



2025:DHC:4897



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

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Reserved on: 20.05.2025
Pronounced on: 05.06.2025

+ BAIL APPLN. 4378/ 2024

IMRAN ALI @ SAMIR

.....Petitioner

Through: Mr. U.A. Khan and Mr.
Tushar Upadhyaya,
Advocates.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Aman Usman, APP
with SI Hitesh Bhardwaj,
PS-Crime Branch,
Prashant Vihar.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. This is an application under Section 483, BNSS read with Section 439 Cr. PC for grant of regular bail filed on behalf of the petitioner Imran Ali @ Samir in case FIR No. 204/2023, under Sections 15/25/29 of NDPS Act, PS Crime Branch, Delhi.

2. As per brief facts, on 17.08.2023, a secret information was received that petitioner and co-accused Mohd. Shareef will bring



2025:DHC:4897



poppy straw from Tapukada, Alwar, Rajasthan in a vehicle and will go to Azadpur via Punjabi Bagh.

3. The raiding team took position at Punjabi Bagh Chowk towards Britannia Chowk. The informer identified one white taxi bearing No. DL1ZA-8248, coming from Dhaula Kuan side as the vehicle in which the suspects were travelling with the contraband. The vehicle was chased. The above-mentioned taxi was found near garbage house, near park, Sarai Pipalthala, Adarsh Nagar. Its rear gate was lying open, from which, a boy was taking down a heavy sack and another boy was keeping a sack on a Splendor motorcycle parked nearby and the taxi driver was standing outside the taxi. Petitioner Imran Ali @ Samir, co-accused Mohd. Shareef and the taxi driver (Sumit) were caught. Notice under Section 50 NDPS Act was given to them. Their replies were recorded on the respective notices under Section 50 NDPS Act.

4. On the search of the sack recovered from the petitioner, 10.860 kgs of poppy straw was recovered. The sack recovered from co-accused Mohd. Shareef contained 11.870 kgs of poppy straw.

5. At the instance of petitioner and co-accused Mohd. Shareef, five more sacks containing poppy straw were recovered from house No. 21, Sarai Pipalthala, Ground Floor. The quantity of poppy straw recovered from the said house was 54.640 kgs.

6. Petitioner and co-accused disclosed that they used to supply poppy straw in the area of Azadpur Mandi and various places in Delhi



2025:DHC:4897



after procuring the same from Tapukada, Alwar, Rajasthan from one Aarif.

7. During police remand, at the instance of the petitioner and co-accused Sumit, two sacks containing 20.518 kgs of poppy straw were recovered from the house of co-accused Amir Khan from Rajasthan.

8. Learned counsel for the petitioner submits that accused persons were apprehended at 7:00 pm and the recovery was affected thereafter. Thus, the alleged recovery was affected from the car as well as from the rented house in between sunset and sunrise. Despite that, no search warrant was obtained to search the vehicle or the rented accommodation. Thus, in view of the non-compliance of provisions of Section 42 NDPS Act, the alleged recovery is rendered illegal in the light of the judgment of Hon'ble Supreme Court in the case of *State of Punjab Vs. Balbir Singh (1994) 3 SCC 299*.

9. It is further submitted that the recoveries were affected from a crowded place but no sincere effort was made to join the public persons or to videograph the search and seizure proceedings conducted at the spot. The owner of the house from where the recovery was allegedly affected, was also not made witness to the search and seizure. No rent agreement, rent receipt or police verification evidence has been collected by the police to show that the alleged place of recovery was a rented accommodation of the petitioner.



2025:DHC:4897



10. It is also submitted that co-accused Mohd. Shareef and Sumit have since been granted bail by the Coordinate Bench of this Court, and therefore, petitioner is also entitled for grant of bail on parity.

11. Bail application has been vehemently opposed by the learned APP, submitting that 10.860 kgs of poppy straw was recovered from the possession of the petitioner at the spot itself while 54.640 kgs of poppy straw was recovered at the instance of the petitioner from his residence. Another quantity of 21.520 kgs of poppy straw was recovered at the instance of the present petitioner from co-accused Amir Khan. It is thus submitted that there is recovery of commercial quantity of contraband from the petitioner, and therefore, the rigors of Section 37 of the NDPS Act would be attracted in the present case, before granting bail to the petitioner.

12. Learned APP further submits that on an analysis of CDRs of the petitioner and co-accused Sumit, their location was found at Tapukada, Alwar, Rajasthan on 17.08.2023 at the time of procurement of contraband. Petitioner was found to be in constant touch with supplier Aarif. The Splendor motorcycle, recovered from the spot, has been found to be registered in the name of the present petitioner. There have been UPI transactions made between the petitioner and the co-accused, which corroborate the disclosure regarding *modus operandi* adopted by the accused persons in procuring the contraband and further selling it.



2025:DHC:4897



13. It is further submitted that petitioner is involved in two similar cases under NDPS Act. He is thus a habitual offender, involved in procurement and supply of contraband and thus is not entitled for the grant of bail.

14. The Court has considered the rival submissions and has perused the material on record.

15. Undisputedly, pursuant to the receipt of secret information, the car in which the petitioner and co-accused were travelling, was intercepted and the petitioner and co-accused were apprehended at 7:00 pm. The recovery was affected from the sacks only thereafter. It is not in dispute that no warrant had been obtained before affecting the search of the petitioner. Petitioner alleges violation of Section 42 of the NDPS Act, and therefore, it would be apposite to refer to the said provision, which is reproduced as under:-

“42. Power of entry, search, seizure and arrest without warrant or authorisation.

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may



furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

16. On a plain reading of the aforesaid provision, it is apparent that upon receipt of secret information by an officer as regards contraband in some building, conveyance or enclosed place, the same is required to be taken down in writing by such officer and is to be sent to an



officer immediately superior to such officer receiving information within 72 hours and in cases where the warrant is required for affecting search after sunset, of a building, conveyance or enclosed place but the circumstances do not afford spending time for obtaining warrant, lest it would hamper the chances of the accused being caught, the officer concerned is required to take down the reasons for such omission to obtain warrants.

17. The question which needs determination in the present case is as to whether the present is a case where Section 42 of the Act can be said to have any application and there is violation of the same.

18. Section 43 of the NDPS Act reads as under:-

“43. Power of seizure and arrest in public place. Any officer of any of the departments mentioned in section 42 may

(a) seize in any public place **or in transit**, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act;

(b) **detain and search** any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.

Explanation. For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.”



2025:DHC:4897



19. Punjab & Haryana High Court, in the case of *Mandeep Kaur Vs. State of Punjab, CRM-M-27760/2021*), held that another material distinction between search of a building, conveyance or enclosed place conducted under provisions of Section 42 of the NDPS Act and a search of a vehicle in 'transit' in terms of Section 43 of the Act is that in case of search of a vehicle in transit, there is no requirement of obtaining any search warrant even if search is conducted after sunset by a non-gazetted officer unlike a case of search of a building, conveyance or an enclosed place.

20. In the present case, the information was that contraband was being transported in a vehicle from Alwar, Rajasthan to Azadpur in Delhi via Punjabi Bagh. At the time when the petitioner and co-accused Mohd. Shareef and Sumit were apprehended, they were shifting the contraband from the car to Splendor motorcycle. Considering that the recovery of contraband has been affected from a vehicle which was in 'transit' in a public place, Section 43 and proviso to Section 42 of the Act would get attracted with regard to the recovery of contraband from the petitioner at the spot.

21. There is also additional recovery of 54.640 kgs. of poppy straw at the instance of the present petitioner and co-accused Mohd. Shareef from the rented accommodation of the petitioner. Even though, no rent agreement /rent receipt has been seized, statement of the landlord is that he had rented out the room from where the alleged recovery was



2025:DHC:4897



affected, to the petitioner herein. Not only this, there is also recovery of 20.518 kgs of poppy straw at the instance of the present petitioner and co-accused Sumit from the house of co-accused Amir Khan at Rajasthan.

22. During investigation, the police has also collected the details of UPI transactions between the petitioner and the co-accused persons as also the CDRs as an evidence to show that petitioner was at Tapukada, Rajasthan on 17.08.2023 at the time of procurement of contraband. The CDRs show that he was in constant touch with supplier Arif.

23. Admittedly, there is no independent public witness of recovery and there is no photography/videography of the recovery. The use of technology certainly enhances the efficacy and transparency of the police investigation and assures fairness, and therefore, ideally, every effort should be made by the investigating agency to use technological means in aid of investigation. However, there may be situations where audio/video recording may not be feasible like the present case.

24. The recovery has been made from a vehicle in transit and after chasing it at some distance. The absence of independent witnesses and the videography at best may be regarded as a key irregularity in a search and that would cast an added duty upon the court to scrutinize the evidence regarding the search more carefully.

25. The combined recovery of contraband from the petitioner falls in the category of commercial quantity. Consequently, the rigours of



2025:DHC:4897



Section 37 of the NDPS Act would be attracted in the present case. The provisions of Section 37 of the NDPS Act are mandatory in nature. The recording of finding as mandated in Section 37 is *sine qua non* for granting bail to the accused involved in the offences under the said Act. The twin conditions provided in the said Section are:

- (i) satisfaction of the Court that there are reasonable grounds for believing that accused is not guilty of the alleged offence and;
- (ii) he is not likely to commit an offence while on bail.

26. There is nothing on record at this stage from which it can be inferred that petitioner is not guilty of the offence in question.

27. Admittedly, co-accused Mohd. Shareef and Sumit have since been enlarged on bail but their case was different, they were not involved in any other case under NDPS Act, but petitioner is stated to be involved in two more cases under the NDPS Act. Therefore, the Court is not satisfied that petitioner is not likely to commit an offence while on bail. Hence, petitioner is not entitled for grant of bail on parity.

28. Petitioner has been in custody since 17.08.2023. It cannot be said that he has been behind the bars for a phenomenally long period or that because of inordinate delay in concluding the trial, he should be enlarged on bail.

29. In my view, the narrow parameter of bail available under Section 37 of the Act has not been satisfied in the facts of the present



2025:DHC:4897



case. The length of period of his custody or the fact that charge sheet has been filed and trial has commenced are by themselves not sufficient consideration that can be treated as a persuasive ground for granting relief to the petitioner under Section 37 of the NDPS Act. I am therefore not inclined to grant bail to the petitioner.

30. The application is accordingly dismissed.

31. Nothing stated in this order shall tantamount to an expression on the merits of the case.

RAVINDER DUDEJA, J.

JUNE 05, 2025

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