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

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Date of decision: April 3, 2025

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BAIL APPLN. 592/2025

ABDUL RAB

R/O Afghanistan (Permanent)
Presently at H.NO 28, Krishna Park,
Extension, B-block, Gali no 08,
New Delhi-110018

.....Petitioner

Through: Ms. Sushma Sharma,
Mr.Dhruv Kumar Sharma &
Mr.Girish Kumar Sharma,
Advocates

Versus

NARCOTICS CONTROL BUREAU (NCB)

Delhi Zonal Unit West Block-1,
Wing No.7, R.K. Puram,
New Delhi-110066.

.....Respondent

Through: Appearance not given

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

NEENA BANSAL KRISHNA, J.

1. Bail Application under Section 483 read with 528 of the *Bhartiya Nagrik Suraksha Sanhita, 2023* ('B.N.S.S. 2023' *hereinafter*) read with Section 439 and Section 482 *Code of Criminal Procedure, 1973* ('Cr.P.C.' *hereinafter*) has been filed for seeking Regular Bail under Sections 8(c),



21(c)/22(c)/23/25/27A, 29 & 61 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* ('NDPS' *hereinafter*), Police Station Narcotics Control Bureau ('NCB' *hereinafter*), R.K. Puram, New Delhi.

2. The ASJ while dismissing the Bail Application filed by the Applicant herein, *vide* Order dated 26.07.2024, had opined that recovery of a commercial quantity of contraband attracts the rigours of Section 37 of the NDPS Act, therefore, at that stage, reasonable grounds to presume the innocence of the Accused could not be warranted.

3. *The case of Prosecution* is that information was received on 25.04.2022 by Amrit Kumar Tiwary, Superintendent, NCB-Delhi Zonal Unit ('DZU' *hereinafter*) from Sh. Harish Upadhayay, Deputy Superintendent, Gujarat, ATS that one Md. Imran was transporting Narcotic drugs in MG Hector Car bearing Registration No. HR 87E 1111 from Muzaffarnagar, was scheduled to arrive at Delhi on the intervening night of 25.04.2022 and 26.04.2022 and a substantial quantity of Narcotics drugs could be recovered. Joint raiding Team was constituted of NCB, DZU and ATS, Gujarat, which was divided into three groups and stationed at various points while the *third group* comprising of IO Sh. Rahul Kumar Purbe, IO Sh. Rajeev Sehrawat, Sepoy Dharmender Singh and Rajbir were stationed at Red Light below the Bridge Bus stand, Sarai Kale Khan, Delhi for surveillance.

4. At around 05:50 AM, the Car bearing Registration No. HR 87E 1111 coming from the Rajghat side, was accosted. The driver disclosed his name as Mohd. Imran, resident of H.No. 1414/3 Khala Par, Kidwai Nagar,



Muzaffarnagar, U.P. and that he was carrying 1 Kg of Heroin in the Car. He was taken to NCB-DZU Office, New Delhi along with his vehicle/car, for further investigation. The search of his vehicle was conducted and a *light grey coloured packet* on which '*Flipkart*' was written, was found from the trunk of the car. The packet contained a transparent polythene was recovered which *contained brown coloured powder*. The substance was tested using the D.D. Kit which was positive for the presence of Heroin.

5. The substance was found to weigh 1 kg i.e. a commercial quantity under the NDPS Act, which was seized *vide* a Panchnama.

6. Disclosure of Md. Imran led to *co-accused Razi Haider Zaidi*, owner of the MG Hector Car, who was also associated in drug smuggling and illicit trafficking of Heroin along with others. Md. Imran also disclosed about his godown located at Sarswati Colony near Jaroda Village Bus Stand, NH-58 Muzaffarnagar, UP ('Muzaffarnagar Godown' *hereinafter*) wherein there could be the possibility of recovery of huge quantities of contraband. He also disclosed the names of Md. Hakin and Hamidullah, who were of Afghan origin.

7. Accordingly, a raid was conducted on 26.04.2022 at the Muzaffarnagar Godown, from where three blue colour plastic jerry-cans containing 17 packets of Heroin, one gunny bag weighing 17.250 Kgs., one blue colour gunny bag containing medicinal powder weighing 3.650 Kgs, suspected to be medicinal powder, and powder weighing 2.750 Kgs, which was later disclosed as Acetic Anhydride, were recovered. The Panchnama was prepared and the said contraband was seized.



8. Md. Imran was arrested on 27.04.2022 at 22:30 PM.
9. On 27.04.2022, the raid by Delhi Police officials was conducted at Razi Haider Zaidi's rented accommodation in Okhla Vihar, Jamia Nagar, New Delhi but nothing incriminating was recovered.
10. Razi Haider Zaidi, during his interrogation, disclosed in his statement recorded on 06.05.2022, that he works for Shahid who was involved in drug trafficking and it was on his direction, that he took the godown on rent in Muzaffarnagar and contacted Rajinder who was the owner of *M/s RR Global Impex* for receiving a consignment of *Mulethi* in which 10 Kg of Heroin was received and that Md. Imran had accompanied him when Mulethi consignment containing concealed Heroin, was brought to the Flat at Shahin Bagh, Okhla, New Delhi.
11. Subsequently, Razi Haider Zaidi in his statement recorded 08.05.2022, under Section 67 NDPS, further disclosed that Avtar Singh @ Sunny was present at the Muzaffarnagar godown where Heroin was processed
12. Subsequently, on the Application of ATS, Gujarat, both Avtar Singh and the Applicant/Abdul Rab, were arrested in FIR No. 2/2022 on 13.05.2022, before the Hon'ble Special Judge, Bhuj.
13. ***Applicant/Abdul Rab*** in his statement recorded on 16.05.2022, disclosed that he came to India in 2015 and had been residing on his UNHCR Card. One Nadir, an Iranian national approached him to do business in India. He sent two Containers out of which one was detained by DRI, Mumbai and the second one was detained by Customs, Chennai. However, the second Container was later released after paying customs duty



and brought to Muzaffarnagar Godown with the assistance of Razi Haider Zaidi. It was also disclosed that the Applicant imported the Containers in question, in the name of Dinto and he received money for transport of the Containers either through bank transaction or in cash, through Hawala.

14. Notice was issued to Dinto Kallukaran who disclosed that he was running a Company in the name of *M/S Phillos India Enterprises* and was in the Import/Export business. He had imported two Containers of chemicals from Iran on the request of the Applicant, for which he received the payment in cash from the Applicant.

15. The samples were sent to CRCL for examination. As per the Test Report dated 20.10.2022, the samples were found positive for *Diacetylmorphine (Heroin), Monoactylmorphine along with Dextromethorphan and caffeine.*

16. According to the Prosecution, the role of the Applicant herein, was that he allegedly transported the contraband from Chennai to the godown in Muzaffarnagar.

17. After completion of investigation, Complaint was filed by the Respondent/NCB and the *Charges have been framed under Section 21(c) read with Section 29 of NDPS Act against the present Petitioner.*

18. *Ld. Special Judge, NDPS, North Delhi dismissed his Bail Application vide Order dated 26.07.2024 on the ground that there is a definite bar of Section 37 of NDPS Act as commercial quantity of contraband, was recovered.*



19. The Applicant, thereafter, filed an Application No. 3034/2024 seeking Bail, before this Court, which was withdrawn *vide* Order dated 18.11.2024.

20. **The Applicant has sought Bail primarily on the ground of *delay in trial*.** The Applicant was arrested by the Investigating Agency on 13.05.2022 and has been in *judicial custody for 2 years 11 months*. The case is still at an initial stage as only *one witness out of 33 Prosecution witnesses* have been examined so far and the trial might take a long time to be concluded.

21. Reliance has been placed on judgements of Co-Ordinate Bench of this Court in *Sukhwinder Singh. vs. State of NCT of Delhi*, Bail Appln. No. 2274/2023; *Shivam vs. State Govt of NCT of Delhi*, Bail Appln. No. 3312/2023; *Rizwan vs. State of NCT of Delhi*, Bail Appln. No. 2800/23; *Madhuri Chauhan vs. State of NCT of Delhi*, Bail Appln. No. 2848/2022; and *Sovraj vs. State of NCT of Delhi*, Bail Appln. No.2537/2023.

22. The Applicant/Abdul Rab has also sought Bail on the ground that there is *no evidence against him regarding import of contraband*. Applicant was arrested in a joint operation of NCB & Gujarat, ATS, Police Station Ahmedabad in FIR No. 02/2022 but thereafter, he was released by Spl. Judge (NDPS) Bhuj, Kutch under Sections 169 CrPC *vide* Order dated 12.12.2022 due to the lack of evidence against him. It is explained that the second Container in question was seized by Customs department, Chennai and was later released which would have been impossible, had there been any contraband in the Container.

23. It is further submitted that the act of *importing containers on other licences is not in contravention of NDPS Act*. It is further submitted that as



per the Invoice, the Chemical imported by *M/S Phillos India Enterprises* is clearly mentioned as “*normal plasticiser concrete additives*”, which is used for mixing Cement. The financial transaction between Mr. Dinto who imported the Chemical at the instance of Abdul Rab, is not incriminating in any manner. As the Applicant was an Afghan National, he did not possess an Import licence and procured the imported Container on the licence of *Phillos India Pvt. Ltd.*

24. The Applicant has also *sought Bail on the ground that the Applicant was arrested on the basis of a single act* i.e. for bringing the Container to the godown at Muzaffarnagar on 07.03.2022. However, he was arrested in two cases of NCB, i.e. the present case and in another case being VIII/39/DZU/2022 which amounts to *double jeopardy* and the Applicant is entitled to bail on this ground itself.

25. Further, he has already been granted Bail in RC-VIII/39/DZU/2022 by the Co-ordinate Bench of this Court *vide* Order dated 20.01.2025. The other co-accused, namely, Shamim Ahmed and Rajender Prasad Sharma in the second case, have also been granted Bail by this Court *vide* Order dated 12.02.2024 and Order dated 10.04.2024, respectively.

26. It is submitted that the statement of the Applicant as well as the statement of the co-accused cannot be read against him as the same has no evidentiary value in the eyes of the law. Reliance for the same is placed on *Toofan Singh v. State of Tamil Nadu*, CrI. Appl. No. 152/2013.

27. *It is further submitted that Article 21 is an exemption to the statutory bar under Section 37 of NDPS Act*, for which reliance is placed on



Rabi Prakash vs. State of Odissa SLP No. 4169/2023; Union of India vs. K.A. Najeeb (2021) 3 SCC 713; Sheikh Javed Iqbal @ Ashfaw Ansari @ Javed Ansari vs. State of UP, CrI. Appl. No. 2790/2024; Deep Raj @ Neetu v. State of Himachal Pradesh, CrI. MP(M) No. 2822/2022; Mohd. Muslim @ Hussain vs. State (NCT of Delhi), SLP (CrI) No. 915/2023; and Ankur Chaudhary vs. State of MP, SLP (CrI.) No. 4648/2024.

28. Further, the Applicant is the UNHCR card holder, on whom his wife and two minor children and old aged mother are dependent. Lastly, it is submitted that there is no likelihood of Applicant threatening the witness or tampering with the evidence. The Applicant has a clean record and deep roots in society. Therefore, the Applicant/Abdul Rab may be granted regular Bail.

29. ***The Respondent/NCB in its detailed Status Report***, which is taken on record, submitted that the Accused/Applicant was not entitled to Bail as he had approached the Court with unclean hands. The Bail was further opposed on the ground that the recovery of Heroin was of commercial quantity and the offence was committed in criminal conspiracy with other accused persons.

30. It was further submitted that since the recovery is of commercial quantity, twin conditions for Bail under Section 37 of NDPS Act, have to be satisfied. Hence, the Bail Application is liable to be dismissed.

31. Reliance for the same is placed on State of Kerala vs. Rajesh, AIR 2020 SC 721. Reliance is also placed on State of Madhya Pradesh vs. Kajad, (2001) 7 SCC 673 to state that under Section 37 of the Act negation of bail is the rule and its grant an exception. Further reliance is placed on



Babua @ Tazmul Hossain vs. State of Orissa, 2001 AIR SCW 682 (SC); and Union of India through NCB, Lucknow vs. Md. Nawaz Khan, CrI. Appl. No. 1043/2021.

32. It is further submitted that statement of accused/Abdul Rab recorded under Section 67 of NDPS Act during investigation, also discloses that he had agreed to do Chemical business with Rabani and had imported two Chemical Containers in December, 2021 and February 2022 in the name of his friend's Company, i.e., *M/S Philos India Enterprises* and had gone to Muzaffarnagar on 07.03.2022 to deliver Chemical cans/Containers to Razi Haider and Avtar Singh @ Sunny, for which he had received payment from Nadir from Iran, through hawala for clearance of Container and its expenses.

33. The Applicant/Accused is actively involved in the commission of offence, abetment and criminal conspiracy which is apparent from the totality of the circumstances and investigation carried out by N.C.B.

34. It is further submitted that the Accused/Applicant has not shown any reasonable ground for believing that he is not guilty of the offence and that he is not likely to commit any offence if released on Bail. The twin test under S.37 NDPS Act, is not satisfied and his Bail Application is liable to be dismissed.

35. **Submissions heard and the record perused.**

36. As per the case of the Prosecution, apparently there is Drug Syndicate being run for trafficking Heroin, and the current Applicant is a part of the same thereby mandating the satisfaction of the *stringent twin conditions* under Section 37 of the NDPS Act, 1985.



37. Essentially, the Bail is sought on the *ground* that there has been no recovery of any contraband or incriminating material from the Applicant and that he has been implicated on the Disclosure Statements of other Co-accused recorded under Section 67 of the NDPS Act.

38. The Applicant is alleged to have indulged in conspiracy with co-accused persons in carrying out drug-trafficking activities of contraband, by facilitating transport of Container containing substance in commercial quantity that was used for making Heroin, to the Muzaffarnagar Godown, and being a part of conspiracy of drug trafficking.

39. The Applicant has already been granted Bail in Case No. VIII/38/DZU/2022 by this Court, *vide* Order dated 30.01.2025.

40. As per the record, the Petitioner has been in custody since 13.05.2022, out of which only *one out of 33 Prosecution witnesses*, have been examined. It is evident that trial would take a long time to conclude. The Applicant has no prior record of involvement in criminal cases.

41. It is apposite to refer to the decision of the Apex Court in Union of India vs. K.A. Najeeb, (2021) 3 SCC 713 wherein it was observed that courts are obligated to release the undertrial prisoners on bail if there is a delay in trial. Further, it was observed that *statutory restrictions do not exclude the discretion of Constitutional Courts to grant bail on the grounds of violation of Fundamental Rights enshrined in Part III of the Constitution of India*.

42. In the recent decision of Manish Sisodia vs. Central Bureau of Investigation, 2023 SCC Online SC 139, the Apex Court reiterated that that right of liberty guaranteed under Article 21 of the Constitution of India is a



sacrosanct right which needs to be accepted even in cases where stringent provisions are incorporated through special laws. It was held that prolonged incarceration before being pronounced guilty of an offence, should not be permitted to become punishment without trial. It was further observed that fundamental right of liberty provided under Article 21 of the Constitution is superior to statutory restrictions and reiterated the principle that “*bail is the rule and refusal is an exception*”.

43. This Hon’ble Court in the cases of *Sukhwinder Singh vs. State of NCT of Delhi*, in Bail Application No. 2274/2023 had held that notwithstanding stringent requirements imposed on the accused under Section 37 of the NDPS Act for the grant of Bail, these requirements do not preclude the grant of Bail on the grounds of undue delay in the completion of the trial.

44. Similarly, in the case of *Shivam vs. State Govt of NCT of Delhi*, Bail Application No. 3312/2023, a Co-Ordinate bench of this Court while granting Bail to Applicant who had been in Judicial Custody for about 2.5 years in a case under Sections 21/25/29 of the NDPS Act, wherein allegedly on a cursory search of the polythene discarded by the Applicant, it was found to be containing Heroin weighing 300 gms., observed that delay in trial and long period of incarceration, are important factors which have to be kept in mind while considering the Application for Bail.

45. Likewise, in the case of *Rizwan vs. State of NCT of Delhi*, Bail Application No. 2800/23, this Court opined that various courts have recognized that prolonged incarceration undermines the right to life, and liberty, guaranteed under Article 21 of the Constitution of India, and



therefore, conditional liberty must take precedence over the statutory restrictions under Section 37 of the NDPS Act.

46. In the case of Sovraj vs. State of NCT of Delhi, Bail Application No.2537/2023, it was observed in the case of recovery of nearly 12 kgs. of *Charas* under the NDPS Act, it was held that the Applicant who had spent about three years in Judicial Custody, cannot be made to spend the entire period of trial in custody especially when the trial is likely to take a considerable time.

47. Considering the above-mentioned facts and in light of the aforesaid judgements and that trial may take long to get concluded, the Petitioner is admitted to *Regular Bail* in *FIR No. VIII/38/DZU/2022* under *Sections 8(c), 21(c)/22(c)/23/25/27A, 29 & 61 of NDPS Act, 1985* upon his furnishing a personal bond of a sum of Rs. 50,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:

- (i) Applicant shall furnish his itinerary with the address of contact to the Court/IO at least 5 days in advance, if he travels out of India.
- (ii) Applicant shall appear before the Court as and when the matter is taken up for hearing;
- (iii) Applicant shall provide his mobile number and also the mobile number of his surety to the IO concerned, both of which shall be kept in working condition at all times;
- (iv) Applicant shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;
- (v) Applicant shall not try to contact, threaten or influence any of the witnesses of this case; and



(vi) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

48. Nothing in this Order shall be construed as an expression of opinion on the merits of the pending matter. A copy of this Order be sent to the FRRO, concerned Jail Superintendent and to the concerned Trial Court.

49. Accordingly, the Bail Application is allowed, and accordingly, disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL, 03, 2025

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