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

% Judgment delivered on: 30.10.2018

+ BAIL APPLN. 2159/2018

HARISH SINGH LAMGHARIYA Petitioner

versus

STATE (NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Vijay Datt Gahtori, Adv.

For the Respondent : Ms.Kusum Dhalla, APP with SI Vinod Kumar,
Narcotic Cell, Crime Branch.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

30.10.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks regular bail in FIR No.177 of 2017 under Section 20, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Crime Branch.

2. Allegations in the FIR are that secret information was received that two persons, who were residents of Nainital, Uttarakhand bring charas and supply the same in Delhi. Information was received that they would be coming to Delhi with substantial quantity of charas for supply. A raiding party was prepared.

3. At about 4.45 PM the raiding party saw two persons walking from Rithala Gaon, one of whom was carrying a bag. The two were identified by the secret informer. Subsequently, they were standing on the road when one Swift Dzire vehicle is alleged to have come from which one person got down and started talking to the other two. All three were thereafter intercepted by the raiding party. On search it was found that the bag contained total 3 kgs of charas in two packets of 1.5 kgs each.

4. It is the case of the prosecution that the name of the petitioner surfaced in the confessional/disclosure statement of two of the co accused and they stated that petitioner was the one who would procure charas from villagers and supply the same to them for onward transmission to the third co accused.

5. It is alleged that petitioner himself in his confessional statement given to the prosecution has admitted that he used to procure the same from villagers, thereafter give it to the two co accused, who would transmit it to the third co accused.

6. Learned counsel for the petitioner submits that petitioner has been falsely implicated. He submits that the alleged confessional statements of the co accused as well as the petitioner are statements which are admittedly recorded when they were in police custody and are clearly inadmissible in evidence. He further submits that they are also inadmissible in terms of Section 27 of the Indian Evidence Act as there is admittedly no recovery consequent to the alleged confessional statements.

7. Learned counsel further relies on the judgment of the Supreme Court in *Surinder Kumar Khanna v. Directorate of Revenue Intelligence*, (2018) 8 SCC 271 wherein the Supreme Court, while considering the evidentiary value of a statement recorded under Section 67 of the NDPS Act, has held that a confessional statement of a co accused cannot by itself be taken as a substantive piece of evidence against another co accused and can at best be used or utilized in order to lend assurance to the Court and in the absence of any substantive evidence it would be inappropriate to base the conviction purely on the statements of co accused.

8. In the present case apart from the confessional statement of the co accused and the petitioner himself which as noticed above were not recorded under Section 67 of the NDPS Act but allegedly given to police officials and in police custody. Said statements are inadmissible in evidence and cannot by itself be taken as a substantive piece of evidence and can at best be used or utilized to lend assurance to the Court. Further, there is no recovery of any material consequent to the said statements and conviction cannot be based solely on the said statements.

9. It is not the case of the prosecution that any further discovery or recovery has been made consequent to the confessional statement of the petitioner. There is accordingly at the present stage insufficient material to base a conviction.

10. In view of the above, the case of the petitioner satisfies the exception carved out by Section 67 (1)(b)(ii) NDPS Act. Consequently, there are

reasonable grounds to believe that petitioner is not guilty of such an offence.

11. Further, it is not the case of the prosecution that any material has been found to show that petitioner had earlier also indulged in any such activity or is shown to be involved in any other case of similar nature. Accordingly, it cannot be said that there is any likelihood of the petitioner committing an offence while on bail.

12. In view of the above and on perusal of the record, I am satisfied that petitioner has made out a case for regular bail. Accordingly, on petitioner furnishing a bail bond in the sum of Rs.25,000/- with one surety of like amount to the satisfaction of the Trial Court, petitioner shall be released on bail if not required in any other case. Petitioner shall not do anything which may prejudice either the trial or the prosecution witnesses. Petitioner shall not leave the country without the permission of the Trial Court.

13. Petition is disposed of in the above terms.

14. Order dasti under the signature of the Court Master.

SANJEEV SACHDEVA, J

OCTOBER 30, 2018

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