

IA No. 18/2023
SC No. 373/2019
State Vs. Shanu
FIR No. 100/2019
PS: Crime Branch
U/s: 21/29 of NDPS Act

18.5.2024

**ORDER ON APPLICATION FOR BAIL OF
APPLICANT/ACCUSED SHANU**

1. This order of mine shall dispose of an application for bail filed by applicant/accused Shanu.
2. I have heard the Ld. Counsel for the parties.
3. Sh. Shailender Singh, Ld. Counsel for applicant/accused submitted that in the case in hand, this applicant/accused was arrested way back on dated 18.04.2019 and since then, he is behind bars. He has also submitted that nothing has been recovered from the possession of this applicant/accused and submitted that neither the recovery was alleged to have been affected from this applicant/accused, nor the motorcycle alleged to have been used in the alleged crime belongs to him. He has also submitted that in the case in hand, mandatory provisions of Sec. 50 of NDPS Act have not been complied with by the IO. He has also submitted that this applicant/accused is not previously involved in any other criminal activity and he has clear antecedents. He has also submitted that since, co-accused Majhar Khan @ Sonu has already been granted bail by the Hon'ble High Court of Delhi, vide order dated 03.05.2024, so, this applicant

/accused may also be granted bail on the ground parity.

4. On the other hand, Sh. F. M. Ansari, Ld. Addl. PP for the State has vehemently opposed the present application for bail and submitted that in the case in hand, 1 kilogram heroin was recovered beneath the seat of the motorcycle, when accused was transporting the same and charges u/s. 21(C) of the NDPS Act has been framed against this applicant/accused and submitted that since, the quantity of the contraband recovered from this accused is commercial in nature, so, the embargo contained in Sec. 37 of the NDPS Act is applicable in the present case and as per the law laid down by the Hon'ble Supreme Court of India in "*Union of India v. Ram Samujh and Anr. Appeal (Crl.)866 of 1999*", the present application is liable to be dismissed. However, he has admitted that co-accused Majhar Khan @ Sonu has already been granted bail by the Hon'ble High Court of Delhi, vide order dated 03.05.2024.

5. I have given thoughtful consideration to the submissions made by the Ld. Counsels for the parties and perused the record.

6. The perusal of the record reveals that 1 kilogram heroin is alleged to have been recovered under the seat of the motorcycle, when this applicant/accused was allegedly transporting the same. When enquired, the IO, as well as, the Ld. Addl. PP for the State failed to show as to how the case of the present application is distinguishable from that of the co-accused namely Majhar Khan @ Sonu. Admittedly, the applicant/accused

is in custody since 18.4.2019 and he has already spent more than 5 years in judicial custody. The applicant/accused has not been found involved in any other case previously. As per list of witnesses annexed alongwith the chargesheet, there are 14 witnesses cited, whereas, only three witnesses have been examined so far. So, it will take some time to conclude the trial. No doubt that charge against this accused has been framed u/s. 21(C) of NDPS Act which is relating to the contraband of commercial quantity in nature, but, as the co-accused Majhar Khan @ Sonu has already been granted bail by the Hon'ble High Court of Delhi, vide order dated 03.05.2024 and without touching the merits of the present case, this court is of the considered opinion that this applicant/accused is also entitled to get bail, on the ground of parity with the co-accused Majhar Khan @ Sonu. Therefore, this applicant/accused Shanu is ordered to be released on bail on furnishing a personal bond in the sum of Rs.1,00,000/- alongwith two sureties of like amount, further subject to the following conditions:-

- i. The applicant/accused shall appear before the ACP, ANTF, Crime Branch, Delhi once in a week, on every Friday at 11:00 AM, unless leave of absence is obtained in advance from this court.
- ii. The applicant/accused shall not leave India without prior permission of this court.
- iii. The applicant/accused shall intimate to this court by way of an affidavit and to the Investigating

Officer regarding any change in residential address.

iv. The applicant/accused shall appear before this court on each and every date of hearing.

v. The applicant/accused is directed to give his mobile number to the Investigating Officer and keep it operational at all times. He shall not switch off or change the mobile number without prior information to the Investigating Officer.

vi. The applicant/accused shall not, directly or indirectly, come in contact with any witness of the prosecution.

7. The bail granted to the applicant/accused shall be cancelled forthwith, if any of the above conditions are violated or a case of cancellation of bail is otherwise made out.

8. In the above terms, the application filed by the applicant/accused for grant of bail is **allowed**. **Attested copy of this order be sent to the Superintendent of Central Jail, Mandoli/Tihar, Delhi for supply the same to this applicant/accused.** Dasti copy of this order be also provided to the parties.

(PUNEET PAHWA)
(Special Judge NDPS)/Addl. Sessions Judge/
North East/KKD Courts/Delhi/18.5.2024