



2025:DHC:5116



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 01.07.2025*+ **BAIL APPLN. 776/2025 & CRL.M.A. 13452/2025****MOHD IDRISH ALI**

.....Petitioner

Through: Mr. Amit Chadha, Senior Advocate with Mr. Hirein Sharma, Mr. Vimal Tyagi, Mr. Sanjog Singh, Mr. Saurabh Goel, Mr. Balaji Pathak, Mr. Harjas Singh, Mr. Rajendra Singh, Advocates

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC for the State

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present application, the applicant is seeking grant of regular bail in case arising out of FIR No. 206/2021, registered at Police Station Special Cell, Delhi for the offence punishable under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [hereafter '*NDPS Act*'].

2. The chain of events, as alleged by the prosecution, is that on 05.08.2021, upon receipt of secret information by SI Surender Singh



2025:DHC:5116



that one Shahnawaj Hussain, a resident of Bareilly, Uttar Pradesh, who was allegedly involved in drug trafficking and supplied heroin on the directions of one Khalil Ahmad, a resident of Rampur, Uttar Pradesh – who, in turn, procured the contraband from North-East India – would be arriving near the Hyundai Showroom, Main Road, Rajapuri, Delhi, in Truck No. UP-25BT-9936 between 05:30 AM and 09:00 AM to deliver heroin to one Sachin, a resident of Rajapuri, Delhi, a raid was accordingly planned and conducted. After following the due process of law, a trap was laid near the said Hyundai Showroom. At about 08:40 AM, Shahnawaj Hussain arrived at the spot in Truck No. UP-32BT-9936, carrying a black *pithu* bag. After five minutes, accused Sachin reached the location on a maroon-coloured scooty bearing registration no. DL-8SCX-2705 and stopped near the said truck. It is alleged that Shahnawaj Hussain then handed over a green-coloured polythene packet to Sachin, which he took out from his *pithu* bag. At that point, the raiding team apprehended both individuals and, after serving notices under Section 50 of the NDPS Act, called the ACP to the spot. In the presence of the concerned ACP, a search was conducted of the green-coloured polythene in Sachin's possession, which was found to contain 2 kg of heroin. Thereafter, a search of the black *pithu* bag carried by Shahnawaj Hussain led to the recovery of 3 kg of heroin contained in a transparent polythene bag. Further, 5 kg of heroin was recovered from a yellow-coloured polythene bag kept near the driver's seat of the said truck. Accordingly, the present FIR came to be registered.



3. Subsequently, based on the disclosure statements of accused Shahnawaj Hussain and Sachin regarding the source of the heroin, the present applicant, Mohd. Idrish Ali, and co-accused Mohd. Abdur Rajak were apprehended on the same day, i.e., 05.08.2021, after due compliance with Section 50 of the NDPS Act. From the possession of the present applicant, 1 kg of brown-coloured powder was recovered, and 1 kg of similar substance was recovered from co-accused Mohd. Abdur Rajak. Mobile phones of both accused were also seized. Co-accused Khalil Ahmad was later apprehended on the basis of specific information and identification by accused Shahnawaj Hussain; however, no incriminating substance was recovered from him. The FSL report confirmed that the substances recovered from all the accused tested positive for heroin.

4. Charges in the present case were framed on 07.10.2023. As on date, four witnesses have been examined before the learned Trial Court.

5. During the course of arguments, the learned senior counsel appearing for the applicant submitted that the present accused has been in judicial custody since 06.08.2021 and that, out of 27 witnesses, only 4 have been examined so far. It was further submitted that co-accused Sachin, from whom 2 kg of heroin was recovered, was granted regular bail on 02.05.2024, and co-accused Shahnawaj Hussain, from whom 3 kg and 5 kg of heroin were recovered, was also granted regular bail on 05.07.2024. Co-accused Khalil, from whom there was no recovery, had been granted bail on 28.02.2024.



Relying on the principle of parity, it was argued that the applicant herein, from whom only 1 kg of heroin was allegedly recovered, also deserves to be released on bail. It was also contended that the State has not challenged the orders granting regular bail to the other co-accused from whom a significantly larger quantity of contraband was recovered. The learned senior counsel submitted that the applicant has already undergone custody for more than 3 years and 10 months, has no previous criminal antecedents, and that the trial is likely to take considerable time to conclude. On these grounds, the applicant seeks regular bail.

6. The learned ASC for the State opposed the bail application, submitting that the recovery from the present applicant falls under the category of ‘commercial quantity’ as per the NDPS Act. However, he fairly conceded that the co-accused persons, from whom larger quantities were recovered, have already been granted regular bail by the learned Trial Court nearly a year ago, and that the State has not challenged those bail orders.

7. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

8. In the present case, this Court notes that 1 kg of heroin was recovered from the possession of the applicant, Mohd. Idrish Ali. The CDR details reveal that he was in regular contact with co-accused Mohd. Abdur Rajak, who, in turn, was in touch with other co-accused persons. The FSL report of the mobile phone recovered from the



2025:DHC:5116



applicant has allegedly revealed incriminating photographs relating to narcotic substances and cash. It is not in dispute that the quantity of heroin recovered from the applicant falls within the category of commercial quantity, thereby attracting the statutory bar under Section 37 of the NDPS Act.

9. However, this Court also notes that the learned Trial Court has granted regular bail to co-accused Sachin and Shahnawaj Hussain vide orders dated 02.05.2024 and 05.07.2024, respectively. It is relevant to note that the quantity of narcotic substance recovered from these co-accused was significantly higher, i.e. 2 kg from Sachin and 8 kg in total from Shahnawaj Hussain. The said bail orders were passed on grounds including lack of compliance with directions issued for furnishing cell location data, discrepancy in Cell ID locations, unexplained presence of an unknown person on the co-accused's scooter in video footage prior to arrest, and questionable timing and logistics of alleged apprehension vis-à-vis the toll records and traffic conditions. This is evident from the reasons recorded in order dated 02.05.2024 which are as under:

“ As per order dated 05.04.2022, Ld. Predecessor directed the IO to provide location chart as per cell ID of mobile no. 9210111143 of accused Sachin and of mobile no. 6006699185, 8266953588 and 9557639906 of accused Shahnawaz at 08.40 am dated 05.08.2021 but as per reply of the IO and submissions of Ld. Addl. PP for State, the same was orally told to the Ld. Counsel for accused Sachin. Ironically the order of court has been allegedly complied orally and there is nothing on record to show that the said order dated 05.04.2022 has been complied and the location of the mobile phone of accused Sachin and Shahnawaz at 08.40 am has been provided to the



Ld. Counsel for accused Sachin. This fact become more important as the Cell ID of mobile no. 9210111143 of accused Sachin is 405872008B224 while the Cell ID of mobile no. 8266953588 of accused Shahnawaz is 2229-23006124292 at 08.42 am on 05.08.2021 (time of apprehension) but no document has been filed to show that the address of the said Cell ID by the police officials and in the absence of any document w.r.t. address of such Cell IDs it cannot be said that location of both the accused were same and that too in the absence of compliance of order dated 05.04.2022 w.r.t. providing of location of accused Sachin and Shahnawaz on 05.08.2021 at 08.40 am.

In the video footage provided by the accused of 05.08.2021 in the morning hours about 06.47 am some other person has been shown driving scooty of accused bearing no. DL8SCX 2705 and it has been alleged on behalf of accused that person is official of special cell taking scooty of accused for false implication but it has been stated on behalf of prosecution that it is some unknown person. No doubt, it is defence of accused but that footage is part of record since filing of chargesheet and is of date 05.08.2021. Therefore, it is a matter of trial whether the officials of special cell was riding the scooty of the accused on the date of incident before apprehension of accused ironically there is no explanation from special cell w.r.t. person seen on the scooty nor it has been stated by cell that the footage is manipulated or is of some other date.

In the writ petition no. 113/2022 dated 11.04.2023 it was mentioned regarding Jewar Toll Plaza defence of accused that chargesheet has been filed and accused has all right to defend themselves during the trial and present evidence, no further direction required. The prosecution has not disputed that the vehicle bearing no. UP32 BT 9936 was at Jewar Toll Plaza at 07.16 am on 05.08.2021 and the place of apprehension is about 100 km from Jewar Toll Plaza, the vehicle crossed about 100 km and crossed Noida, South Delhi and then entered West Delhi Rajapuri within 1 hour and 24 minutes and that too during office hours therefore, the submissions of prosecution that it was express way therefore, the distance of 100 km can be covered within 1 hour 24 minutes can not sustain as the express way ends before entering Noida and after that there is routine traffic and the truck crossed the traffic of Noida and Delhi during office hours before reaching Rajapuri.



In the Section 50 NDPS Act notice served upon the applicant it has been mentioned that the search of applicant and his scooty is to be done but the prosecution in its case itself has mentioned that the accused Shahnawaz handed over one *thelly* to the accused Sachin and when accused Sachin was apprehended then he was having that *thelly* but for the reason best known to police officials, nothing about the search of said *thelly* has been mentioned in Section 50 NDPS Act notice. The present matter is only NDPS Act matter pending against the applicant as per report filed by prosecution. The accused, in the absence of compliance of order dated 5.04.2022 by investigating agency, difference in Cell ID of accused Sachin and Shahnawaz, non filing of address chart of cell ID by the investigating agency w.r.t. location of accused, doubt w.r.t. some other person riding the vehicle of applicant on the date of incident before apprehension, coverage of 100 km by a truck in office time from Jewar Toll Plaza to Rajapuri, has crossed the bar of Section 37 NDPS Act and it can be said that there are reasonable ground to believe that he is not guilty of offence and is not likely to commit the offence, therefore, accused Sachin is admitted to bail on furnishing personal bond in the sum of Rs. 1,00,000/- with two sureties of like amount and subject to following conditions...”

10. Thus, in essence, bail was granted to co-accused Sachin, and later to co-accused Shahnawaj, on the grounds of material procedural lapses by the investigating agency, inconsistencies in mobile location data, and absence of conclusive linkage to the alleged location of incident, thereby creating reasonable grounds to believe that the accused was not guilty of the offence at that stage.

11. Despite these circumstances, the learned Trial Court, i.e. the same judicial officer, denied bail to the present applicant, from whom a lesser quantity of heroin was recovered. The denial was based on the reasoning that the recovery from the applicant was distinct and independent from that of Sachin and Shahnawaj, and therefore, the



2025:DHC:5116



applicant could not claim parity. It was further held that in view of the recovery of commercial quantity, the bar under Section 37 of the NDPS Act remained applicable.

12. It is pertinent to mention that the present applicant, Mohd. Idrish Ali, was apprehended only on the basis of disclosure statements made by co-accused Sachin and Shahnawaj Hussain. Notably, both of these co-accused persons, who form the very link in the chain of alleged culpability against the applicant, have since been granted regular bail by the learned Trial Court over a year ago. The State has chosen not to challenge those bail orders, which have attained finality.

13. Though this Court is conscious that the recovery from the applicant falls within the ambit of commercial quantity, it is not clear as to why the State did not choose to challenge the bail granted to co-accused Sachin and Shahnawaj Hussain, from whom significantly larger quantities of heroin were recovered and who had allegedly disclosed the name of present applicant.

14. Moreover, the applicant has been in judicial custody since 06.08.2021, i.e., for a period of about 3 years and 11 months. Charges in the present case were framed in October 2023, and as of now, only 4 witnesses out of 27 have been examined. Thus, the trial is proceeding at a slow pace and is likely to take considerable time to conclude. The delay in trial, despite the applicant's prolonged incarceration, also weighs in favour of grant of bail. Further, it is not



2025:DHC:5116



disputed that the applicant has no previous criminal antecedents, including any prior involvement in offences under the NDPS Act.

15. In light of the above peculiar circumstances, including the long period of incarceration, slow pace of trial, grant of bail to similarly placed co-accused from whom larger quantities were recovered, the non-challenge of their bail orders by the State, this Court is of the view that the rigours of Section 37 NDPS Act stand mitigated in the present case.

16. Therefore, for the reasons recorded hereinabove, this Court is inclined to grant regular bail to the present accused/applicant on his furnishing a personal bond in the sum of Rs.1,00,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the same terms and conditions as imposed by the learned Trial Court in orders dated 02.05.2024 and 05.07.2024 while granting bail to co-accused Sachin and Shahnawaj.

17. The bail application along with pending application, if any, stands disposed of.

18. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

19. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
JULY 01, 2025/vc