

(2025) 02 DEL CK 1180
In the Delhi High Court
Case No : Bail Application No. 569 Of 2025

Kanchan

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision : 24-02-2025

Acts Referred:

Bhartiya Nagarik Suraksha Sanhiyta, 2023 — Section 482

Code of Criminal Procedure, 1973 — Section 437, 438

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21, 25, 29, 37, 67

Citation : (2025) 02 DEL CK 1180

Hon'ble Judges : Vikas Mahajan, J

Bench : Single Bench

Advocate : Mohit Mathur, U.A. Khan, Tushar Upadhyaya, Sumit Mishra, Aman Usman

Final Decision : Dismissed

Judgement

Vikas Mahajan, J

1. The present petition has been filed by the petitioner under Section 482 BNSS read with Section 438 CrPC seeking anticipatory bail in connection with FIR No.80/2024 under Sections 21/25/29 of NDPS Act registered at Police Station Crime Branch, Delhi.

2. The case of the prosecution is that based on a secret information, two brothers namely, Sumit and Sachin were apprehended and during their personal search, Heroin weighing 1010 gms was found from a polythene bag which accused Sumit was carrying in his left hand, however, nothing incriminating was recovered from co-accused Sachin. Both the accused persons were arrested and during interrogation both Sachin and Sumit disclosed that they had procured the recovered Heroin from one Renu Nagiya and they were going to supply it to one Gaurav, who is a resident of Burari, Delhi. They also disclosed that Gaurav's brothers viz., Vikas and Krishna also assist Gaurav in drug trafficking and handles the said business in absence of their brother Gaurav.

3. On 15.04.2024, search was conducted for apprehending accused Gaurav but he was found absconding, however, at his residence, his brother Vikas was found present, who was apprehended. On apprehending Vikas, he stated that he is indulging in drug trafficking with his brother Gaurav and used to take delivery from Sumit and Sachin in the absence of his brother Gaurav. Subsequently, Heroin weighing 50 gms and Rs. 2.20 lacs were recovered from the house of Gaurav at the instance of Vikas. Thereafter, accused Vikas was arrested in the present case.

4. Though accused Renu Nagiya was absconding, she was finally apprehended on 05.09.2024 from her house. She disclosed that she used to procure Herion from her distant relative viz. Kanchan (petitioner herein) and one Mehar who is still absconding, and would supply the same to her customers through her brother-in-law (devar) accused Shambhu. Accused Shambhu Nagiya was also arrested under Section 29 of NDPS Act, who disclosed that he used to supply Heroin to Sumit and Sachin and one Billa on the directions of his sister-in-law (Bhabhi) i.e. Renu Nagiya.

5. He also disclosed that in return for the work of supplying smack/Herion, Renu Nagiya would pay him Rs. 1,000/- to Rs.5,000/- daily but as he was not able to meet expenses of his household, therefore, he started supplying smack / Herion separately.

6. As per the Status Report, twice notices under Section 67 of NDPS Act were served / displayed at the door of the locked house of the Kanchan (petitioner), Deepak, Mehar @ Aloo and Anil @ Billa (now in judicial custody) to join investigation but all above mentioned accused persons did not join the investigation. Accordingly, NBWs were procured against the said accused persons from the learned Trial Court but the same also, could not be executed.

7. Mr. Mohit Mathur, the learned Senior Counsel appearing for the petitioner submits that one of the incriminating circumstances pressed by the prosecution against the present petitioner are in the form of CDRs showing that the petitioner was regularly speaking to accused Renu Nagiya. He submits that the CDRs showing connectivity between the petitioner and the co-accused Renu Nagiya is not unusual as they were known to each other, inasmuch as, the daughter of accused Renu Nagiya is married to the nephew of the petitioner.

8. He further submits that the petitioner has been falsely implicated in the present case as brother of the petitioner viz. Anil @ Bhola had made a complaint against the officials of the PS Crime Branch alleging that the said officials were demanding bribe from him for excluding his name from other NDPS cases pending against him, in respect which, he has already been granted anticipatory bail by the concerned court.

9. Elaborating further, Mr. Mathur submits that even sister-in-law of Anil @ Bhola namely, Nisha was arrested by police officials of PS Crime Branch through ASI Rupesh and thereafter, a demand of bribe was made by the said police official.

However, Anil @ Bhola did not accede to the said demand and he made a written complaint against ASI Rupesh to the CBI and the same culminated into an FIR.

10. He submits that on a previous occasion samdhi of brother of the petitioner namely, Murli on being fed up with continuous harassment, had even recorded a conversation of him and IO SI Om Prakash, wherein SI Om Prakash has admitted to have taken Rs. 12 lacs through IO ASI Sandeep Kumar in one of the NDPS cases. He submits that in that recorded conversation, SI Om Prakash had even asked Murli to give Rs 40 lacs in order to settle the matter of Kanchan/applicant. He, therefore, submits that police officials including IO of the present case, are trying to falsely implicate the petitioner and her family members in order to take bribe from them.

11. Mr. Mathur submits that the disclosure statement of co-accused Renu Nagiya, on the basis of which petitioner apprehends arrest, is also inadmissible in evidence, in view of the law laid down by the Hon'ble Supreme Court in Toofan Singh vs. State of Tamil Nadu; (2021) 4 SCC 1, especially when no recovery whatsoever has been made from the present petitioner. Furthermore, he contends that the petitioner is a woman and she is entitled to benefit of first proviso to Section 437 CrPC. He, therefore, urges the Court that the anticipatory bail be granted to the petitioner.

12. Per contra, Mr. Aman Usman, the learned APP for the State has argued on the lines of the Status Report. He invites attention of the Court to the Status Report to contend that the applicant/Kanchan is running a big syndicate of drug trafficking.

13. As regard Mr. Mathur's submission that the petitioner has been falsely implicated, Mr. Usman submits that the case registered at the instance of the samdhi of brother of the petitioner namely, Murli is concerned, the same is not related to the present case and the transaction.

14. He submits that CDRs and WhatsApp connectivity of petitioner with the co-accused Renu Nagiya proves her active involvement in supply of drugs/Heroin. He submits that during interrogation of accused Renu Nagiya, she has disclosed that she had procured the recovered commercial quantity Heroin from the present petitioner, who is the main supplier of Heroin. He submits that illicit drug trafficking is a serious offence and thus, urges the Court to dismiss the present anticipatory bail application.

15. I have heard the learned Senior Counsel for the petitioner, as well as, the learned APP for the State and have perused the material on record.

16. In the present case, it is not in controversy that there is no contraband recovered from the petitioner or at her instance but it is also the case of the prosecution that the petitioner is avoiding to join the investigation despite notices under Section 67 of NDPS Act having been affixed outside her residence. Even NBWs have also been issued against the present petitioner on 08.10.2024

but the same could not be executed.

17. Further, the petitioner has been named in the disclosure statement of Renu Nagiya who stated that she used to procure Heroin from present petitioner and one Mehar and would supply the same to her customers through her brother-in-law i.e., co-accused Shambhu. Though, there is no recovery from Renu Nagiya as well, but Sumit and Sachin from whom recovery was made had disclosed in their disclosure statement that they had procured the recovered Heroin from Renu Nagiya.

18. There is material in the form of CDRs and WhatsApp connectivity to show that the present petitioner was in constant touch with co-accused Renu Nagiya. Though, disclosure statement of co-accused Renu Nagiya recovered under Section 67 of the NDPS Act may not be sufficient to hold the petitioner guilty in view of the law laid down in Toofan Singh (supra), but at this stage, when the anticipatory bail application of the petitioner is being considered, the benefit of Toofan Singh (supra) cannot be extended to the petitioner in the light of decision of Hon'ble Supreme Court in State of Haryana vs. Samarth Kumar 2022 SCC OnLine SC 2087, the relevant part of which reads as under:

4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar.

Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1.

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8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

19. It is relevant to note that when co-accused Sumit and Sachin were arrested, 1010 gms Heroin was recovered at the instance of Sumit, which is a commercial quantity. Co-accused Sachin and Sumit have stated that they had procured the recovered Heroin from Renu Nagiya, who in turn had disclosed that she used to procure Heroin from the present petitioner.

20. Such disclosure statements of the co-accused cannot be ignored at this stage as the matter needs to be further investigated to unearth the entire chain of supply of contraband for which the custodial interrogation of the petitioner is imperative. Further, this Court cannot lose sight of the fact that the Hon'ble

Supreme Court has repeatedly held that grant of anticipatory bail in cases involving Narcotics Drugs and Psychotropic Substances is a very serious issue and the Courts should be slow in granting anticipatory bail when commercial quantity is involved. State by the Inspector of Police vs. B. Ramu, 2024 SCC OnLine SC 4073. This Court is also not oblivious to the fact that the activities of drug cartels have become rampant and alarming and to curb the menace of drug trafficking in the country, law has also prescribed stringent parameters in the form of section 37 of NDPS Act for grant of bail under the NDPS Act.

21. Insofar as submission of Mr. Mathur as to false implication of the petitioner on the ground that a complaint against the officials of PS Crime Branch had been made by the brother of Renu Nagiya namely, Anil and that SI Om Prakash had asked Murli, samdhi of petitioner's brother, to pay bribe for excluding the name of petitioner, is concerned, the learned APP has stated that the complaint made by Anil does not relate to the present case. Be that as it may, the said submission of Mr. Mathur is only in the form of a defence of the petitioner and cannot be given much weightage while considering petitioner's plea for anticipatory bail and that too when the investigation is at very nascent stage and there is no reasonable ground for believing that the petitioner is not guilty of such offence.

22. In view of the above facts and circumstances, no ground is made out for grant of anticipatory bail to the petitioner. Accordingly, the petition is dismissed along with the pending application, if any.

23. Nothing stated herein above shall be construed as an expression of opinion on the merits of the case.