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

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Judgment delivered on: 29.11.2018

+ BAIL APPLN. 2446/2018

ASEEN KOCHAR

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Arvind Singh, Mr. S.K. Gautam, Mr. Vipin Singh
Raghav, Mrs. Sanju Singh and Mr. Manoj Kumar, Advs.

For the Respondent: Mr. Hirein Sharma, Addl. PP for State

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

29.11.2018

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks regular bail in FIR No. 581/2017 under Sections 20/21/25/61/85 of the NDPS Act, Police Station Tilak Nagar. Since a weapon was recovered from one co-accused chargesheet was filed under Sections 20/21/25/61/85 read with Sections 25/54/59 of the Arms Act.
2. Charge has been framed against petitioner under Section 21(b) of the NDPS Act.
3. The allegations against the petitioner are that the petitioner was travelling from Sonapat to Delhi and had come to deliver Cocaine in his vehicle – Swift Dzire. The contention is that during search of the petitioner

10 small packets were recovered. Each small packet contained white powder. Powder of all the packets was mixed up and the total weight was found to be 10 gm. After testing the powder, it was found to contain cocaine.

4. Two sample each of 1 gm. were taken and sent for forensic examination. The forensic report has been received which established that the sample sent contained cocaine (6.7%).

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated as requirement of Section 50 NDPS Act was not complied with during search and seizure. Further, it is contended that from the status report, it is apparent that there were 10 packets of 1 gm. each which were allegedly recovered from the petitioner and the contents of all the packets were mixed prior to testing. He submits that since the percentage of cocaine found is 6.7%, it is not discernible as to whether each of the packets contained some concentration of cocaine or only one packet contained cocaine of a higher concentration which on mixing has reduced the percentage to 6.7%.

6. Learned counsel submits that in case the quantity of cocaine recovered from the possession of an accused is 2 gm or less then the offence is punishable under Section 21(a) and the punishment could be imprisonment of a term upto one year or fine which may extend to Rs. 10,000/- or both.

7. Learned counsel for the petitioner submits that the petitioner has been in custody since 04.12.2017. He submits that since there a doubt as to

the quantity recovered from the petitioner and the purity of the seized articles has been compromised and the quantity is suspect and there is tampering with the packets allegedly recovered, the petitioner is clearly entitled to the benefit of doubt.

8. Without commenting on the merits of the case and keeping in view the totality of facts and circumstances, I am of the view that petitioner has made out a case for grant of regular bail.

9. Accordingly, on petitioner furnishing a bail bond in the sum of Rs.50,000/- 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 either prejudice the trial or the prosecution witnesses. Petitioner shall not leave the country without permission of the Trial Court and shall also surrender his passport to the IO, if any.

10. It is clarified that this Court has not expressed any opinion on the merits of the matter. It would be open to the trial court to consider the same in accordance with law and the evidence that comes on record.

11. Petition is disposed of in the above terms.

12. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

NOVEMBER 29, 2018/‘rs’