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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 15.01.2025*+ **BAIL APPLN. 1845/2024**

GULAM HAZRAT MIRZALE .....Petitioner

Through: Mr. Anandh Venkatramani,  
Mr. Devvrat Singh, Mr. Rishit  
Vimadalal, Ms. Rini Mehra  
and Mr. J. Shivam Kumar,  
Advocates

versus

CUSTOMS .....Respondent

Through: Mr. Anurag Ojha, SSC with  
Mr. Dipak Raj, Mr. Shubham  
Kumar, Mr. Kuldeep Mishra  
and Mr. Swastik Mishra,  
Advocates**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J. (ORAL)**

1. The instant application has been filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (hereafter '*Cr.P.C.*'), read with Section 37 of Narcotics Drugs and Psychotropic Substances Act, 1985 (hereafter '*NDPS Act*'), has been filed on behalf of the applicant seeking grant of regular bail in case bearing C. No. VIII(AP)10/P&I/3237-D/Arrival/2021, dated 21.04.2022, for offence punishable under Sections 8/21/23/29 of the NDPS Act.



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2. Briefly stated, the facts of the present case are that the present applicant was arriving at IGI Airport, Terminal 3, New Delhi, on Flight No. EK 516 dated 08.08.2021 from Dubai to Delhi, carrying a silver-colored trolley bag with tag number 0176542792. It is alleged that, based on suspicion, the applicant was diverted to the green channel. The baggage of the applicant was X-rayed, and no beep sound was heard during the DFMD examination. During the personal search of the applicant, nothing objectionable was found. However, upon searching the silver-colored trolley bag, it was discovered that the bag contained clothes and various black-colored shampoo/hair coloring bottles with broken seals, packed in 7 paper boxes. Upon opening the bottles, they were found containing a black liquid with an unusual smell. A detailed examination revealed that the black liquid, weighing 3.60 kg, was suspected to be a narcotic substance. Testing with the Narcotic Drugs Detection Kit confirmed that the substance was 'Heroin.' It is stated that during the enquiry, the applicant provided a voluntary statement under Section 67 of the NDPS Act, admitting to the recovery of the contraband and his involvement in the case.

3. The learned counsel appearing for the accused/applicant contends that the Investigating Agency has failed to comply with the mandate provided under Section 50 of the NDPS Act, inasmuch as the notice under Section 50 of NDPS Act, dated 08.08.2021, is a typed/printed notice entailing the statement of the Petitioner in a typed/printed form along with his thumb impression. It is also stated



that there is a violation of Section 52A of the NDPS Act. Next, it is argued that though the alleged recovery has been made from the applicant at the IGI Airport, neither any independent public witness has been cited by the prosecution nor any CCTV footage of the Airport has been procured. It is further contended that the applicant is in judicial custody for more than three years, and out of 18 witnesses, only 03 witnesses have been examined as yet. Therefore, it is prayed that the applicant be granted regular bail.

4. Conversely, the learned counsel appearing on behalf of the Customs argues that the recovery of narcotic substance, i.e. heroin, in this case is of commercial quantity and therefore, provisions of Section 37 of NDPS Act will have to be satisfied by the applicant. The learned counsel also draws this Court's attention to the fact that the FSL report supports the case of prosecution. It is further stated the recovery had been effected from the applicant, from his silver-colored trolley bag. The learned counsel also submits that all mandatory procedures under the NDPS Act were followed in this case by the Customs authorities. It is also submitted that the applicant herein is a foreign national, and if granted bail, he may abscond. Therefore, it is prayed that the present bail application be dismissed.

5. This Court has **heard** arguments addressed by learned counsel for both the parties and has perused the material on record.

6. A perusal of the complaint, filed by the Customs authorities before the learned Trial Court, reveals that the present applicant Ghulam Hazrat Mirzale along with co-accused Abdul Khaliq



Noorzai, both nationals of Afghanistan, were intercepted at the IGI Airport. Both the accused persons as well as the trolley bags carried by them were searched by the Customs officials. In their trolley bags, some shampoo/hair color bottles were found, containing black coloured-thick liquid having an unusual smell. The said liquid, upon testing, was found to be Heroin. Total 17 bottles, weighing about 4.02 kg (including the weight of bottles) were recovered from co-accused Abdul, and total 15 bottles, weighing about 3.60 kg (including the weight of bottle) were recovered from the present applicant.

7. Concededly, the quantity of narcotic substance recovered in this case from the present applicant is commercial quantity, i.e. about 3.60 kg of heroin. Therefore, the twin conditions under Section 37 of the NDPS Act will have to be satisfied by the applicant 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.”

8. The Hon’ble Apex 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.”

9. Insofar as the argument of the learned counsel for the applicant, that no CCTV footage has been placed on record by the Customs authorities, is concerned, the learned counsel appearing for the Customs had drawn this Court’s attention of the complaint filed before the learned Trial Court, wherein it has been specifically mentioned that photographs of the recovery proceedings were taken at the spot. Further, it is also specifically mentioned in the complaint that two independent witnesses, and a language interpreter, were called at the spot and all the proceedings had taken place in their



presence.

10. As far as the argument of learned counsel for the applicant, that provisions of Section 50 and 52A of the NDPS Act, were not followed by the Customs authorities and therefore bail should be granted to the applicant is concerned, this Court finds the same unmerited. 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 the course of 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.

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(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



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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.”

11. In view thereof, when this Court considers the material placed on record by the respondent, specifically the fact that recovery of 15 bottles containing Heroin of about 3.60 kgs was made from the trolley bag of the present applicant at the IGI Airport, this Court is of the opinion that a prima facie case, at this stage, is made out against the applicant for commission of offences punishable under the provisions of NDPS Act. Notably, the applicant herein is a foreign national, and the trial is at a crucial stage i.e. the evidence of prosecution witnesses is being recorded. Considering the same, this Court finds no ground to grant regular bail to the applicant at this stage.

12. The bail application is accordingly dismissed.

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

14. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**JANUARY 15, 2025/ns**