

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : September 05, 2016

+ BAIL APPLN. 930/2016
VED PRAKASH @ MISTRI Petitioner
Through: Mr.Sanjiv Kumar, Senior Advocate
with Mr.S.K. Santoshi, Advocate

versus

THE STATE (NCT OF DELHI) Respondent
Through: Mr.Amit Chadha, Additional Public
Prosecutor for the State

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

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P.S. TEJI, J.

1. By this petition filed under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr. P.C.) the petitioner seeks bail in FIR No.40/2015 under Section 18/21/22/29/61/85 of NDPS Act read with Section 419/468/174-A of IPC, at Police Station Special Cell (SB), Delhi.

2. In the office of Special Cell/NR, Sector 6, Rohini, Delhi, the police was monitoring certain mobile numbers suspectedly used by drug suppliers and on 24.05.2015, a secret information was received by Sub-Inspector Sandeep Kumar, that one Ram Pal would go towards Durgapuri Chowk on his motorcycle No. DL-13SG-2747 between 2 to 2.30 PM having possessed with heroin. A trap was laid and Ram Pal was apprehended at about 2.15 PM and one Kg heroin was recovered

from the dicky of the said motor cycle.

3. During investigation, accused Ram Pal disclosed that he had purchased the said heroine from the petitioner and on his pointing out the petitioner was arrested on 26.05.2015. Intercepts of petitioner and Ram Pal were sent to FSL for forensic comparison alongwith their sample voices. It was further revealed that the petitioner used to receive narcotics contraband from one Shakir Ali, who was also arrested having possessed with 5 Kg of opium. Investigation concluded and the charge sheet was filed in the case.

4. Petitioner applied for bail before the court of Special judge, NDPS, New Delhi, which was rejected vide order dated 23.04.2016 mainly on the ground of the commercial quantity of the narcotics contraband involved in the present case.

5. Learned counsel for the petitioner contended on behalf of the petitioner that the petitioner was arrested merely on the pointing out of co-accused Ram Pal but nothing incriminating material was recovered from his possession. Even nothing incriminating was recovered from the house of the petitioner. It is further submitted that after the apprehension of co-accused Ram Pal on 24.05.2015 till the alleged apprehension of the petitioner, no phone call was made to the petitioner from the mobile of co-accused Ram Pal, while he was in custody of prosecution. Recovery of two mobile phones containing three mobile numbers i.e. 9719541000, 9897177151 and 9808218502 was effected from the petitioner. It is contended that the prosecution

had recorded conversation between number of persons including the co-accused and the petitioner herein from different mobile numbers, but none of the mobile number belongs to the petitioner and none of those number were recovered from the possession of the petitioner. More so, none of the said numbers were kept on interception by the prosecution, therefore an inference can be drawn that the petitioner has been falsely implicated in the present case.

6. It is further contended that the petitioner has cooperated in giving voice samples before the FSL Rohini and as per opinion of the Expert, the report is not conclusive in nature and the inference can be drawn that the voice may not be of the petitioner. Moreover, no public witness has joined the investigation and admittedly nothing has been recovered from the possession of the petitioner. In such a situation, learned counsel for the petitioner contended that the embargo to section 37 of NDPS shall not come in the way of releasing the petitioner on bail. Lastly, it is contended that there is no likelihood of his tampering with the prosecution evidence as he is permanent resident of the address available on record. Therefore, the petitioner ought to be released on bail.

7. Learned Additional Public Prosecutor for the State vehemently opposed the aforesaid contentions raised on behalf of the petitioner and submitted that the petitioner is involved in the recovery of the narcotic substance of commercial quantity. Upon a trap, co-accused Ram Pal was apprehended with one kg of heroin and he had disclosed

the name of the petitioner from whom he had purchased the heroin. The petitioner himself has admitted the fact that he used to supply heroin to Ram Pal and recovered 1 kg heroin, which was recovered from Ram Pal was provided by him. It is further submitted that the recovery of 1 kg heroin is a commercial quantity and there is specific bar under Section 37 of the NDPS Act for granting bail to the accused. Even the bail application filed by the petitioner before the learned Special Judge, NDPS, was rejected on this ground and there is no infirmity in the said order. And the bail application filed by the petitioner is liable to be rejected on this ground.

8. Learned Additional Public Prosecutor for the State further submitted that the report received from FSL, in respect of the voice of the petitioner and Ram Pal, matches with their voice samples, therefore the petitioner be not released on bail.

9. I have heard the contentions raised by learned counsel for the petitioner as well as learned Additional Public Prosecutor for the State and also gone through the material placed on record.

10. So far as the grounds, circumstances, explanations and reasoning given by the petitioner in support of his contentions regarding his false implication in the case is concerned, this Court is of the opinion that all such circumstances shall be tried by the concerned Court and shall be decided by leading cogent evidence. For the purpose of deciding the bail application, this Court need not go to the merits of the case, what this Court needs to consider is as to

whether or not the petitioner has been able to make out any prima facie case for grant of bail to the petitioner.

11. I have also gone through the impugned order dated 23.04.2016, whereby the bail application of the petitioner has been rejected considering the commercial quantity involved in this case. The extracts of the same are reproduced hereunder:

“9. It is relevant here to state that Section 37 of NDPS Act makes it clear that no accused shall be granted bail if he has been charged with an offence involving commercial quantity of contraband unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and he is not likely to commit any offence while on bail. Since this case pertains to commercial quantity of Narcotics Drug, Section 37 of NDPS Act is applicable in the present case and in view of the discussion made above, there is nothing for this court to be satisfied that there are reasonable grounds for believing that the applicant/accused is not guilty of the said offence or that he is not likely to commit any offence while on bail.”

12. This Court observes that the petitioner has not been able to make out a case for granting bail in the facts of the present case. Moreover, the admitted facts of the case are that charge sheet is yet to be filed and the report regarding petitioner's voice sample indicates that the voice sample can probably be of the petitioner. Apart from the said fact, this court is of the conscious opinion that there is recovery of 1 kg heroin from the accused Ram Pal, who disclosed that the same was purchased from the petitioner herein.

13. This court observes that there is recovery of 1 kg heroin, which belongs to a commercial quantity and there is specific bar of granting bail to such persons under Section 37 of the NDPS Act and that the petitioner has not been able to make out a special case for grant of bail. More so, possibility of petitioner absconding from the trial also cannot be ruled out at this stage.

14. In view of the aforesaid, the facts emerging from the record culminate into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

15. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for cancellation of bail made by the petitioners. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

16. In view of the aforesaid directions, the present petition filed by the petitioner is disposed of.

(P.S.TEJI)
JUDGE

SEPTEMBER 05, 2016
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