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

+ **BAIL APPLN. 1359/2025**

GAGAN GAURAV

.....Petitioner

Through: Mr. Aditya Aggarwal, Mr. Naveen
Panwar and Ms. Manvi Gupta,
Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

21.05.2025

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1. The present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in the proceedings arising from FIR No. 246/2024 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985³ at P.S. Crime Branch.

2. Briefly stated, the facts of the case of the Prosecution are as follows:

2.1. On 1st December, 2024, ASI Somnath received information, stating that certain persons were involved in the illegal supply of Ganja through courier from Vishakhapatnam to Delhi. The Ganja had been ordered through DTDC courier company, *vide* tracking ID No. D33126877 in the name of one Bishamber Ram at DTDC Meera Bagh Delhi. Following this, a

¹ "BNSS"

² "Cr.P.C."



raiding party was formed, and the information was verified with the courier company. It was confirmed that two parcels had been delivered from Vishakhapatnam with the aforementioned tracking ID, intended for delivery to Bishamber Ram at Vikas Nagar, Balaji Chowk, Near Rajdhani School, Mohan Garden, Uttam Nagar, Delhi. Additionally, the receiver's mobile number was provided on the parcels.

2.2. The delivery of the consignment was assigned to two DTDC employees, Sourabh and Deepak. Sourabh called the mobile number listed on the parcel, and the person who answered, claimed to be out of Delhi and requested that the parcels be delivered to his associates near Tyagi Barat Ghar, Tyagi Market, Near Bala Ji Chowk, Mohan Garden, Uttam Nagar, Delhi. Two persons on a scooty arrived at the said location and received the parcels after one of them presented an Aadhar card in the name of Vishambhar Ram. Both these persons signed the DRS receipt to acknowledge the delivery.

2.3. The raiding team apprehended both these persons, who identified themselves as Munip Mahato and Baljeet Kumar. Notices under Section 50 of the NDPS Act were served to them, and the parcels they had received were searched. The search revealed Ganja inside both parcels. Using an electronic weighing scale, each parcel was found to contain 29.26 kg of Ganja, totalling 58.52 kg. Pursuant to this, the present FIR was registered. The mobile phones of the accused persons were seized as evidence and sent to the FSL for examination.

2.4. Munip Mahato and Baljeet Kumar were arrested on 2nd December, 2024, and their disclosure statements were recorded. Both accused

³ "NDPS"



confirmed that the Ganja had been sent by one Munna (the Applicant). Munip Mahato revealed that he had been in contact with the Applicant (xxxxxxx72) through WhatsApp calls and chats. His phone was examined, and it showed multiple calls between him and the Applicant. Furthermore, the Applicant had sent him an Aadhaar card *via* WhatsApp in the name of Vishambhar Ram, with a photo of Baljeet Kumar, which was used to receive the parcels. Munip Mahato further disclosed that the Applicant is the kingpin of a drug syndicate and has engaged other associates in its operations. He further stated that he could identify the house of the Applicant at Patna as well as his village.

2.5. A raid was conducted at the Applicant's residences in Village Rampur Syamchand, P.S. Raghapur, Distt Vaishali, Bihar, and Poonadih, Distt Patna, Bihar, but the Applicant was found to be absconding. During investigation, it was revealed that the Applicant's real name is Gagan Gaurav. It was also discovered that he was previously involved in another NDPS case (FIR No. 73/2023) under Section 20/8 of the NDPS Act, PS-ACB Visakhapatnam, Andhra Pradesh. Non-Bailable Warrants were issued against the Applicant, and further raids were conducted at his residences, but he remained absconding.

2.6. During investigation, the ownership and CDR of the mobile number (xxxxxxx72) used by the Applicant were obtained, which revealed that the number was registered in the name of Sanjit Kumar, son of Chandeeep Roy, residing in Vill-Milkipur, P.S. Raghapur, Distt-Vaishali, Bihar, which is about 1 km from the Applicant's village. Efforts to examine Sanjit Kumar proved unsuccessful, as he had not lived in his village for several years and was reportedly working in Tamil Nadu. However, frequent callers to the



mobile number, including Lalan Kumar, Ravi Ranjan, and Tinki Devi, were examined. Lalan Kumar and Ravi Ranjan, relatives of the Applicant, and Tinki Devi, his wife, confirmed that they regularly communicated with the Applicant on the number xxxxxxxx72. The investigation also revealed that this number had been used on two different IMEI numbers between 31st January, 2024 and 5th February, 2024, and again from 21st August, 2024 to 5th October, 2024. Additionally, the mobile number of Tinki Devi (xxxxxxx17) was also registered in the Applicant's name and was used with both IMEI numbers, proving that the mobile number (xxxxxxx72) was indeed used by the Applicant. The majority of the phone's locations were traced to the Applicant's village.

2.7. During the investigation, the CDR of another mobile number (xxxxxxx872), which was mentioned on the parcels, was obtained. Frequent callers to this number, including Subhash Mahto and Anita, were examined, who confirmed receiving multiple calls from the Applicant using this number. This establishes that, during the commission of the offence, both the mobile numbers (xxxxxxx872 and xxxxxxx72) were used by the Applicant.

2.8. On 28th February, 2025, the Applicant surrendered before the Trial Court. He was interrogated, during which he admitted his involvement in the case. He was arrested, and his disclosure statement was recorded. He revealed that he, along with his associate Mukesh, was involved in the supply of Ganja from Vishakhapatnam to Delhi. He explained that Mukesh would deliver Ganja *via* courier, and he had provided a fake Aadhaar card to Mukesh for the delivery. The Aadhaar card was also sent to Munip Mahato *via* WhatsApp.



3. Counsel for the Applicant raises the following grounds seeking grant of regular bail:

3.1. No recovery has been effected from the possession of the Applicant. The entire case of the Prosecution rests on disclosure statements and CDR connectivity, without any independent or corroborative evidence linking the Applicant directly to the contraband.

3.2. The mobile number relied upon by the Prosecution, allegedly belonging to the Applicant, is not owned or used by him. The Applicant has no connection with the said number. As per the Prosecution's own case, the consignor's mobile number is not registered in the name the Applicant. Furthermore, the consignee is Bhishamvar Ram, and the mobile number written on the parcel is also not registered under the Applicant's name.

3.4. The Applicant has already been granted regular bail in both prior cases in which he had been implicated under the NDPS Act, indicating that he is not a flight risk and has cooperated with the investigation.

4. On the other hand, Mr. Amit Ahlawat, APP for the State, opposes the bail application and makes the following submissions:

4.1. A total of 58 kilograms of Ganja was recovered in the present case, which falls within the category of commercial quantity under the NDPS Act. As such, the Applicant is required to satisfy the twin conditions stipulated under Section 37 of the NDPS Act.

4.2. The Prosecution's case is not solely based on the disclosure statements of the co-accused. Rather, there is direct evidence linking the Applicant to the offence, including CDR and WhatsApp communications between the Applicant and the co-accused. Further, the disclosure made by the co-accused led to the identification of the Applicant and corroborates his



involvement.

4.3. The mobile number found on the seized parcels was being used by the Applicant. Following the arrest of co-accused Munip Mahto, the Applicant contacted the co-accused's wife and brother using the same number. Moreover, the Applicant is alleged to have used a forged Aadhaar Card, suggesting deliberate and active participation in the offence.

4.4. The Applicant has a history of similar offences, being previously involved in FIR No. 73/2023 under Sections 20/8 of the NDPS Act registered at PS-II Town District, Visakhapatnam Commissionerate, Andhra Pradesh, and FIR No. VIII/15/DZU/2023 under Sections 8/20/29 of the NDPS Act registered by the Narcotics Control Bureau, Delhi. His past conduct demonstrates a strong likelihood of absconding or committing similar offences if released on bail.

4.5. Drug trafficking poses a grave threat to society at large, particularly to the youth, and has a detrimental impact on the nation's economy. In light of the seriousness of the offence, individuals involved in such activities ought not to be released on bail.

5. The Court has carefully considered the rival contentions and the material on record. The recovery of 58.52 KGs of Ganja was effected from the parcels recovered from co-accused Munip Mahato and Baljeet Kumar. No recovery was effected from the physical possession of the Applicant at the time of arrest, nor during any contemporaneous search of his residences during the raids. This raises a foundational question: whether the material collected during investigation suffices to establish that the Applicant was in conscious possession of the contraband, or had such dominion and knowledge over it, so as to attract the rigour of Section 37 of the NDPS Act..



The concept of “conscious possession” under the NDPS Act has been elaborated by the Supreme Court in ***Rakesh Kumar Raghuvanshi v. State of Madhya Pradesh***,⁴ as follows :

“Conscious possession refers to a scenario where an individual not only physically possesses a narcotic drug or psychotropic substance but is also aware of its presence and nature. In other words, it requires both physical control and mental awareness. This concept has evolved primarily through judicial interpretation since the term “conscious possession” is not explicitly defined in the NDPS Act. This Court through various of its decisions has repeatedly underscored that possession under the NDPS Act should not only be physical but also conscious. Conscious possession implies that the person knew that he had the illicit drug or psychotropic substance in his control and had the intent or knowledge of its illegal nature.”

Likewise, in ***Mohan Lal v. State of Rajasthan***,⁵ the Supreme Court has emphasized that mere physical proximity or notional linkage is insufficient to constitute conscious possession unless the prosecution can show that the accused had knowledge and dominion over the narcotic substance.

6. Applying the aforesaid principles to the facts of the present case, this Court finds that the Prosecution has not been able to *prima facie* establish either physical possession or the requisite mental element. As regards the element of awareness and control over the contraband, the Prosecution has failed to produce any corroborative evidence, such as electronic communication, surveillance input, or any material, to demonstrate that the Applicant was in contact with the co-accused or had knowledge of the contraband. The Prosecution has not shown that the Applicant played any direct role in the ordering, packaging, dispatch, or receipt of the recovered substance. The Prosecution seeks to connect the Applicant through (i)

⁴ 2025 SCC OnLine SC 122.

⁵ (2015) 6 SCC 222.



disclosure statements of the co-accused; (ii) mobile number analysis; and (iii) alleged WhatsApp exchanges. However, *prima facie* these strands of evidence, even taken collectively, fall short of the threshold necessary to establish conscious possession. Further, while reliance is placed on certain mobile numbers allegedly used by the Applicant to coordinate with the co-accused, the ownership and origin of these numbers remain inconclusive. One of the numbers (xxxxxxx72) is registered in the name of a third party 'Sanjit Kumar' who has not been examined during investigation, and whose connection to the Applicant is not independently established. The other number cited was found on the seized parcels, but has not been shown to be either registered in the Applicant's name or operated from a device linked to him. As regards the Aadhaar card allegedly sent to the co-accused by the Applicant, it bears neither the Applicant's name nor photograph, and the mobile number from which it was purportedly shared, has similarly not been linked to the Applicant through any forensic or technical evidence. In the absence of independent verification or digital forensics, the Prosecution's case rests heavily on uncorroborated disclosure statements. Thus, at this stage, the threshold to demonstrate knowledge, dominion, or a coordinating role of the Applicant in relation to the recovered contraband remains unmet. In light of the foregoing circumstances, the Court is of the opinion that the rigours of Section 37 of the NDPS Act stand diluted in the present case.

7. As regards the Applicant's previous involvement in NDPS cases, it is noted that he has been granted bail in those matters, and there is no material before this Court to suggest that he has misused the liberty so granted. The apprehension of flight or reoffending, in such circumstances, is not sufficient in itself to deny bail, and can be mitigated through suitable



conditions.

8. The Applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/Duty MM, on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned IO;
- b. 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;
- c. The Applicant shall, under no circumstance, leave the country without the permission of the Trial Court;
- d. The Applicant shall appear before the Trial Court as and when directed;
- e. The Applicant shall provide the address where he would be residing after his release 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.
- g. The Applicant shall report to the concerned P.S. on first, second and fourth Friday of every month.

9. 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.

10. 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.

11. A copy of the order be sent to the Jail Superintendent for necessary information and compliance.

12. The bail application is allowed in the aforementioned terms.

SANJEEV NARULA, J

MAY 21, 2025

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