

Shabaz @ Nanhe vs State Govt. Of Nct Of Delhi on 1 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 24.03.2025

Pronounced on : 01.04.2025

BAIL APPLN. 346/2025

SHABAZ @ NANHE

Through: Mr. Sachin Dev, Mr. S
Advs.

versus

STATE GOVT. OF NCT OF DELHI

Through: Mr. Aman Usman, APP f
with SI Monu Chauhan,
Branch.

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HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

RAVINDER DUDEJA, J.

1. This is a first bail application filed on behalf of accused-Shabaz @ Nanhe under Section 483 of BNSS, 2023 (Section 439 Cr.P.C.) read with Section 528 BNSS (Section 482 Cr.P.C.) in case FIR No. 60/2024 under Sections 21/25/29 NDPS Act, registered at Police Station Crime Branch, Delhi.

2. As per the prosecution version, co-accused Zaki Ahmad and Hasib were apprehended on the basis of secret information and heroin weighing 310 grams and 200 grams respectively was recovered from their possession.

3. Upon interrogation, co-accused Zaki Ahmad and Hasib disclosed that the alleged heroin recovered from them, was given by one Rashid. Rashid was also arrested and on interrogation, Rashid disclosed that he had purchased 510 grams heroin from the applicant/accused Shabaz @ Nanhe through one X (CCL).

4. On 17.03.2024, X (CCL) was apprehended at the instance of Rashid.

5. Accused Rashid disclosed that applicant/accused Shabaz @ Nanhe had demanded some amount in advance for the purchase of 510 grams of heroin, and therefore, on 13.03.2024, he transferred Rs. 50,000/- from his account to the account of mother of X (CCL) and the same amount was transferred to the account of Shoeb, brother of the applicant/accused Shabaz @ Nanhe. The said amount was further transferred to the account of applicant/accused.

6. During investigation, statement of Shoeb, brother of applicant was recorded. He confirmed that he had sent the amount to the account of applicant on his instructions.

7. Learned counsel for applicant submits that no recovery has been affected from the applicant/accused, and therefore, the bar under Section 37 NDPS is not applicable qua the present applicant. It is further submitted that there is no recording/transcript of alleged conversation between the applicant and the co-accused persons and prosecution is relying only on the evidence of transfer of Rs. 50,000/- to the account of the applicant from the account of his brother Shoeb, who allegedly received the said money from the account of the mother of X (CCL). It has been submitted that brother of the applicant has since been examined as PW-4 but he turned hostile and has stated that Rs. 50,000/- were transferred in his account from the account of mother of X (CCL) towards the repayment of loan taken by X (CCL) from the applicant/accused.

8. Learned counsel further argues that CDRs showing connectivity between the present applicant and the co-accused persons are not sufficient to hold the applicant guilty of any offence, particularly, when no recovery has been made from his possession.

9. Learned counsel further states that even the case property allegedly recovered from the co-accused is tempered as at the time when the same was produced before the SHO, he noted the seal of "SKM" while nowhere it is stated in GD No. 0022 A that he had affixed his own seal. Even, in the Register No. 19, there is no mention of the seal of SHO, but when the case property was produced before the learned Metropolitan Magistrate, besides the seal of "SKM", seal of "VS" was also noted.

10. Per contra, learned APP appearing for the State has argued on the lines of the status report. He submits that the bank statement of mother of X (CCL) clearly shows that on 13.03.2024, Rs. 50,000/- were received from Rashid and the same were transferred to the account of brother of the applicant, who further transferred the money to the account of the applicant/accused. He further submits that these transactions were made at the same time and all of them made telephonic call to each other during that period. It is contended that CDRs reveal that they were in constant touch with each other and there was also a conference call between the applicant and the co-accused Zaki Ahmad and Hasib and X (CCL) for the supply of heroin.

11. With regard to the seal, it is submitted that SHO had counter sealed the case property with the seal of "VS" and as stated, it is evident in his statement recorded under Section 161 Cr.P.C. and in the proceedings under Section 52A NDPS Act, it is mentioned that case property was duly sealed with the seal of "SKM" and "VS". It is submitted that allegations are grave and serious in nature, and therefore, applicant is not entitled for grant of bail.

12. Admittedly, the secret information does not contain the name of the present applicant. It is also an admitted fact that there is no recovery from the possession of the present applicant and that the recovery is only from co-accused Zaki Ahmad and Hasib.

13. The name of the present applicant has come only in the disclosure statement of Rashid. Co-accused Rashid has since been enlarged on bail by the Predecessor Bench on 04.03.2025 and while granting bail to co-accused Rashid, reliance has been placed on the judgment of the Supreme Court in the case of Tofan Singh vs. State of Tamil Nadu [(2021) 4 SCC 1], wherein it has been held

that disclosure statement of co-accused recorded under Section 67 of the NDPS Act is not admissible in law.

14. The prosecution is mainly relying on the evidence of the CDR connectivity and transfer of Rs. 50,000/- in the account of applicant from the account of the mother of the X (CCL).

15. In the case of Azad vs. State of GNCT of Delhi [2023 SCC OnLine Del 1769], it has been held that "CDR data can only be taken as supporting or corroborative piece of evidence and conviction cannot be made solely on the basis of CDR data". Thus, evidentiary value of CDRs can only be considered during the trial and not at the stage of consideration of bail application. In this regard, reliance may be placed on the decision of the Supreme Court in State (By NCB) Bengaluru vs. Pallulabid Ahmad Arimutta [2022 12 SCC 633]. The relevant paragraphs of which reads as under:-

"12.The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial."

16. While dealing with the bail application of co-accused Rashid Khan, the Court observed that merely because the petitioner was having telephonic conversation with the co-accused, it would not be sufficient to establish the involvement of petitioner when there is no recovery made from the petitioner.

17. Admittedly, the amount of Rs. 50,000/- received in the account of the applicant/accused is not from the co-accused Zaki Ahmad and Hasib, from whom the alleged contraband has been recovered.

18. The Court is conscious of the fact that twin conditions provided under Section 37 of the NDPS Act needs to be satisfied before granting bail in a case involving commercial quantity. When the law is strict, the evidence also needs to be strong and cogent.

19. The Nominal Roll received from the Jail does not indicate the involvement of applicant/accused in any other criminal case. Applicant has no criminal antecedents, and therefore, I am satisfied that there are reasonable grounds for believing that applicant is not likely to commit any offence while on bail. However, applicant needs to satisfy the triple test viz. flight risk, influencing any witness or tampering with evidence. In my view, the same can be taken care of by imposing stringent bail conditions on the applicant.

20. Applicant is in custody since the date of his arrest. Charge sheet has already been filed and charges have also been framed. Applicant is not required for any custodial interrogation. Trial is not likely to conclude in near future and the continued incarceration of the applicant will not serve any purpose.

21. In view of the above, this Court is of the opinion that applicant has made out a prima facie case for grant of bail.

22. Applicant is directed to be released on his furnishing a personal bond in the sum of Rs. 30,000/- with one surety of the like amount to the satisfaction of the trial court, subject to following conditions:-

- a) applicant shall appear before the trial court on every date of hearing;
- b) applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the case in any manner whatsoever;
- c) applicant shall provide his address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/SHO;
- d) applicant shall furnish his mobile phone number to the IO/SHO and shall keep his mobile phone on at all the times.

23. It is clarified that any observation made in the present order are only for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

24. The bail application is allowed, in the aforementioned terms.

RAVINDER DUDEJA, J.

APRIL 01, 2025/vp