

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **BAIL APPLN. 2109/2015**

Date of Decision : October 19<sup>th</sup>, 2015

**MOHD. ALI**

.....Petitioner

Through Mr.Rajat Srivastav and Mr.Mohd.  
Jarjish, Advs.

Versus

**STATE (NATIONAL CAPITAL TERRITORY OF DELHI)**

.....Respondent

Through Mr.G.M. Farooqui, APP with Insp.  
Pardeep, PS H.N. Din

**CORAM:**  
**HON'BLE MR. JUSTICE P.S.TEJI**

**P.S.TEJI, J.**

1. The present application has been filed by the applicant under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 for the grant of regular bail in FIR No. 173/2014, Police Station Hazrat Nizamuddin Railway Station, under Section 20 of the NDPS Act.

2. The facts, in brief, are that the FIR of the present case was registered as on 26.10.2014 inspector Satbir Singh with SI

Chandershekhar went for patrol at the Hazrat Nizamuddin Railway Station and saw two persons, namely, Mohd. Ali (petitioner-herein) and Munna Bhai roaming in suspicious condition checking the parcels. Due to suspicion since both the persons sat on one parcel and started checking with their fingers the said parcel, inspector Satbir checked it and found Ganja in the parcel. Both the accused persons failed to provide any authority letter for bringing Ganja from Bhuvneshwar to Nizamuddin and thus both committed offence for illegally bringing Ganja under the NDPS Act. The parcel weighed around 52 kgs. Parcel was enclosed in white plastic cover upon which railway mark R-19-10 BBS870289 P1 NZM was written with black ink and 26.10.14 with blue ink. There was one cardboard carton inside having seven packets sealed with tapes which were opened. Total weight of all the 7 packets was 50 kgs. All the pulandas were sealed and taken into the police custody. Since the petitioner-herein and co-accused Munna Bhai were found possessing Ganja unlawfully, thus FIR for offence under Section 20 NDPS Act was registered.

3. Arguments advanced by the learned counsel for the applicant and the learned APP for the State were heard.

4. The arguments advanced by the learned counsel for the petitioner/accused are that perusal of the order on charge reveals that the applicant is connected with the alleged crime on the basis of presumption, as prescribed in Section 35 of NDPS Act. It is further submitted that possession cannot be presumed but when possession is found, culpable mental state is to be presumed under Section 35 of the NDPS Act. There was no conscious or actual possession of the alleged contraband from the petitioner. It is further argued that the applicant was arrested in this case on 27.10.2014 and is undergoing judicial custody since then; nothing has been recovered from the person of the applicant; applicant has the responsibility of his family; charge sheet has already been filed; the bilti on which delivery was to be collected was not in the name of either of the accused persons.

5. The learned Additional Public Prosecutor for the State has opposed the bail application on the ground that production of the parcel slip shows that both the accused persons had come to collect the delivery of the parcel containing the Ganja and as such they would be presumed to have deemed possession of Ganja. Further that from investigation and circumstances till now, enough evidence against

applicant has been found.

6. The record reveals that the petitioner/accused Mohd. Ali along with co-accused was found by the police at the railway station and due to their suspicious behaviour around the parcel room, they were apprehended. It is clear from the facts that 50 kgs of Ganja was recovered from the parcel seized by the police on which the applicant and his co-accused were sitting. Even during the search of the accused, one receipt of the said parcel was recovered from him, which connects him with the recovery of the contraband.

7. Keeping in view the quantity of the recovered Ganja which is 50 kgs and it being a commercial quantity which is covered under Section 37 of the NDPS Act and also that the petitioner/accused and the co-accused were having the possession of the bilti/delivery slip which was having the same number on the document as on the parcel seized, prima facie connects the accused with the alleged offence. As the delivery slip was found to be in the possession of the accused and looking at the seriousness of the offence committed by him, this Court is of the view that the plea of the accused for grant of regular cannot be allowed.

8. The application is accordingly dismissed. However, it is made clear that the observations made above shall not affect the merits of the case.

**(P.S. TEJI)**  
**JUDGE**

**OCTOBER 19, 2015**  
**dd**