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

+ **BAIL APPLN. 591/2017**

JAGANNATH

....Petitioner

Through: Mr. Nitin Joshi, Ms. Anindita Das,
Advocates.

versus

STATE (NCT OF DELHI)

....Respondent

Through: Mr. Mukesh Kumar, APP for the State

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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27.07.2017

1. By this application filed under Section 439 of the Code of Criminal Procedure, 1973, the petitioner seeks grant of regular bail in FIR No. 28/2016 dated 24.05.2016 registered at Police Station - Special Cell under Section 18/29/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').
2. The case of the prosecution as also observed by the Special Judge NDPS, Patiala House Courts, is that:

“...(b)on 24.05.2016 SI Raj Singh received secret information that two members of the said syndicate namely Nand Ram and Mangli Ram would come from Bareilly in their Bolero Jeep no. UP 87E 0282 via outer Ring Road ,ISBT, Kashmere Gate and Burari Chowk and they would hand over the consignment of opium to their contact at Mukarba Chowk road heading towards Chandigarh between 03.30 PM To 04.30 PM .The said information was

reduced into writing on a separate piece of paper and after briefing the Senior police officials, it was further lodged as DD NO.19. As per the direction of the senior police officials, SI Raj Singh constituted a raiding party and allegedly intercepted the said bolero jeep and overpowered two persons who were present in the vehicle i.e. Mangli Ram who was in the Driving seat and Nand Ram @Master who was on the left seat beside him and 86 Kg opium was allegedly recovered from the said vehicle.

(c) During investigation, it was revealed that both of them were indulging in trafficking of opium along with their other associates namely Umesh Sahni, Chanderpal @ Tesu, Rakesh Gupta and Mahabir, etc. A team was sent to Bareilly, UP and raid was conducted at the house of the Chanderpal on 25.05.2016. Chanderpal allegedly jumped from the second floor of his house upon the roof of his Neighbour, thus injuring his ankle. However the search of his house led to recovery of 10 kg Opium.

(d) On 25.05.2016, accused Rakesh Kumar Gupta was apprehended from his house at Bareilly, UP and 2kg Opium was recovered from his house.

(e) On 25.06.2016 itself, accused Umesh Sahni was apprehended from his house at Distt. Bareilly, UP and 13 kg opium was recovered from his house.

(f) On 20.06.2016, accused Jaganath Rai was apprehended from the house of his in Laws in Village Jatolli, Mohalla Thatiya, Disst. Muaffarpur, Bihar and 8kg opium was recovered from his possession.

(g) On 22.08.2016 accused Tarun Kumar Maurya was arrested and 3kg opium was recovered from his possession.

(h)On 27.09.2016 accused Ram Kumar Gupta was arrested from his house in Bareilly and 1 kg opium was recovered from his possession.

2. When the samples of the recovered substance were sent for forensic examination to FSL., Rohini the same were found to be 'opium' containing Morphine ,Codeine ,Thebaine ,Narcotine, Papverine and Meconic acid .The Percentage of Morphine in the samples was found to be 10.56%, 8.34%, 11.15%, 12.28%, 6.74% 9.85%and 3.83% respectively.”

3. Mr. Nitin Joshi, learned counsel for the petitioner contended that the petitioner is innocent and has been falsely implicated by the officials of Police Station Special Cell (NR); that the petitioner was arrested after having planted the contraband on him; that the SHO Police Station – Kathaiya, who participated in the raid categorically admitted that no contraband was recovered from the possession of the arrestee; that the mandatory notice dated 20.06.2016 served to the petitioner under Section 50 of the NDPS Act does not bear any signatures of the witnesses; that the Inspector In charge of the local police station was the senior most police official present in the raid and thus his absence as a witness to the mandatory notice casts serious doubt on its authenticity; that there are no signatures of any independent witnesses except the officials of Delhi Police Special Cell (NR) on the disclosure statement, recovery memo, arrest memo and personal search memo.

4. Per Contra, Mr. Mukesh Kumar, learned APP for the State submitted that 8 Kg. of “Opium” was recovered from the possession

of the petitioner; that the petitioner worked as a carrier of “Opium” and was the kingpin of the interstate narcotic drug cartel and was arrested on 20.06.2016; that the reply of the RTI stating that no NDPS substance was recovered should not be relied upon as there could be possibility of manipulation and moreover the same can be seen only at the stage of trial.

5. I have heard both the counsel for the parties and have also perused the material available on record.

6. The charge sheet has been filed which shows the petitioner was the supplier of the opium and had supplied huge quantity of opium to the already arrested accused persons. The record further shows that 8 Kg opium was recovered from the possession of the petitioner. Investigation revealed that three mobile phones were recovered from the possession of the petitioner and the call details indicate that he was in touch with the other accused persons. It was submitted by the counsel for the petitioner that no independent witness joined at the time of the alleged recovery, arrest, personal search etc. and, thus, the case of the prosecution becomes doubtful. This submission has no force at this stage as the search memo, arrest memo and seizure memo shows that the same was conducted in the presence of Head Constable and Constable of the Special Cell (NR), Delhi.

7. Considering, the fact that 8 Kg. “Opium” was recovered from the petitioner which is a huge quantity, the international value of the alleged recovery is to be Rs. 4 Crores approximately and also that the allegations that he is a supplier of illicit “Opium” to the other co-accused, this Court is of considered view that there is *prima facie*

involvement of the petitioner and, therefore, in my opinion, there is no merit in the present application and the same is liable to be rejected.

8. Before parting with this order, this Court would like to place it on record by way of abundant caution that whatever has been stated in this order has been said only for the purpose of disposing of this application for bail made by the applicant. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact arising for decision in the case which shall naturally have to be done by the Trial court.

9. Consequently, the petition is dismissed.

SANGITA DHINGRA SEHGAL, J.

JULY 27 , 2017

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