

# Ayub Pathan vs State Of Nct Of Delhi on 22 November, 2023

**Author: Jyoti Singh**

**Bench: Jyoti Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ BAIL APPLN. 3430/2022  
AYUB PATHAN

STATE OF NCT OF DELHI

Through: Mr. Amol Sinha, A  
Mr. Kshitiz Garg, Advocate  
Kumar, PS: Special Cell.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 22.11.2023 CRL.M.(BAIL) 1647/2023 (for interim bail, by Petitioner)

1. Present application has been filed on behalf of the Petitioner Ayub Pathan under Section 439 read with Section 482 Cr.P.C. for grant of interim bail for four weeks in FIR No. 294/2020 dated 07.12.2020 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act, 1985') at PS: Special Cell, New Delhi, on the ground of wedding of his daughter on 24.11.2023 and 25.11.2023. In support of the application, wedding invitation card has been filed.

2. Learned counsel for the Petitioner urges that the only allegation against the Petitioner is with respect to an offence committed under Section 21 of the NDPS Act, 1985 in respect of FIR No. 294/2020 as he stands discharged for offences in case FIR No. 174/2020 under Sections 302/34 IPC; Sections 25, 27 of the Arms Act and Sections 16/17/18/ 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 24/11/2023 at 02:20:07 18A/18B/19/20/23/38 of the Unlawful Activities (Prevention) Act, 1967 vide order dated 31.08.2021 passed by Special Judge, NIA, Mohali, Punjab. Copy of the order is annexed with the application. It is further urged that Petitioner is the sole guardian of the family and has to make necessary financial arrangements by selling/mortgaging some of his properties in order to bear expenses for the marriage and therefore, his timely release is imperative. Learned counsel also submits that the trial has commenced and therefore, no custodial interrogation is required. In a nutshell, interim bail is sought on humanitarian grounds. Learned counsel also pleads that the Petitioner has deep roots in the society and undertakes that he shall not jump the bail and/or violate

any conditions imposed by the Court while granting interim bail.

3. Status report has been handed over in Court and is taken on record. Copy of the status report has been furnished to counsel for the Petitioner.

4. It is stated in the status report and on that basis argued by the learned Additional Standing Counsel that the allegations in FIR No.294/2020 no doubt pertain to Section 21 of the NDPS Act, 1985, however, these cannot be seen in isolation and the background to the arrest of the Petitioner is extremely crucial. It is highlighted that source information was received for the last several months that ISI through its K2 desk was funding the targeted killings of certain Leaders through the funds generated from drugs trafficking. As per information, they have been pushing narcotics through Hizbul Mujahiddin cadres/OGWs based in Kashmir and supplying the same to their Khalistani counterparts in Punjab for onward distribution. As a part of their nefarious designs and on the instructions of ISI, three persons from Kashmir have come to Delhi to provide funds obtained from drug trafficking 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 24/11/2023 at 02:20:07 to the sharpshooters. Since January, 2020, Special Cell was working on credible information that ISI was planning to execute certain targeted killings in Delhi and neighbouring States and have activated their K2 desk to execute the same. It was further revealed in investigation that in furtherance of the conspiracy to revive militancy in Punjab, gangster Sukhmeet Pal Singh @ Sukh Bhikhariwal had been hired, who had travelled to Dubai with fake documents and an FIR No.93/2020 has been registered against him. On 07.12.2020, source information was received that Sukhmeet Pal Singh @ Sukh Bhikhariwal had instructed his sharpshooters Gurjit Singh @ Bhaa and Sukhdeep Singh @ Bhura to commit another targeted killing in Delhi and accordingly, a trap was laid in and around the place of information.

5. It is further stated in the status report that after the trap was laid at about 6:45 a.m. two cars, one being Honda City and the other Swift, were spotted near the place of information. Gurjit Singh and Sukhdeep Singh were in Honda City, as identified by the informer, whereas Swift car had three occupants, who were Kashmiris. As soon as occupants of both the cars met each other, all were apprehended after exchange of fire between the police party and accused persons. From both the sharpshooters, three sophisticated pistols of different make were recovered. A total of 13 rounds were fired during the exchange of fire. At the time of apprehension of the accused persons, driver of the Swift car did not deboard the car and drove rashly to escape hitting the Government Gypsy of police party. He was later identified as Riyaz Ahmed Rather and a separate case FIR No.295/2020 under Sections 186/353/307/34 IPC and 25 of Arms Act was registered at PS: Special Cell, Delhi against Gurjit Singh, Sukhdeep Singh and Riyaz Ahmed Rather.

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6. It is stated that the two Kashmiri men carrying backpacks, who had come out of the Swift car, were apprehended at the spot on 07.12.2020 and were identified as (1) Mohd. Ayub Pathan (the present Petitioner) s/o Mohd. Abdulla Pathan, R/o Astan Mohallah, Gundipura, Jammu & Kashmir and (2) Shabir Ahmad Gojri s/o Abdul Karim Gojri, R/o Dofpura, Badgam, Jammu & Kashmir. On search of the backpacks, polythene packets were discovered and when tested with the help of field-testing kit, it was found that the 2 bags contained narcotic 'Heroin' weighing 881 grams and 824 grams respectively. Petitioner was found in possession of 'Heroin' weighing 824 grams and Rs.1 lakh cash whereas co-accused Shabir Ahmad Gojri was found in possession of 'Heroin' weighing 881 grams. Hence, present FIR No.294/2020 dated 07.12.2020 under Section 21 NDPS Act, 1985, PS:

Special Cell was registered against both of them. The contraband seized at the time of arrest was sent to FSL, Rohini for expert opinion and the examination report confirmed that the Exhibits were found to contain 'Diacetylmorphine' and supplementary charge sheet was filed before the learned Special Judge, NDPS, Patiala House Courts, Delhi on 24.12.2021.

7. It is highlighted by the learned ASC from the status report that preliminary interrogation revealed that the Petitioner was acting on the instructions of his cousin brother Abdul Majeed Khan, who was based in Rawalpindi, Pakistan and was one of the senior operators of Hizbul Mujahiddin. Abdul Majeed Khan had introduced the Petitioner to Pakistan based operative code name "Sadakat", another senior operator of Hizbul Mujahiddin based in Rawalpindi, Pakistan. Sadakat is said to be handling channelling of funds through Narco-Terrorism and tasked the Petitioner to receive a consignment of narcotics infiltrated into India through Pakistan 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 24/11/2023 at 02:20:08 and to deliver the same as and when directed by him. On instructions of Sadakat, Petitioner along with his associates Shabir Ahmad Gojri and one Riyaz Ahmed Rather, came to Delhi for giving Rs.1 lakh cash to these gangsters and they were also carrying around two kgs 'heroin', which was to be given to some other associate in lieu of money.

8. In this backdrop, learned ASC strenuously urges that interim bail should be declined as there is strong apprehension that the Petitioner, who is a permanent resident of Jammu & Kashmir, will abscond and leave the country to evade judicial proceedings. Insofar as the plea of the Petitioner that he is the sole guardian of the family is concerned, learned ASC submits that this plea is factually incorrect since Petitioner has a son who is 36 years of age and capable of shouldering the responsibility of the family. In any event, it is urged that humanitarian grounds pleaded cannot be a consideration to override security concerns of the Nation.

9. At this stage, learned counsel for the Petitioner submits that co-accused Riyaz Ahmed Rather has been granted bail in case FIR No.295/2020, referred to by the Respondent. The learned ASC submits that this fact cannot be immediately verified as the Investigating Officer concerned in the

said FIR is not available in Court today and in any case, this cannot be a ground to grant bail to the Petitioner in the present case.

10. I have heard learned counsel for the Petitioner and learned ASC for the State as well as examined the status report.

11. There is no dispute that Petitioner stands discharged for offences under FIR No. 174/2020, which is reflected from the order dated 31.08.2021 passed by Special Cell, Mohali, Punjab. However, learned ASC is correct in 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 24/11/2023 at 02:20:08 his submission that the allegations under Section 21 of the NDPS Act, 1985 cannot be seen in isolation in the present case and the background to the arrest of the Petitioner cannot be ignored. From the status report, it emerges that Petitioner was arrested along with co-accused Shabir Ahmad Gojri from the place of information where a trap was laid pursuant to source information regarding a plan of targeted killing in Delhi, on instructions of the K2 desk of ISI. Petitioner was apprehended from the Swift Car along with Gurjit Singh and Sukhdeep Singh who were in the Honda City Car, when they met each other at the place of information. The contraband along with cash of Rs.1 lac was recovered from the Petitioner and it was confirmed by the FSL examination report that the contraband contained 'Diacetylmorphine'. Importantly and significantly, the status report highlights that preliminary interrogation has revealed that Petitioner was following the instructions of his cousin brother Abdul Majeed Khan, who is presently based in Rawalpindi and is one of the senior operators of Hizbul Mujahiddin and it was he who had introduced the Petitioner to a Pakistan based operative code name 'Sadakat', another senior operator of the said organization and Sadakat is stated to be handling channelling of funds through Narco-Terrorism and tasked the Petitioner to receive a consignment of narcotics infiltrated into India and to deliver the same, as and when directed. Broadly understood, stand of the Respondent is that the drug trafficking is an integral part of the larger ISI terrorist activities including target killings and since the Petitioner works closely with his cousin based in Rawalpindi and others who channelise funds through Narco-Terrorism, the allegations of drug trafficking should not be seen in isolation. It is emphasized that there is a very strong apprehension that the Petitioner will This is a digitally signed order.

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12. Principles which the Court must consider while granting or declining bail have been culled out by the Supreme Court in several judgements from time to time. In Prahlaad Singh Bhati v. NCT, Delhi and Another, (2001) 4 SCC 280, the Supreme Court held that while granting bail, the Court has to keep in mind nature of accusations, character, behaviour, means and standing of the accused, reasonable possibility of securing presence of the accused at the trial and the larger interest of the public or State, amongst other considerations. In Siddharam Satlingappa Mhetre v. State of

Maharashtra and Others, (2011) 1 SCC 694, the Supreme Court held that just as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order and both are equally important. In State of U.P. through CBI v. Amarmani Tripathi, (2005) 8 SCC 21, the Supreme Court observed that danger of the accused absconding or fleeing, if released on bail, is one of the considerations while considering the application for grant of bail. It would also be useful to allude to observations of the Supreme Court in Gurcharan Singh and Others v. State (Delhi Administration), (1978) 1 SCC 118, that while considering a petition for grant of bail in a non-bailable offence, likelihood of the accused fleeing from justice and seriousness of the offence are two paramount considerations.

13. From a holistic reading of the status report, this Court is of the view that the apprehension of the Respondent that the Petitioner may abscond, if granted interim bail to attend the wedding of his daughter in Srinagar, is not entirely unfounded and possibility of the Petitioner leaving the country This is a digitally signed order.

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14. The application is accordingly dismissed. Needless to state that this Court has not expressed any opinion on the merits of the case.

JYOTI SINGH, J NOVEMBER 22, 2023/kks This is a digitally signed order.

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