



2025:DHC:2427



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

% *Judgment delivered on: 08.04.2025*

+ **BAIL APPLN. 4719/2024**

ABHISHEK KUMARPetitioner

Through: Mr. Hasim Alam and Mr.
Vikrant Pandey, Advocates.

versus

DIRECTORATE OF REVENUE
INTELLIGENCERespondent

Through: Mr. Anurag Ojha, SSC for
DRI with Mr. Dipak Raj, Mr.
Subham Kumar, Mr. Vipul
Kumar and Ms. Garima
Kumar, Advocates

+ **BAIL APPLN. 4836/2024**

FAYAZ AHMAD BHATTPetitioner

Through: Mr. Hasim Alam and Mr.
Vikrant Pandey, Advocates

versus

DIRECTORATE OF REVENUE
INTELLIGENCERespondent

Through: Mr. Anurag Ojha, SSC for
DRI with Mr. Dipak Raj, Mr.
Subham Kumar, Mr. Vipul
Kumar and Ms. Garima
Kumar, Advocates



CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of these applications, the applicants seek grant of regular bail in SC No. 356/2022, arising out of DRI/DZU/34/ ENQ-01/2022, registered for the offence punishable under Sections 8/20/29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 [hereafter '*NDPS Act*'].

2. Briefly stated, the facts of the present case, as discernible from the record, are that on 01.02.2022, the Deputy Director of the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit, had informed the Assistant Director of the DRI, Delhi Zonal Unit, New Delhi, that intelligence had been received regarding certain individuals involved in the trafficking of a narcotic substance, specifically *charas*, in commercial quantity. Pursuant to this information, the Deputy Director had instructed the Assistant Director (GI), DRI, Delhi Zonal Unit, to constitute a team of officers for the purpose of intercepting and examining the individuals mentioned. Subsequently, on 02.02.2022, the Deputy Director conveyed that further intelligence had been received indicating that the narcotic substance was being transported to Delhi in a truck bearing registration number JK-03-D-7134, which was coming from Jammu and Kashmir and was expected to pass through the Murthal



Toll Plaza. It was further informed that the individuals transporting the substance were likely to meet prospective buyers or carriers near the said toll plaza. On the same day, Mr. Anil Kumar Rawal, Assistant Director, DRI, Delhi Zonal Unit, had directed Mr. Nakul Dev, Intelligence Officer (IO), to take necessary action in this regard. The IO had then called two independent witnesses, introduced himself by showing his identity card, and also introduced the witnesses to the other officers of the DRI, Delhi Zonal Unit. The independent witnesses were informed about the intelligence received, specifically that a truck bearing registration number JK-03-D-7134 was suspected to be carrying concealed narcotic substances and would soon pass through the Murthal Toll Plaza. They were requested to witness the interception and search proceedings, to which they agreed. Thereafter, the DRI officers mounted surveillance near the Murthal Toll Plaza. On 02.02.2022, the officers sighted the truck bearing registration number JK-03-D-7134 crossing the toll plaza. After it crossed the plaza, the officers intercepted the truck and introduced themselves as DRI officers to the occupants of the vehicle, which included three individuals seated in the truck cabin. Upon inquiry, the person driving the truck identified himself as Bashir Ahmad Sofi, son of Ghulam Mohammad. The two other occupants disclosed their names as Fayaz Ahmad Bhatt, and Abhishek Kumar. During preliminary questioning, Bashir Ahmad Sofi informed the officers that the actual driver of the truck was one Manzoor Ahmad Wani, who had driven the vehicle from Jammu and



Kashmir and had then called him via mobile phone, and was currently waiting near the toll plaza. In the meantime, Manzoor Ahmad Wani had also arrived at the location and presented himself before the DRI officers. After interrogation, the above-mentioned accused persons namely Bashir Ahmad Sofi, Manzoor Ahmad Wani, Fayaz Ahmad Bhat and Abhishek Kumar were served with notices under Section 50 of the NDPS Act. Thereafter, the personal search of the above-mentioned accused persons was conducted by the DRI officers in the presence of Senior Intelligence officer, DRI, however, no contraband was recovered from their personal search. Thereafter, DRI officers started the search of the truck cabin and one black color shoulder bag, and one HDPE bag (*katta*) was found and fifteen packets were recovered from those bags. The total gross weight of the said fifteen packets came out to be 15.725 Kg. Each packet which was marked as 1 to 15, was cut and tested and was found to contain a black colour substance, and found to be *charas*. Thereafter, the accused persons were arrested on 02.02.2022 in the present case.

3. The learned counsel appearing on behalf of the applicants argues that the applicants have been in judicial custody for the last three years i.e., since 02.02.2022, and that they have been falsely implicated in the present case. It is contended that there exists a discrepancy in the recorded weight of the contraband, which is apparent from a comparison of panchnama-recovery memo, proceedings under Section 52A of NDPS Act and the CRCL (Central



Revenue Control Laboratory) sample reports. It is further argued that the prosecution had failed to prepare an inventory of seized contraband in accordance with the relevant Rules and thus, there was non-compliance with Section 52A of the NDPS Act. It is further submitted that out of total 42 witnesses, several have been dropped, and only 2 out of the remaining 18 witnesses have been examined by the prosecution so far, thereby leading to prolonged delay in the trial proceedings. It is therefore prayed that the applicants herein be granted regular bail. In support of his contentions, the learned counsel for the applicants has also placed reliance on certain case laws.

4. The learned counsel appearing on behalf of the respondent/DRI, on the other hand, opposes the present bail applications and argues that the allegations against the applicants herein are serious in nature. It is stated that the applicants were apprehended on spot with commercial quantity of narcotic substances, and all mandatory compliances were made by the investigating agency. It is further argued that the FSL report in this case confirmed that the recovered contraband was *charas*. It is submitted by the learned counsel that the minor difference in the weight of the recovered narcotic substance is due to the drying up of the moist content in it, and it cannot be a ground to grant bail to the applicants. Similarly, it is contended that any alleged non-compliance with provisions of Section 52A of NDPS Act also cannot be the ground for grant of bail. It is stated that there is a strong possibility that the applicants may abscond, if released on



bail, and therefore, the present bail applications be dismissed.

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

6. A perusal of the record in this case reveals that the applicants herein were apprehended at the spot by the officials of DRI, pursuant to receipt of a secret information, and fifteen packets containing about 15.725 kg of *charas* were recovered from the truck in which the accused persons were traveling. The said truck was being driven by co-accused Bashir Ahmed and present applicants Abhishek Kumar and Fayaz Ahemed were sitting besides the drive in the truck. Concededly, the quantity of narcotic substance recovered in this case from the present applicants is commercial quantity, i.e. about 15.725 kg of *charas*. Therefore, the twin conditions under Section 37 of the *NDPS Act* will have to be satisfied by the applicants so as to be entitled to grant of bail. Section 37 of the *NDPS Act* is set out below:

“37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -

- a) every offence punishable under this Act shall be cognizable;
- b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless –
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit



any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

7. The Hon’ble Supreme Court in *Narcotics Control Bureau v. Mohit Aggarwal*: 2022 SCC Online SC 891, while explaining the meaning of ‘reasonable grounds’ under Section 37(1)(b) of *NDPS Act*, has held as under:

“14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.”

8. As per case of the prosecution, the CRCL report of the seized contraband in this case has clearly opined that each sample in this case, tested positive for *charas*. Insofar as the argument of learned counsel for applicants, regarding difference of about 5 grams in weight of seized contraband, is concerned, this Court is of the opinion that the alleged difference of weight is only minor, and the same could be due to loss of moisture in the seized *charas*. In this regard, the DRI has also drawn this Court’s attention to the fact as per CRCL report, the samples were having fungal growth and due to the same, the weight of the samples could have been reduced by a few



grams. The explanation offered by the DRI, at this stage, cannot be rejected. Thus, this argument can be of no help to the applicants. Needless to state, the applicants shall be at liberty to raise all these contentions during the course of trial.

9. As far as the argument of learned counsel for the applicants, that provisions of Section 52A of the NDPS Act were not followed as inventory of seized contraband had not been prepared, and therefore bail should be granted to the applicant is concerned, this Court finds the same unmerited. The learned Trial Court in the order dated 10.12.2024, while dismissing the bail application, has noted that the accused persons in the present case had not disputed the genuineness of the proceedings under Section 52A of the NDPS Act and rather, had admitted the same under provisions of Section 294 of Cr.P.C. Further, in this regard, it shall be apposite to note that the Hon'ble Supreme Court in *Narcotics Control Bureau v. Kashif*: 2024 SCC OnLine SC 3848 has held that any procedural irregularity or illegality found to have been committed in conducting the search or seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during investigation, inadmissible, and any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The relevant extract of the decision is as under:

“39. The upshot of the above discussion may be summarized as under:

(i) The provisions of NDPS Act are required to be interpreted



keeping in mind the scheme, object and purpose of the Act; as also the impact on the society as a whole. It has to be interpreted literally and not liberally, which may ultimately frustrate the object, purpose and Preamble of the Act.

(ii) While considering the application for bail, the Court must bear in mind the provisions of Section 37 of the NDPS Act which are mandatory in nature. Recording of findings as mandated in Section 37 is sine qua non is known for granting bail to the accused involved in the offences under the NDPS Act.

(v) Any procedural irregularity or illegality found to have been committed in conducting the search and seizure during the course of investigation or thereafter, would by itself not make the entire evidence collected during the course of investigation, inadmissible. The Court would have to consider all the circumstances and find out whether any serious prejudice has been caused to the accused.

(vi) Any lapse or delay in compliance of Section 52A by itself would neither vitiate the trial nor would entitle the accused to be released on bail. The Court will have to consider other circumstances and the other primary evidence collected during the course of investigation, as also the statutory presumption permissible under Section 54 of the NDPS Act.”

10. During the course of investigation, the Call Detail Records of the mobile numbers used by the accused persons, including two mobile numbers used by applicant Fayaz Ahmed and one mobile number used by applicant Abhishek Kumar, were obtained and analysed. The CDR analysis revealed that all the accused persons were in constant touch with each other. There are about 317 calls exchanged between Fayaz Ahmed and co-accused persons, and about 34 calls exchanged between Abhishek Kumar and co-accused persons.

11. Therefore, at this stage, considering the fact that the applicants



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were apprehended at the spot, and recovery of commercial quantity of narcotic substance i.e. 15.725 kg of *charas* was made from the truck in which the applicants were travelling, CRCL report received in this case, CDRs of the accused persons, this Court finds no ground to believe reasonably that the applicants herein have not committed the offence in question (insofar as satisfaction of twin conditions under Section 37 of NDPS Act is concerned).

12. In view thereof, this Court finds no ground to grant regular bail to the applicants at this stage.

13. The bail applications are accordingly dismissed.

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

15. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 8, 2025/ns