

HIGH COURT OF DELHI**Bench: Hon'ble Ms. Justice Swarana Kanta Sharma****Date of Decision: 24th May 2024**

CRIMINAL APPELLATE JURISDICTION

BAIL APPLN. 1869/2024

KRISHNA ...Petitioner**VERSUS****STATE OF NCT OF DELHI ...Respondent****Legislation:**

Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C)

Subject: Application for anticipatory bail in a case involving the recovery of heroin and alleged involvement in a drug trafficking syndicate.**Headnotes:**

Criminal Law – Anticipatory Bail – Application under Section 438 of the Cr.P.C – Petitioner sought anticipatory bail in connection with FIR No. 80/2024 registered at Police Station Crime Branch, Delhi for offences under Sections 21, 25, 29 of the NDPS Act – Information received regarding drug peddlers leading to the arrest of co-accused and recovery of 1010 grams of heroin – Petitioner named during the interrogation of co-accused – Petitioner alleged to be involved in drug trafficking syndicate – Petitioner absconding and failed to respond to notices under Section 67 of the NDPS Act – Application for anticipatory bail rejected. [Paras 3-13]

Evidence – Confessional Statements and Corroborative Material – Confessional statements of co-accused – WhatsApp conversations and Call Detail Records (CDRs) examined – Evidence indicating prima facie involvement of the petitioner – Court held that custodial interrogation necessary to uncover the entire drug syndicate. [Para 11-12]

Decision – Rejection of Anticipatory Bail – Court found no ground for granting anticipatory bail – Investigation at a nascent stage – Risk of tampering with evidence if bail granted – Application dismissed. [Para 13]

Referred Cases:

- Narcotics Control Bureau v. Mohit Aggarwal (2022) SCC Online SC 891
- Tofan Singh v. State of Tamil Nadu (2013) 16 SCC 31
- State of Haryana v. Jarnail Singh (2004) 5 SCC 188
- Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565
- Satpal Singh v. State of Punjab (2018) 13 SCC 813

Representing Advocates:

Mr. Shubham Prajapati and Mr. Rakesh Kr. Mandal for the Petitioner

Mr. Manoj Pant, APP for the State along with Mr. Sanjay Pal, Ms. Shweta Shandilya, and Mr. Ashok Kumar Shukla for the Respondent

JUDGMENT**SWARANA KANTA SHARMA, J. (ORAL) CRL.M.A. 16389/2024
(exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The instant application under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of the applicant seeking grant of anticipatory bail in case arising out of FIR bearing No. 80/2024, registered at Police Station Crime Branch, Delhi for offences punishable under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
4. Issue notice. Mr. Manoj Pant, learned APP accepts notice on behalf of State.
5. Brief facts of the case as per prosecution are that on 14.04.2024, SI Om Prakash had received an information at about 07:20 PM from a secret informer regarding drug peddlers and drug suppliers in the area of Delhi. The secret informer had informed that two brothers namely Sumit @ Sunny and Sachin would be coming in a Scorpio car bearing license No. DL-8C-BG-4349 at Naala Pul towards Burari side, which is adjacent to the outer ring road, to deliver Heroin to one Gaurav at about 08:00 PM to 08:20 PM and if raid is conducted, both of them can be apprehended. The said information was noted down by SI Om Prakash in compliance of Section 42 NDPS Act and communicated to his superior officers to approve the raid. Upon approval being conveyed to SI Om Prakash, a GD entry vide No. 0075A, dated

- 14.04.2024, had been made by Inspector Jai Bhagwan, ANTF, Crime Branch in furtherance of compliance of Section 42 of the NDPS Act. After that, both the accused persons had been apprehended and arrested by the raiding team along with their Scorpio car and upon checking, one transparent polythene pouch containing muddy colour powdery (Heroin) substance had been recovered from the accused persons. Upon weighing, weight of heroin was found to be 1010 grams. Thereafter, the Scorpio Car was also taken into police possession. Subsequently, a case vide FIR bearing No. 80/23, dated 15.04.2024 had been registered at Police Station Crime Branch, Delhi for offences punishable under Sections 21/25/29 of the NDPS Act.
6. During interrogation, both the accused persons had disclosed that they used to procure heroin from Renu Nagia and Nitin, both residents of Pratap Nagar, Delhi and used to further supply it coaccused Gaurav, Vikas and Krishna i.e., the applicant herein, who are all residents of Burari, Delhi. Thereafter, on 15.04.2024, co-accused Vikas, who is the real brother of the present applicant/accused Krishna had been apprehended. After mandatory compliance of provisions of NDPS Act, co-accused Vikas had been arrested for offences punishable under Sections 21/29 of the NDPS Act, and 50 grams of heroin and Rs.2,20,000 /-had been recovered at his instance from his house. Further, during police custody remand of accused Sumit @ Sunny and Sachin, raids were also conducted at the residence of present applicant/accused Krishna whose name had been disclosed during their interrogation, but the present applicant/accused Krishna could not be apprehended as he had been absconding.
 7. Learned Counsel appearing on behalf of the applicant argues that the applicant herein has been falsely implicated in the present case and that the applicant herein was not present at the place of the alleged offence. It is further stated that the applicant is named in the present case only on the basis of confessional statement of the main accused i.e. Sumit @ Sunny and Sachin, and there is no other evidence except the alleged confessional statement which connects him in the present case. It is also submitted that the present applicant has clean antecedents and has never been involved in any criminal activity. It is further contended that the applicant undertakes to join the investigation as and when required by the prosecuting agency and any stringent condition be imposed on him.. Thus, it is prayed that the applicant be granted anticipatory bail.
 8. *Per contra*, learned APP for the State strongly opposes the bail application and argues that the present case is at the initial stage of investigation and if

the applicant is granted anticipatory bail, he can tamper with evidence. It is further stated that in this case, the quantity of contraband recovered is of commercial nature and the applicant/accused is the receiver of the same. It is further argued that the applicant/accused has been running a big syndicate of drug trafficking and his arrest is necessary to apprehend other accused persons. It is further stated that post recording of confessional statement of the co-accused, notices under Section 67 of the NDPS Act were served upon the applicant but he chose not to appear before the investigating agency. It is accordingly prayed that the instant anticipatory bail application be rejected.

9. This Court has heard arguments addressed on behalf of both the parties and has perused the material placed on record.
10. As per the case of the prosecution, pursuant to receipt of information on 14.04.2024, a raid had been conducted, and two coaccused persons namely Sumit and Sachin had been apprehended along with their vehicle. Upon search, recovery of a transparent polythene pouch containing 1010 grams of heroin had been made by the raiding team. During interrogation, co-accused Sumit and Sachin had disclosed that they had procured heroin from one Renu Nagia and one Nitin, who were residents of Pratap Nagar, Delhi, which was to be supplied to co-accused Gaurav, Vikas, and Krishna i.e., the present applicant/accused. Furthermore, on 15.04.2024, Vikas, the brother of present applicant Krishna had been apprehended based on information from Sumit and Sachin. Upon searching his house, 50 grams of heroin and Rs. 2,20,000/- in cash had been recovered. Further raids were conducted at the residence of the present applicant/accused, during the custody remand of Sumit and Sachin, but he could not be apprehended as he had been absconding.
11. This Court further takes note of the fact that the present applicant/accused has skipped summons dated 19.04.2024 and 30.04.2024 issued by investigating agency under Section 67 of the NDPS Act and has not joined the investigation. This Court has also gone through the WhatsApp conversations between the main accused Sachin and the present applicant/accused as well as the CDR analysis, and is of the opinion that the present applicant/accused is *prima facie* involved in the syndicate of drug trafficking.
12. As regards the argument that applicant is being implicated in this case solely on the basis of confessional statements of co-accused, this Court is of the opinion that there is other material on record such as WhatsApp conversations and Call Detail Records which reveals the involvement of present applicant in the offence in question. Moreover, investigation in the

present case is at a nascent stage and to uncover the entire drug syndicate, the investigating agency requires the custodial interrogation of the present applicant/accused. Thus, there is no ground made out for grant of anticipatory bail to the present applicant/accused.

13. Accordingly, the present anticipatory bail application stands rejected.
14. It is however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.
15. The judgment be uploaded on the website forthwith.

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