



\$~7

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

+ BAIL APPLN. 3989/2024

SUSHIL

.....Petitioner

Through: Mr. Aditya Aggarwal & Mohd Yasir,
Advocates

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State
SI Om Prakash ANTF Crime Branch

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

03.12.2024

%

1. This petition has been filed seeking regular bail in FIR No.222/2021 registered at PS Crime Branch under Sections 20/25 NDPS Act. The petitioner has been in custody since 19th November 2021 and has undergone about 3 years of imprisonment. Interim bail was granted for 14 days in May 2022. As per the nominal roll, he has no previous involvement and his jail conduct has been satisfactory.

2. Previously, his bail was dismissed by this Court by order dated 17th February 2023. Counsel for petitioner points out that said order was passed by a Coordinate Bench of this Court dismissing the bail '*at that stage*' since charges were yet to be framed.

3. Subsequently, three circumstances have occurred. The testimonies of two independent witnesses namely PW1-Shahnawaz, and PW3-Zakir Hussain has been recorded. These two witnesses were the driver and helper of the Truck from which 300 kgs of *ganja* was seized on 15th November



2021. Both these witnesses have now testified that “*it is wrong to suggest that one Kwid Car was accompanying us from all the way in from Orissa in which other accused persons were sitting*”. Additionally, the bail of co-accused Mahesh has been dismissed by judgment of a Coordinate Bench of this Court on 8th October 2024 (2024:DHC:7977).

4. The case of the prosecution is that on 15th November 2021 at about 11:43 pm, a call was received by Ct. Anuj Kumar, posted in the Narcotics Cell, Crime Branch, from one Zakir Hussain stating that he was a driver of a TATA vehicle UP 25DT 2874 and was accompanied by helper Shahnawaz and a person named Shahzeb, who has hired the vehicle from Bareilly to Orissa. Zakir Hussain mentioned that Shahzeb had loaded some gunny bags which seemed like *ganja*. This information with the investigating team and a raiding team was prepared. A trap was laid at Ring Road after climbing down Wazirabad Flyover towards Burari, Delhi. At about 1:10 AM, the TATA vehicle was seen descending from Wazirabad bridge, which was intercepted by the raiding team. The identity of driver was revealed as Zakir and the other person was Shahnawaz. The third person was Shahzeb Chaudhary. On search of the truck, the contraband was recovered packed in 12 white plastic bags hidden underneath plastic crates.

5. Shahzeb later disclosed that petitioner and one Akram @ Raju had gone to Orissa on directions of one Abrar @ Bale and got *ganja* loaded in the truck. Petitioner was thereafter arrested and his Kwid car was also taken into police possession.

6. Counsel for petitioner therefore states that there are two aspects of the matter which have relevance. *Firstly*, testimonies of both Shahnawaz and Zakir Hussain are informers who denied that petitioner was there in the



escorting car and *secondly*, that on 15th November 2021, at the time of seizure, location of petitioner as ascertained from CDRs is about 225 kms away. While Shahzeb location was at Tundala, Agra; petitioner's location was at IMS Engineering College, Ghaziabad at the relevant time. Location charts of previous dates from 9th November 2021 till 13th November 2021 have also been presented to show that there was a large distance of about 100 kms to 1200 kms between Shahzeb and petitioner on these dates.

7. Allegation against co-accused Mahesh was that he had travelled in the car to pilot the truck along with petitioner. Mahesh was granted bail by this Court by order dated 8th October 2024, as noted above. It is noted in the said order that there is nothing else except the disclosure statement to implicate Mahesh and there was no material to show that Mahesh was travelling with other co-accused and the CDR records also don't bear it out. On that basis bail was granted.

8. Counsel for petitioner states that petitioner would be at parity with Mahesh since the allegation is that they were travelling together which is now belied by testimonies of the two independent witnesses- PW1 and PW3.

9. APP for the State however contends that petitioner was involved as part of the syndicate and was supplying *ganja* from Orissa and co-accused Abrar @ Bale was denied bail by a Coordinate Bench of this Court on 8th October 2024, noting that Abrar @ Bale was in touch with other co-accused through CDR connectivity. He further contends that on the other dates i.e. 11th and 14th November 2021, the location of Shahzeb and petitioner was together.

10. Considering the submissions of petitioner's counsel and also subsequently recorded testimonies of two independent witnesses, as also the



grant of bail of co-accused Mahesh, and considering that petitioner has been in custody for about 3 years, has no previous involvement, his jail conduct has been satisfactory, and had been released on interim bail which liberty he did not misuse, this Court is of the inclined to grant bail to petitioner on the following conditions.

11. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only) with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically before the concerned I.O. every second and fourth Thursday of every month at 4 p.m., and will be not kept waiting for more than an hour.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution



witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

12. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

13. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

14. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

15. Order be uploaded on the website of this Court.

ANISH DAYAL, J

DECEMBER 3, 2024/sm