

# Mohd. Shafi vs State Nct Of Delhi on 23 April, 2024

**Author: Jyoti Singh**

**Bench: Jyoti Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
BAIL APPLN. 1066/2024  
MOHD. SHAFI

Through: Mr. Siddharth Sr  
Sharma, Ms. Khushi Gupta  
Kalra, Advocates.

STATE NCT OF DELHI

Through: Mr. Yudhvir Singh  
with SI Happy Kumar, AATS/

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 23.04.2024

1. This application has been preferred on behalf of the applicant Mohd. Shafi S/o Abdul Hai under Section 439 Cr.P.C. seeking regular bail in case FIR No.415/2021 dated 07.05.2021 under Sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and Section 14 of Foreigners Act, 1946 registered at P.S.: Khyala.

2. It is the case of the prosecution that on 07.05.2021, an informer came to the office of AATS/W and met ASI Mange Ram and informed that an Afghan national, who supplies heroin, will be coming at around 04:15 PM to 04:45 PM near Ganda Nala Road, Near Gas Agency, Khyala, New Delhi in a white colour car bearing No.DL-10CB-2154 to supply heroin. After complying with the procedure under Section 42 NDPS Act, vide DD Nos. 5 and 6, a raiding party was constituted and trap was laid. At about 04:35 PM, one Afghan national came in a white car, in which a lady was sitting and parked the car on the roadside. After some time, when nobody turned up, car This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:12 driver was apprehended when he was trying to leave the spot.

3. It is stated in the status report that on interrogation, the driver disclosed his name as Mohd. Shafi (applicant) resident of Gali No. 9, Hanuman Chowk, Wazirabad, Delhi with permanent address being Street No. 05, Kandhar, Afghanistan and the lady disclosed her name as Tareena. Both were

apprised of their legal rights and notice was served under Section 50 NDPS Act. Search of the car led to recovery of 07 plastic bags/kattas which in turn contained 125 small polythene bags. Total 125.840 kgs heroin was recovered from the car and case was registered. During course of investigation, ownership documents of the vehicle were obtained and the accused Mohd. Shafi was found to be the owner. Sampling of recovered narcotic substances was carried out before the learned M.M. and the entire process was photographed and videographed in the presence of the accused. 14 samples of 50 gram each were taken out, of which 07 samples of 50 gram each were sent for forensic examination. FSL report has confirmed that the seized substance was heroin. Charge Sheet has been filed and till date 05 prosecution witnesses have been examined. Bail is opposed on the ground that recovery of commercial quantity has been made from the accused persons and prosecution evidence is pending.

4. Learned counsel for the applicant submits that applicant is innocent and has been falsely implicated. Without prejudice, it is submitted that the sampling procedure followed by the prosecution is in clear violation of Standing Order 1/89 dated 13.06.1989 issued by the Department of Revenue, Ministry of Finance, Government of India. In order to seize the contraband substance, ASI Mange Ram checked only 1 out of the 125 packets with the help of field testing kit ignoring the remaining 124 packets. Oblivious of the procedure laid down in Standing Order Nos. 1/88 and 1/89, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:12 the IO proceeded to mix the contents of one tested packet with the contents of the other packets and also emptied the contents of about 20 packets in one big blue plastic bag, purchased by Const. Rahul on the asking of the IO from a nearby shop. Contents of 125 packets were mixed without ascertaining whether all were identical in weight, size and the contents.

5. It is argued that the IO PW-4 was cross-examined on multiple occasions and stated that only 01 out of 125 packets was tested at the spot to ascertain homogeneity and that he did not remember as to in which lot he mixed the packet tested with the drug field testing kit. He admitted that he had collected the substance from 20 polythene packets in lot No. 1 to lot No. 6 and in lot No. 7. He put the substance of only 04 polythene packets and had mixed the substance in the given lots before sealing them. Earlier in the examination-in-chief also, PW-4 stated that he had opened only 01 polythene and checked its contents with the field testing kit.

6. The argument is that the procedure adopted for sampling violates the Standing Orders and is in teeth of the judgments of this Court holding that provisions of Standing Orders are mandatory and are required to be complied with for the purpose of sampling. The procedure adopted by the IO reveals that the contents of all the packets were mixed with each other without weighing each one of them and without recording the size of each packet as well as testing only 1 packet with the testing kit and assuming the rest to be containing the same substance. No efforts were made by the IO to mark each of the 125 packets in the beginning and nothing was mentioned in the inventory to show that duplicate samples were drawn from all the packets. Section 52A NDPS Act requires the seizing officer to prepare an inventory on the spot and draw the representative samples before the

Magistrate, none of which was done and all samples were arbitrarily mixed.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:13. This has caused immense prejudice to the applicant as it can never be ascertained as to what were the actual contents of the packets and/or their weight. Evidence shows that seizing officer has mixed about 20 packets in a single blue colour polythene and created 06 lots of 20 packets and 01 lot of 04 packets. Learned counsel submits that this Court in Sandeep v. State (NCT of Delhi), 2024 SCC OnLine Del 451, Amina v. State NCT of Delhi, 2023 SCC OnLine Del 3491 and Betty Rame v. Narcotics Control Bureau, 2023 SCC OnLine Del 3279, has held that where sampling procedure followed by the prosecution does not confirm to the aforementioned Standing Orders, accused will be entitled to bail.

7. It is further contended that co-accused Tareena has been granted regular bail by this Court on 28.02.2024 in BAIL APPLN. No. 314/2024 on the ground of faulty sampling procedure and violation of the two Standing Orders. It is urged that the Trial Court has erred in rejecting the bail application by differentiating in the role of the applicant on the ground of gender and ownership of the vehicle, being in the name of the applicant.

8. Per contra, learned APP argues that commercial quantity of heroin was recovered from the applicant and he can be released only on bail, if he satisfies the Court that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while being enlarged on bail. Insofar as the Standing Orders referred to and relied upon by the applicant are concerned, these are merely advisory and directory in nature and their non-compliance cannot be a singular ground to release the applicant on bail. Discrepancies or irregularities, if any, pointed out in the sampling procedure will be a matter of trial. Reliance is placed on the judgment of this Court in Bipin Bihari Lenka v. Narcotic Control Bureau, 2022 SCC OnLine Del 1160, where the Court has held that This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:13. Prejudice, if any, on account of alleged improper sampling can only be considered during the course of trial.

9. I have heard learned counsel for the applicant and the learned APP and examined the rival contentions.

10. The primordial ground raised on behalf of the applicant in the present application is that the sampling procedure followed by the prosecution is not in consonance with the procedure laid down in Standing Order No. 1/88 dated 15.03.1988 issued by Narcotics Control Bureau and Standing Order No. 1/89 dated 13.06.1989 issued by Ministry of Finance, Government of India. Before proceeding to examine the contentions of the parties, it would be relevant to examine the applicable

provisions of the NDPS Act and look at the judicial precedents on the issue. Section 52 of the NDPS Act deals with measures that are required to be taken by an Officer for disposal of persons arrested and articles seized. Section 52A NDPS Act provides the procedure for disposal of seized narcotic drugs and psychotropic substances including the procedure for sampling. For ready reference, Section 52A is extracted hereunder:-

"52A. Disposal of seized narcotic drugs and psychotropic substances.--

(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-

in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in subsection (1) shall prepare an This is a digitally signed order.

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(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of such drugs, substances or conveyances. and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under subsection (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Criminal Procedure Code, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub-

section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

11. Procedure for drawing a sample of a substance allegedly recovered as a narcotic substance, has been laid down elaborately in Standing Orders No. 1/88 and 1/89 and this Court has taken a consistent view that provisions of the Standing Orders are mandatory and have to be complied with. In Amina (supra), this Court relying on the judgments of the Supreme Court in Noor Aga v. State of Punjab and Another, (2008) 16 SCC 417 and Union of India v. Bal Mukund and Others, (2009) 12 SCC 161 as well as of this Court in Laxman Thakur v. State (Govt. of NCT of Delhi), 2022 SCC OnLine Del 4427, observed as follows:-

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:13 "27. From a careful assessment of the decisions cited above and the perusal of the Standing Orders, this Court is of the considered opinion that the Standing Orders have to serve a certain purpose having been issued by the Narcotics Control Bureau, Government of India and cannot be rendered optional for compliance to the investigating agencies. The procedures prescribed in the said orders are based upon a certain logic which ought to be respected, or else it would be a worthless piece of paper. Notwithstanding that Courts in the decisions cited above have accepted it as a mandatory directive [refer to Noor Aga (supra), Bal Mukund (supra), Basant Rai (supra) Santini Simone (supra) and finally Amani Fidel (supra)], even the Hon'ble Supreme Court while taking a view that Section 52 & Section 57 NDPS were directory in Gurbax Singh (supra) said that "the IO cannot totally ignore these provisions". Even Balbir Singh (supra) states that non-compliance does not render the trial initiate "the officers, however, cannot totally ignore these provisions". Therefore, in this Court's view, the Standing Orders ought to be respected by the investigating agencies and non-compliance of those Standing Orders may naturally invoke a reasonable doubt relating to the process of sampling which is the most critical procedure to be carried out in order to ascertain the nature of the substance and its quantity. In fact, the Field Officers Handbook issued by the Narcotics Control Bureau for Drug Law Enforcement also reiterates these procedures prescribed under the Standing Orders.

28. As a side-wind, it is worth mentioning that post the decision in Mohanlal (supra), the discussion has also veered towards whether the sampling has to be done mandatorily before the Magistrate in compliance of Section 52A NDPS Act. Recently, a Coordinate Bench of this Court in Kashif v. Narcotics Control Bureau, 2023 SCC OnLine Del 2881 while granting relief to the accused has taken the view that the compliance of Section 52A is mandatory and cannot be delayed or ignored. Moreover, there is a recent Standing Order issued dated 23rd December 2022 by the Ministry of Finance in exercise of powers conferred by Section 76 r/w Section 52 A of NDPS Act wherein procedure for seizure and storage of seized material and sampling and disposal has been provided in detail and which directs sampling to be done in front of the magistrate. Therefore, as per this view, the sampling ought to be done in compliance of Section 52A and not at the time of seizure. However, this has not been the scope of the discussion during the arguments addressed by the learned counsels in this matter and therefore is not being deliberated in detail. The only purpose why this is being adverted to, is to emphasize that in this case the samples were drawn at the time of seizure and that too not in compliance with the Standing Orders.

29. The adherence to strict process under the NDPS Act has certain important function and purpose. The Hon'ble Supreme Court has often This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:13 reemphasized that considering the provisions of the NDPS Act are stringent in nature and provide twin conditions as a threshold for granting bail under Section 37 of the Act, compliance by the investigating agencies has to be necessarily precise and not ad hoc or half-hearted or truncated in nature.

30. The lack of compliance of these provisions necessarily imports an element of "doubt", moreover a "reasonable doubt". This, therefore will segway into the issue of proving guilt, considering that the guilt of any accused has to be proved beyond reasonable doubt. It would therefore not be enough to contend, as is done by the prosecution that issues of non-compliance were to be considered at the time of trial and what prejudice is caused to the accused, had to be shown by the accused. Even if that may be so, if such non-compliance provides reasonable ground for acquittal of an accused [depending on the nature of the evidence led, as it was in the case of Amani Fidel (supra)], a fortiori at the stage of granting bail, it would be even more important to consider this possibility, even if it is just a possibility. At the stage of granting bail, the accused is still not proved as guilty and is under trial and therefore deserves the benefit of doubt.

31. Pursuant to appreciation of contentions of the parties as well as documents on record, this Court is of the considered opinion that the petitioner is entitled to be enlarged on bail subject to certain conditions.

32. The fact that the contraband which was seized contained in 2000 pudiyas 100 each in 20 bags, were all emptied together in a plastic jar, was prima facie not in compliance with the process envisaged under the SO 1/88 and 1/89, as adverted to above. The procedure, in compliance with the standing orders, could have been adopted, inter alia to make lots of a bunch of pudiyas together, as envisaged in the SO. By mixing all the pudiyas together, the sample was not a true representative sample and the composition of the mix would therefore, would be at a serious variance. Even though these are issues which would have to be considered at the point of trial, it would still import an element of reasonable doubt in the sampling procedure undertaken."

12. In Noor Aga (supra), dealing with a case where the alleged recovery was of 1.4 kgs heroin from a cardboard container, the Supreme Court observed as under:-

"87. Preservance of original wrappers, thus, comes within the purview of the direction issued in terms of Section 3.1 of Standing Order 1 of 1989. Contravention of such guidelines could not be said to be an error which in a case of this nature can conveniently be overlooked by the court. We are not oblivious of a decision of this Court in South Central Railway v. G. Ratnam [(2007) 8 SCC 212 : (2007) 2 SCC (L&S) 851] This is a digitally signed order.

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(SCC p. 222, para 23) "23. In the cases on hand, no proceedings for commission of penal offences were proposed to be lodged against the respondents by the investigating officers."

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89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

90. Recently, this Court in State of Kerala v. Kurian Abraham (P) Ltd. [(2008) 3 SCC 582] , following the earlier decision of this Court in Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

13. In this context, it would be relevant to refer to another judgment of this Court in *Amani Fidel Chris v. Narcotics Control Bureau*, 2020 SCC OnLine Del 2080, relevant passages of which are as under:-

"32. In the opinion of this court, the procedure adopted by the respondent in the present case for drawing samples neither conforms to the procedure prescribed under Section 52A of NDPS Act nor under the Standing Orders. At the cost of repetition, the respondent neither filed any application before the Magistrate for drawing the samples under his supervision nor followed the procedure of drawing a representative sample outlined in paras 2.4 or 2.5 read with 2.8 of the Standing Order 1/89.

33. Resultantly, this court is of the view that the samples sent to the CRCL were not the representative samples. Besides, by mixing the contents of all the 4 packets before drawing any sample not only the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:13 sanctity of the case property in the individual packet was lost but also the evidence as to how much each individual packet weighed. In reaching the aforesaid conclusion, I also draw support from the decisions in *Shajahan v. Inspector of Excise (DB)* reported as 2019 SCC OnLine Ker 3685 *Kulwinder Kumar v. State of Punjab*, reported as 2018 SCC OnLine P&H 1754 and *Santosh Kumar v. The State of Bihar* passed in Criminal Appeal (SJ) No. 158/2016 decided on 30.08.2019."

14. In *Laxman Thakur (supra)*, a Co-ordinate Bench of this Court reiterated that compliance with the procedure laid down in Standing Order 1/88 is mandatory and relevant observations are as follows:-

"11. The standing order 1/88 mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.

12. I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the



applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable."

15. In Sandeep (supra), this Court was once again called upon to decide the issue of entitlement of an accused to bail on the ground that sampling procedure adopted by the Investigating Officer was not in consonance with the Standing Orders and the judgments on the subject. Relying on several judicial precedents, Court held as under:-

"18. A reading of the Standing Order No. 1/89 would show that all packages/containers are to be serially numbered and kept in lots for sampling. In cases where more than one package/container is seized, it is advisable to draw one sample (in duplicate) from each of such packets/containers. Clause 2.5 of the Standing Order, however, states that where the packages/containers seized together are identical in size and weight, bearing identical marking, and the content of each packets gives identical result on colour testing by Drug Identification Kit, conclusively indicating that the packages/containers are identical in all respects, the packages/containers may be bunched together in lots of 10 packages/containers (in case of ganja and hashish lots of 40 packages/containers) and for each of such lots of packages/containers, one sample (in duplicate) may be drawn. Clause 2.8 states that, while drawing the This is a digitally signed order.

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19. In the present case, the above procedure has been completely violated and not adhered to by the prosecution. As noted hereinabove, the prosecution emptied all the packages that were recovered from the trolley bag of the accused persons into one composite whole and thereafter, samples from such composite whole were drawn before the learned Metropolitan Magistrate. Similar exercise was done for the packages recovered from the backpacks carried by the accused. This is clearly is not in compliance with the Standing Orders.

20. In similar circumstances, in Laxman Thakur (supra), this Court, placing reliance on the judgment of the Supreme Court in Union of India v. Bal Mukund, (2009) 12 SCC 161, and the judgment of this Court in Santini Simone v. Department of

Customs, 2020 SCC OnLine Del 2128, which in turn had considered the earlier judgment of the Supreme Court in *Sumit Tomar v. State of Punjab*, (2013) 1 SCC 395, and of this Court in *Amani Fidel Chris* (supra); *Basant Rai v. State*, 2012 SCC OnLine Del 3319; *Edward Khimani Kamau v. The Narcotics Control Bureau*, 2015 SCC OnLine Del 9860; *Charlse Howell @ Abel Kom v. The Narcotics Control Bureau*, 2018 SCC OnLine Del 10564, held as under:

"12. I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable."

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28. In the present case, prima facie the sampling procedure followed by the prosecution was not in conformity with the terms of the Standing Orders no. 1/88 and 1/89. There is also no prior history of any prosecution being pending against the accused persons herein. The accused have already been in custody for more than a year. Both the accused are aged around 20 years and the trial is likely to take long.

29. In my view, therefore, the applicants have been able to meet the test laid down in Section 37 of the NDPS Act and of being enlarged on bail."

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16. In *Betty Rame* (supra), the Court was dealing with the question as to whether the issue of faulty sampling can be gone into at the stage of seeking bail or would have to await trial. Agreeing with the applicant, the Court observed as under:-

"25. As a side-wind, it is worth mentioning that post the decision in *Mohanlal* (supra), the discussion has also veered towards whether the sampling has to be done mandatorily before the Magistrate in compliance of Section 52A NDPS Act. Recently, a Coordinate Bench of this Court in *Kashif v. Narcotics Control Bureau*, 2023 SCC OnLine Del 2881 while granting relief to the accused has taken the view that the compliance of Section 52A is mandatory and cannot be delayed or ignored. Moreover, there is a recent Standing Order issued dated 23rd December 2022 by the Ministry of Finance in exercise of powers conferred by Section 76 r/w Section 52 A of NDPS Act wherein procedure for seizure and storage of seized material and sampling and disposal has been provided in detail and which directs sampling to be done in front of the magistrate. Therefore, as per this view, the sampling ought to be done in

compliance of Section 52A and not at the time of seizure. However, this has not been the scope of the discussion during the arguments addressed by the learned counsels in this matter and therefore is not being deliberated in detail. The only purpose why this is being adverted to, is to emphasize that in this case the samples were drawn at the time of seizure and that too not in compliance with the Standing Orders.

26. The adherence to strict process under the NDPS Act has certain important function and purpose. The Hon'ble Supreme Court has often reemphasized that considering the provisions of the NDPS Act are stringent in nature and provide twin conditions as a threshold for granting bail under Section 37 of the Act, compliance by the investigating agencies has to be necessarily precise and not ad hoc or half-hearted or truncated in nature.

27. The lack of compliance of these provisions necessarily imports an element of "doubt", moreover a "reasonable doubt". This therefore will segway into the issue of proving guilt, considering that the guilt of any accused has to be proved beyond reasonable doubt. It would therefore not be enough to contend, as is done by the prosecution that issues of non-compliance were to be considered at the time of trial and that what prejudice is caused to the accused, had to be shown by the accused. Even if that may be so, if such non-compliance provides reasonable ground for acquittal of an accused [depending on the nature of the evidence led, as it was in the case of Amani Fidel (supra)], a fortiori at the stage of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:13 granting bail, it would be even more important to consider this possibility, even if it is just a possibility."

17. Coming to the facts of this case and analysing them in the light of the provisions of Standing Orders, aforementioned, it prima facie emerges that there is non-compliance of the procedures laid down therein. PW-4 has deposed in the cross-examination that he tested only 01 packet out of the 125 packets recovered. Without ascertaining the contents, size, weight etc. of the packets, the contents of all the packets were mixed together. As per the deposition of PW-4, the Seizing Officer has mixed about 20 packets in a single blue colour polythene and created 06 lots of 20 packets and 01 lot of 04 packets and did not know in which lot the tested sample was mixed. Procedure requiring drawing of 01 sample in duplicate from each packet in case of seizure of more than 01 packet was also violated. Packets did not contain serial numbers as required by paragraph 2.2 of the Standing Order 01/89. It has come out in the evidence that the Seizing Officer directly mixed 20 packets in a single lot, which according to the applicant violates the mandate of paragraph 2.8 of Standing Order 01/88, which requires the Seizing Officer to take equal representative quantity from each packet of the lot and only thereafter mix the same homogenously. Applying the judgments of the Supreme Court and of this Court, as aforementioned, prima facie the procedure adopted by the prosecution for sampling was not in conformity with the laid down procedure under the Standing Orders and thus the applicant is entitled to be released on bail.

18. Learned Trial Court in the impugned order dated 20.03.2024 has declined bail to the applicant primarily on the ground that he is the owner of the car from which the contraband was allegedly seized as also that the co-accused was granted bail on the ground of her being a female. Insofar as the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 22:43:13 second ground is concerned, a bare perusal of the order passed by this Court on 28.02.2024 shows that the gender of the co-accused was not a consideration for grant of bail and the prime reason was faulty sampling and violation of the aforementioned Standing Orders. Applicant has rightly argued that once both the co-accused are stated to be present in the car when the contraband was allegedly seized, the ownership of the car cannot be a ground to reject bail of the applicant and as far as the sampling procedure is concerned, the law will be equally applicable to the applicant.

19. In my view, the applicant has made out a ground for grant of regular bail. Accordingly, it is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court. One surety out of the two will be by a person who is permanent resident of Delhi. Release on bail will be further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
- iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;
- iv. He shall appear before the Trial Court as and when the matter is taken up for hearing;
- v. He shall not indulge in any criminal activity or communicate with or come in contact directly or indirectly with any This is a digitally signed order.

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20. Needless to state that any observation in the present order will not tantamount to expression of opinion on the merits of the case.

21. Application stands disposed of.

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

JYOTI SINGH, J APRIL 23, 2024 B.S. Rohella/kks This is a digitally signed order.

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