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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3541/2024**

KOSHINDER

.....Petitioner

Through: Mr. Colin Gonsalves,
Senior Advocate with Mr.
Kamran Khwaja, Adv.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Sanjeev Bhandari,
ASC for the State with Mr.
Arjit Sharma, Adv.
SHO/Insp. Prashant Yadav
and IO/Insp. Santosh
Kumar, PS Kashmere
Gate.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

16.01.2025

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1. The present application is filed seeking regular bail in FIR No. 261/2024 dated 09.05.2024, registered at Police Station Kashmeri Gate, for offences under Section 22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
2. The brief facts of the case are that on 09.05.2024, on the basis of secret information, accused Brijesh was apprehended. The auto which accused Brijesh was driving was searched and 2.16 Kg of restricted medicine, that is, 30 packets (18000 tablets of Alprazolam), were recovered from the same. Thereafter, at the instance of accused Brijesh, co-accused Amar was apprehended and 2.16 Kg of restricted medicine was recovered from him.
3. On 11.05.2024, a raid was conducted at the instance of co-accused Amar and two persons, namely, Faiz Ahmad and Umar, were apprehended. Three gatta peti containing a total of 18000 tablets of Alprazolam were found and the same were recovered. During interrogation, the said accused persons disclosed that they



had stored the restricted medicine at a shop in Loco Colony, Aligarh, Uttar Pradesh. A raid was conducted at the shop and 312000 restricted tablets Alprazolam, weighing approximately 39.960 Kg, were recovered.

4. During investigation of the case, several other accused persons were arrested and recoveries were effectuated from them.

5. On 23.05.2024, a raid was conducted at Indian Oil Petrol Pump, Wazirabad Road at the instance of co-accused Umar. It is alleged that at 3:25 PM, the applicant arrived at the spot in a car and he was waiting for someone even after the car left. The applicant was apprehended and a red and black colored bag was recovered from his right hand. On checking the same, a total of 6000 capsules of Tramadol were found in 25 packets from it.

6. During the course of arguments, the learned senior counsel for the applicant has stressed that the applicant has been falsely implicated in the present case and the CCTV of the petrol pump clearly shows that the applicant was not carrying any bag.

7. It is further submitted that it is mentioned in the chargesheet that the car reached the petrol pump at 3:25 PM, however, the seizure was not effectuated there.

8. It is submitted that the Investigating Officer in the present case has been suspended and the Head Constable who recorded the secret information has been dismissed on the allegation of extortion.

9. It is further submitted that the applicant had also moved an application under Section 91 of the Code of Criminal Procedure, 1973 for preservation of the CCTV footage of the petrol pump as well as the CDR of the applicant.

10. The learned Trial Court *vide* order dated 09.09.2024 passed directions to this effect.



11. On 09.01.2025, this Court noted the submission of the learned Additional Standing Counsel ('ASC') for State that the order dated 09.09.2024 was not brought to the knowledge of the prosecution and that the inspection of dispatch register also indicates that the same was not sent to concerned authorities for compliance.

12. This Court had perused the order dated 09.09.2024 and noted that the application filed by the applicant had been opposed by the learned prosecutor and it thus seemed that the prosecution was aware of the said order. In view of the same, this Court had called for a report from the learned Principal District & Sessions Judge in this regard.

13. The report given by the Principal District & Sessions Judge (Central), Tis Hazari Courts, Delhi, indicates that *prima facie* there has been dereliction of duty on the part of not only the Assistant Ahlmad and the Naib Court but also the Prosecutor who was representing the State.

14. Today, the learned ASC submits that the present case relates to recovery of huge amounts of contraband from a number of accused persons.

15. He, however, fairly submits that the State has now taken steps to comply with order dated 09.09.2024. He submits that the hard disks from the petrol pump were seized on 07.01.2025 and the same has since been sent for FSL. He further submits that the mobile number of the applicant and his mobile instrument has also been sent for FSL.

16. He submits that the pendrive relied upon by the applicant in the present case has also been sent to FSL and the chargesheet has since been filed.

17. I have heard the counsel and perused the record.



18. In the present case, it is alleged that a raid was conducted at the instance of co-accused Umar at Indian Oil Petrol Pump, Wazirabad Road and a recovery of 6000 capsules of Tramadol was made from a bag being carried by the applicant.

19. It has been stressed that the applicant was carrying no such bag from which the recovery was allegedly made.

20. This Court has perused the CCTV Footage placed on record by the applicant. It can be seen that the applicant arrives at the Petrol Pump in a car at around 3:25 PM. The applicant then gets out of the car, however, he is not holding any bag as alleged by the prosecution. It can be seen that thereafter, a scorio car comes to the spot with police officials. The applicant seems to have been apprehended thereafter.

21. It is not the case of the prosecution that the recovery was effectuated from the car in which the applicant arrives at the petrol pump. Thus, at this stage, a bare perusal of the CCTV Footage supports the argument of the applicant that he was not carrying any bag from which the alleged recovery was made.

22. Moreover, as noted above, the conduct of the prosecution in not taking any steps in preserving the footage promptly, despite an order of the learned Trial Court, also *prima facie* creates doubt on the prosecution and supports the case of the applicant.

23. On being pointedly asked, it is admitted that the CCTV footage has since been deleted because a long period of time has elapsed since the relevant date. It is contended that the hard disks from the petrol pump have now been seized and sent for FSL for retrieving data. It is stated that the FSL can retrieve this footage from the hard disks.

24. The conduct of the prosecution in not promptly preserving



the footage, at this stage, does not appear to be *bona fide*. The CCTV footage is admittedly an essential piece of evidence and the same has been jeopardized due to the manner in which prosecution has conducted the investigation as noted above. The benefit of the same cannot be denied to the applicant at this stage.

25. The Courts are not expected to accept every allegation made by the prosecution as a gospel truth. The bar, as provided in Section 37 of the NDPS Act, cannot be invoked where the evidence against an accused appears to be unbelievable and does not seem to be sufficient.

26. The Hon'ble Apex Court, in the case of ***Union of India v. Shiv Shanker Kesari : (2007) 7 SCC 798***, has observed as under:

“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.”

27. The Hon'ble Apex Court, in the case of ***Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352***, has reiterated the law in regard to Section 37 of the NDPS Act as under:

“20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is



reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

28. While the case involves recovery of a huge amount of contraband, however, the conduct of the State as well as the CCTV footage have led this Court to believe that there are reasonable grounds for believing that the applicant is not guilty of such offence.

29. The applicant has no prior antecedents, thus, there is no reason for this Court to believe that the applicant is likely to indulge in any offence while on bail.

30. In view of the above, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

31. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicants shall under no circumstance leave the boundaries of the Country without informing the concerned IO;
- c. The applicant shall appear before the learned Trial Court on every date;
- d. The applicant shall, after his release, appear before the concerned Investigating Officer once in every week;



- e. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/ SHO;
- f. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
32. In the event of there being any FIR/DD entry / complaint lodged against the applicant; it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
33. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.
34. The bail application is allowed in the aforementioned terms.
35. Considering the observations in the report of the Principal District & Sessions Judge (Central), Tis Hazari Courts, Delhi, a copy of this order be sent to Delhi Government, Commissioner of Police and Principal District & Sessions Judge (Central), Tis Hazari Courts for taking necessary action against the erring officials.
36. It is pointed out by the learned ASC that the orders passed in Miscellaneous Applications are not being uploaded by the Trial Courts and the same is also one of the reasons why the directions for preserving the footage and call records was not complied with.
37. A copy of this order be also sent to all the Principal District & Sessions Judges in Delhi for issuing appropriate directions to ensure that in future, the orders passed in



miscellaneous applications are uploaded on the website immediately.

AMIT MAHAJAN, J

JANUARY 16, 2025