

\$~2

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

+ **BAIL APPLN. 165/2016**

RAJ KUMAR YADAV @ RAJU YADAV Petitioner
Through: **Mr.J.S.Kushwaha and Mr.Krashanu**
Pundir, Advocates.

versus

THE STATE Respondent
Through: **Ms.Alpana Pandey, APP for the State.**

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
08.02.2016

%

1. By filing the present bail application under Section 439 Cr.P.C., the petitioner is seeking bail in case FIR No.610/2013 under Sections 20/25/29/61/85 of NDPS Act, PS Tilak Nagar, Delhi.
2. I have heard learned counsel for the petitioner as well as learned APP for the State and carefully gone through the record.
3. Mr.J.S.Kushwaha, Advocate for the petitioner has submitted that the petitioner has not been arrested from the spot. Rather he had been arrested from outside Tihar Jail after about 1½ month of the registration of the FIR where the petitioner had gone to meet his brother Ramesh Rai who had been arrested in this case. Learned counsel for the petitioner has further submitted that the petitioner is in custody since 31.12.2013 and has been arrested on the basis of disclosure statement of the co-accused. The godown was allegedly taken on rent by the petitioner but even the owner of

the godown has expired. Thus, when the petitioner was not even named in the FIR and not arrested at the spot, there is no material to connect him with the crime, hence he may be ordered to be released on bail.

4. Ms.Alpana Pandey, learned APP for the State has strongly opposed the prayer of the petitioner for his release on bail on the ground that commercial quantity of *ganja* has been recovered from the godown which was taken on rent by the petitioner and in view of the provisions of Section 37 of NDPS Act, it is not a fit case to enlarge the petitioner on bail.

5. The learned Special Judge while dismissing the bail application of the petitioner on 07.01.2016 has noted the contentions made on behalf of the petitioner Raj Kumar Yadav as under :-

'It has been submitted on behalf of accused No.5 Rajkumar Yadav @ Raju Yadav that he is in J/C since 31.12.2013; he has been falsely implicated in this case; he is not named in the FIR; he is innocent; nothing was recovered from his possession; he was lifted from his village; he is not a previous convict; the prosecution evidence will take considerable time to conclude, therefore, applicant/accused be granted bail.'

6. It is also recorded by learned ASJ that earlier bail applications filed by petitioner Raj Kumar Yadav have been dismissed on 10.12.2014 and 28.04.2015.

7. The contention of the petitioner before learned Trial Court was that he was arrested from his village whereas before this Court, it was alleged that he was arrested from outside Tihar Jail where he had gone to meet his brother Ramesh Rai.

8. Further perusal of the final report under Section 173 Cr.P.C. annexed by the petitioner alongwith this bail application, reveals that initially three accused persons namely Amarnath Rai, Ranjit Kumar and Ramesh Rai were

arrested in this case when they were allegedly carrying three bags of *ganja* in Mahindra Champion and apprehended by the police officers who were on the duty of vehicles checking and had also placed barricades.

9. The present petitioner has been allegedly arrested after issuance of NBWs against him by the concerned Court and on the basis of secret information that the petitioner would come to Tihar Jail to meet his brother Ramesh Rai. The petitioner was allegedly indulged in distribution of *ganja* supply and for that purpose he and his co-accused had taken a godown on rent and recovery of *ganja* has also been allegedly effected from the said godown.

10. The recovery of *ganja* in this case is of commercial quantity. Section 37(1)(b)(ii) of NDPS Act specifically says that an accused involved in an offence described therein cannot be released on bail unless there are reasonable grounds for believing that he is not guilty of the offence with which he is charged and further that he is not likely to commit any offence while on bail. The provisions for grant of bail to Drug Traffickers have been made so stringent for the reason that Drug Trafficking is undermining the basic fibre of the society and ruining and destroying young lives.

11. In view of the discussion, the prayer of the petitioner for releasing him on bail is rejected.

12. Bail application is dismissed.

13. Any observation made herein above is for the purpose of disposing of the bail application only and shall not be considered as an expression on merits.

PRATIBHA RANI, J.

FEBRUARY 08, 2016

‘st’

BAIL APPLN. 165/2016

Page 3 of 3