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

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Reserved on: 17.11.2023

Pronounced on: 22.12.2023

+ **BAIL APPLN. 2994/2023**

SALMAN

..... Petitioner

Through: Ms. Sushma Sharma, Mr. Girish Kumar Sharma, Mr. Dhruv Kumar Sharma, Ms. Aayushi Gaur, Ms. Stuti Aggarwal and Mr. R. Sahil, Advocates alongwith petitioner in person.

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Satish Kumar, APP for the State with SI Mahavir, PS – Daryaganj

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 439 read with Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking regular bail in case FIR bearing no. 152/2022, registered at Police Station Daryaganj for offences punishable under Sections 21/29/61/85 of Narcotic Drugs and Psychotropic



Substances Act, 1985 (*'NDPS Act'*).

2. Briefly stated, the facts of the case are that on 25.03.2022, pursuant to a secret information received informing that co-accused Arif can be caught with smack near Mahavir Vatika, a raiding team had been constituted, after following the prescribed procedure. On the same day, at about 10:40 PM, secret informer had identified the co-accused Arif, who was seen coming from NS Marg to Ansari road, Mahavir Vatika, and was carrying a bag on his right shoulder. Thereafter, two persons had come near Arif and had asked him whether he had brought smack for them to sell. Immediately thereafter, the raiding team had surrounded the three persons i.e. co-accused Arif, present applicant Salman, and co-accused Naeem. After giving notice under Section 50 of NDPS Act and calling the concerned ACP on the spot, the raiding team had carried out the search of accused persons. Upon conducting search, the team had found a plastic box inside the sports bag carried by co-accused Arif, in which a plastic polythene of white colour was found, containing smack (morphine) like substance. The team had then tested the substance using NDPS testing kit and it was found to be morphine. The plastic polythene containing the morphine had then been weighed, which was found to be 340 grams i.e. commercial quantity. All the three accused persons were arrested on 26.03.2022. During investigation, it was revealed that co-accused Arif had received the plastic box containing morphine from one Parvez, who runs a juice shop in Delhi, and the box had been carried from Shambhal, Uttar Pradesh to Delhi by one Arshad (co-accused),



who ferried passengers and goods from Shambhal to Delhi in his car. Thereafter, Call Detail Records of co-accused Arif were obtained, and it was found that on 24.03.2022, Arif had talked to co-accused Arshad. Thereafter, co-accused Arshad had also been arrested, who had disclosed that he was involved in carrying parcels of morphine from Sambhal to Delhi, in his car, on a commission basis.

3. Learned counsel for the present accused/applicant argues that the applicant has been in judicial custody since 26.03.2022, but he has been falsely implicated in the present case, and no recovery has been affected from him. It is also stated that applicant is entitled to bail on the ground of parity since the main accused Arif, from whom the recovery of contraband was affected, has been granted bail by the Hon'ble Supreme Court *vide* order dated 28.07.2023. It is further stated that notice served to applicant herein is defected since an option to get himself searched before the nearest gazetted officer or Magistrate was given and not just any gazetted officer or Magistrate was not given to him. It is stated that applicant herein is willing to abide by all terms and conditions, and therefore, the present bail application be allowed.

4. Learned APP for the State, on the other hand, opposes the present application and states that applicant herein was arrested while he was purchasing contraband from the co-accused Arif, to further sell it on a commission basis and he is part of a larger conspiracy. It is further argued that present case involves commercial quantity of narcotic substance and therefore, bar under Section 37 of NDPS Act will be



applicable in the present case. It is stated that the case is at the stage of framing of charge before the learned Trial Court, and since there are chances of accused/applicant jumping the bail, therefore, the present bail application be dismissed.

5. This Court has heard arguments advanced by learned counsel of applicant as well as learned APP for the State, and has perused the material on record.

6. In a nutshell, the case of prosecution is that co-accused Arif and two other co-accused including the present applicant were apprehended on 26.03.2022 at the instance of a secret informer near N.S. Marg/Ansari Road, Mahavir Vatika. Upon search of Arif, after compliance of statutory provisions, a plastic box was recovered from his bag, containing 340 grams of morphine, which is commercial quantity. On the basis of Call Detail Records and disclosure of accused persons, two more accused persons were arrested later on.

7. Thus, the allegations against the present accused Salman are that he had come to meet co-accused Arif, for the purpose of obtaining the narcotic drug i.e. morphine from him and to further sell it on commission basis. The applicant is alleged to be a part of larger conspiracy, and he was arrested at the spot by the raiding team, alongwith two other co-accused. The recovery made in the present case is of 340 grams of morphine, which is commercial quantity. The FSL report filed by way of supplementary chargesheet dated 31.08.2023 confirms the recovered substance to be morphine. Further, as it appears



prima facie from the material placed on record, the applicant was served a notice under Section 50 of NDPS Act and the raid had been conducted and arrests had been made after following the procedure prescribed under law.

8. Since the present case involves recovery of commercial quantity, the bar under Section 37 of NDPS Act will be attracted in the present case. As regards the law of Section 37 is concerned, it will be apt to refer to the observations of the Hon'ble Apex Court in case of ***Narcotics Control Bureau v. Mohit Aggarwal*** 2022 SCC OnLine SC 891, which read as under:

“10. The provisions of Section 37 of the NDPS Act read as follows:

“37. Offences to be cognizable and non-bailable.- (1) Notwithstanding anything contained in the Criminal Procedure Code, 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 subsection (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

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. The FSL report has already been filed before the learned Trial Court by way of supplementary chargesheet, and the charges are yet to be framed in the present case, and material witnesses are yet to be examined. Considering the overall facts and circumstances of the case, this Court is not inclined to grant regular bail to the applicant at this stage.
10. Accordingly, the present bail application is dismissed.
11. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.
12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 22, 2023/ns