of the Bail alone.
35. Accordingly, the present Bail Application is disposed of

SHALINDER KAUR, J

APRIL 25, 2025/FRK

Click here to check corrigendum, if any