$~23.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 15.04.2015**

% **BAIL APPLN. 534/2015**

DANSINGH @ DANVEER SINGH @ DANU
..... Petitioner
Through: Mr. Vikas Gautam, Advocate

versus

STATE GNCT OF DELHI
..... Respondent
Through: Mr. Lovkesh Sawhney, APP
SI Dalip Kumar, Special Cell

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The petitioner has preferred the present bail application under Section 439 Cr PC for grant of bail in Session Case no.23/14 pending trial in the court of Sh. Deepak Garg, Special Judge, NDPS Act arising out of FIR No.14/14, PS Special Cell.

2. The submission of learned counsel for the petitioner is that no recovery has been affected from the petitioner and the petitioner was not even apprehended at the spot. He submits that the secret information which allegedly pertained to the petitioner-to the effect that petitioner would make delivery of the contraband substance, was not found to be correct, since the

petitioner was not present at the spot and was not apprehended at the time of the alleged transaction. He places reliance on the judgment of the Supreme Court in ***Chenna Boyanna Krishna Yadav v. State of Maharashtra***, 2007 I AD (SC) 119, to submit that merely because he was allegedly in conversation with the accused Georgii Dedov, it cannot be inferred that the petitioner was involved in the supply of the contraband substance to Georgii Dedov. He also places reliance on the judgment of this Court in ***Karan Singh v. State***, Bail Appl. No.1223/2006 decided on 17.05.2006 to submit that, since the petitioner had been arrested on the ground of secret information regarding his links with the co-accused, the secret information was inadmissible unless and until the provider of such information is examined in the court. He submits that in the present case, the secret informer has not been named as a prosecution witness and he has not been examined and the mere mention of the name of the petitioner in the secret information cannot be a reason to prosecute the petitioner.

3. On the other hand, the learned APP, on the basis of status report filed in the case, submits that there was specific information that the petitioner would come to Karol Bagh, Delhi along with his other associates in a Alto Car to deliver the consignment of narcotic drugs/substance to one of his associates of Russian nationality Georgii Dedov at 11:00 a.m. on 26.03.2014. Accordingly, a raid was conducted and three accused persons including one foreign national, Georgii Dedov resident of Moscow, with co-accused Anil Kumar @ Nillu and Anil Kumar @ Lucky, both residents of Himachal Pradesh were apprehended. Both Anil Kumar @ Nillu and Anil Kumar @ Lucky reached there in Alto car having registration no.HP01

D3703(which was the same as contained in the secret information), and handed over the consignment of narcotic drugs/substances (charas/hashish) to the above said Russian national. The recovered narcotic drugs were found to be weighing 2.210 kgs-which is a commercial quantity. Accordingly, the FIR in question was registered and the three persons were arrested. During their interrogation, it was revealed that the consignment of recovered narcotic drugs was sent by the petitioner, a resident of Distt. Kanga, Himachal Pradesh through Anil Kumar @ Nillu and Anil Kumar @ Lucky for delivery to Georgii Dedov.

4. The status report states that during investigation, it was revealed that the accused Georgii Dedov was in constant touch with the petitioner since long, and the Russian national used to receive drugs, and had received drugs form the petitioner earlier also. It was also revealed that Georgii Dedov had also sent part payment for the recovered drugs through banking channel, which was credited to the account of one Manjeet Singh.

5. The status report further states that a number of telephone calls between the petitioner and Georgii Dedov were intercepted after obtaining permission of the competent authority, and the conversation revealed that the transaction in question – for delivery of drugs by the petitioner, through his associates, to Georgii Dedov had been planned. The voice sample of the petitioner and Georgii Dedov have also matched as per the report of experts of CFSL. The status report states that the petitioner was using several mobile phone numbers, which were deliberately not obtained by him in his own name. While one was in the name of a student, the others were in the

name of his employees. The call detail records also disclose that the petitioner was in Delhi at the time of the transaction in question.

6. The prosecution has enlisted several witnesses, which includes Manjeet Singh – the person in whose account the money has been received from Georgii Dedov for the transaction in question; the employees of the petitioner-in whose names the mobile numbers were obtained and were being used by the petitioner, and; the other persons who were staying with the petitioner at a hotel in Karol Bagh, Delhi, or have seen the petitioner stay at the hotel in Karol Bagh, Delhi.

7. Learned APP submits that the evidence of these witnesses is yet to be recorded and the release of the petitioner at this stage may result in these witnesses being approached and the evidence being tampered. He further submits that the petitioner was apprehended only after issuance of non bailable warrant since he was absconding, and releasing him at this stage may result him again fleeing from the law.

8. Having heard learned counsel, perused the record and the decisions relied upon, I am not inclined to allow this application.

9. Each case has to be viewed and decided on its own facts. The decisions relied upon by the petitioner in ***Chenna Boyanna Krishna Yadav*** (supra) and ***Karan Singh*** (supra) cannot be applied in the facts of the present case, which have been noticed herein above.

10. In ***Chenna Boyanna Krishna Yadav*** (supra), a micro audio cassette was recovered from the premises of one of the accused, namely, Telgi. The said cassette contained recording of alleged conversation between the

appellant and Telgi. As noticed hereinabove, in the present case, the conversation between the petitioner and Georgii Dedov was intercepted with prior authority by the police itself. In ***Chenna Boyanna Krishna Yadav*** (supra), the case of the prosecution – based on the cassette recording, was that the appellant had demanded ransom of Rs. 2 crore from Telgi of the release of two of his employees. The deal had materialized and the appellant came closer to Telgi. The allegation was that friendship had developed between the appellant and Telgi, as a result whereof, the appellant rendered active support and help to Telgi in his alleged unlawful activities of organized crime syndicate in the State of Andhra Pradesh, relating to printing of counterfeit stamps and other documents and sale thereof. The High Court while rejecting the bail application of the appellant had concluded that, prima facie, there was material on record to show that the appellant had knowledge about the continued organized crime of printing and selling fake stamps by Telgi. This prima facie conclusion was founded upon statements of some of the witnesses and the said tape recorded conversation between the appellant and Telgi.

11. The appellant had argued before the Supreme Court that on the basis of the statements of the witness and the tape recorded conversation between the appellant and Telgi, no inference could be drawn that appellant was a party to the conspiracy, or had abetted commission or facilitation of the crime with which Telgi or other co-accused were associated. The allegation of demand of ransom of Rs. 2 crores by the appellant from Telgi had no nexus with the principal offence alleged under MCOCA. The Supreme Court while granting bail to the appellant, *inter alia*, observed as follows:

"As noted above, the circumstance which has weighed with the High Court to conclude that the appellant had knowledge of Organized Crime Syndicate of Telgi, printing fake stamps etc. and these were being sold under hte protection of the appellant and hence he had abetted an organzed crime, is the alleged conversation between him and Telgi in January, 1998, after the kidnapping incident. In our view, the alleged conversation may show appellant's acquaintance with Telgi but may not per se be sufficient to prove appellant's direct role with the commission of an organized crime by Telgi, to bring home an offence of betment in the commission of organized crime falling within the ambit of Section 3(2) of MCOCA and/or that he had rendered any help or support in the commission of an organized crime whether before or after the commission of such offence by a member of an organized crime syndicate or had abstained from taking lawful measures under MCOCA, thus, falling within the purview of Section 24 of MCOCA."

12. Thus, on the basis of the tape recorded conversation attributed to the appellant and Telgi, it was prima facie held that, *per se*, the said conversation may not be sufficient to prove the appellant's direct role with the commission of an organized crime by Telgi to bring home an offence of abetment in the commission of organized crime falling within the ambit of Section 3(2) of MCOCA. In contradistinction, in the present case, the telephonic conversation between the petitioner and Georgii Dedov was intercepted with the prior authority. Moreover, the petitioner has not disputed the case of the respondent disclosed in the status report, that the said conversation was regarding the demand and supply of the recovered consignment and that the said conversation shows that the recovered drugs were actually sent by the petitioner through his associates/co-accused

persons Anil Kumar @ Nillu and Anil Kumar @ Lucky. Pertinently, in ***Chenna Boyanna Krishna Yadav*** (supra), the Supreme Court took note of ***Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu*** (2005) 2 SCC 13, where the Supreme Court observed that, '*..the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case*.", while dealing with a bail application. The Supreme Court also observed in ***Chenna Boyanna Krishna Yadav*** (supra) that when the gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future, either by itself, or conjointly, may not entitle the accused to be enlarged on bail. Thus, the judgment in ***Chenna Boyanna Krishna Yadav*** (supra) does not advance the case of the petitioner as it is clearly distinguishable on facts. On the contrary, the legal proposition taken note of in the said decision goes against the petitioner.

13. Since the prosecution is not relying solely on the secret information qua the petitioner's involvement in the offence in question, the decision in ***Karan Singh Vs. State*** (supra) has no application.

14. The prosecution witnesses include Manjit Singh – the recipient of the part payment in relation to the recovered consignment of drugs; the ostensible subscribers of the several mobile phones allegedly used by the petitioner – which include his employees; three friends of the petitioner who

were allegedly with him on 26.03.2014. They are all material witnesses who are yet to be examined. The release of the petitioner at this stage on bail is most likely to result in the said witnesses – known to the petitioner, being subjected to influence. There is certainly real apprehension of evidence being tampered with. Consequently, the petitioner is not entitled to bail on account of the said consideration in the light of the observation made by the Supreme Court in ***Jayendra Saraswathi Swamigal*** (supra).

15. The petitioner absconded, and was arrested only upon issuance of NBWs. His release on bail may see him, once again, evade the process of law. On this account as well, in my view, he is not entitled to bail. Consequently, the present bail application is dismissed.

16. It is hoped that the Trial Court shall expedite the trial and complete the recording of evidence of all the public witnesses without any delay. The petitioner shall also cooperate in this regard.

VIPIN SANGHI, J

APRIL 15, 2015
sr/sl