

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on : 23rd April, 2018

Date of decision : 8th June, 2018

BAIL APPL. 2283/2017

ARTI

..... Petitioner

Through

Mr. Tanmaya Mehta, Adv. with
Mr. C.M. Sangwan & Mr.
Anurag Sahay, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Ashish Dutta & Ms. Kusum
Dhalla, APP for State with ASI
Sukhbir Singh, PS Crime
Branch.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

ANU MALHOTRA, J.

1. The applicant / petitioner Arti w/o Sh. Buddan Paswan, vide the present bail application no. 2283/2017, the applicant / petitioner seeks the grant of regular bail in terms of Section 439 of the Criminal Procedure Code, 1973 submitting to the effect that she is incarcerated since the date of her arrest on 15.09.2017 qua the alleged commission of the offences punishable under Sections 29 r/w Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under Section 201 of the Indian Penal Code, 1860 in relation to the FIR No. 134/17 PS Crime Branch in which she claims that she has been falsely implicated.

2. Notice of the application was issued to the State.
3. The status report dated 15.12.2017 as submitted by the State is on the record.
4. In terms of the proceedings dated 23.01.2018, the State has submitted the copy of the charge-sheet in the instant case on record.
5. Reliance was also sought to be placed on behalf of the State on the statements recorded during the course of the investigation and the Trial Court Record has thus been requisitioned which has been received and has been perused.
6. A perusal of the Trial Court Record indicates that the charges have been framed on 16.02.2018 of the said Special Judge (NDPS), Additional Sessions Judge, North West, Rohini Courts, Delhi against the petitioner herein Arti along with the co-accused Sanjeev Shah to which the petitioner herein Arti and the co-accused Sanjeev Shah have pleaded not guilty and claimed trial.
7. The charges framed against the present petitioner herein Arti are to the effect that on 08.08.2017 between 6.00 p.m. to 8.00 p.m. in Village Alipur, both of them had hatched a criminal conspiracy to commit the offence of sale of 22 Kilo 200 Grams of Ganja (i.e. contraband of commercial nature) and that on 08.08.2017, the petitioner herein Arti had given 22 Kilo 200 Grams of Ganja to the co-accused Sanjeev Shah for selling the same to Guddi of Village Pitampura and that the CDR of the mobile phone no. 8800477358 used by the petitioner herein Arti and the mobile phone no. 8750623462 used by the co-accused Sanjeev Shah revealed that both the petitioner herein Arti and the co-accused Sanjeev Shah were in

telephonic contact with each other and thus the petitioner herein Arti along with the co-accused Sanjeev Shah had allegedly committed the offence punishable under Sections 29 r/w Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under Section 201 of the Indian Penal Code, 1860. *Inter alia*, the petitioner herein Arti was also charged with having used the mobile phone no. 8800477358 and all her talks were made to the co-accused Sanjeev Shah and on two other phones from the said phone number as on 09.08.2017, which is reflected as being the last call from the mobile phone no. 8800477358 as per the CDR and after 10.00 p.m., the petitioner herein Arti caused the material evidence i.e. the mobile phone and SIM of phone no. 8800477358 to disappear by breaking and throwing the same into the Piyao Maniyaari Naala with intent to screen herself from legal punishment for the offence of the conspiracy of the commission of the offences of possession of sale of the contraband i.e. Ganja and thus allegedly committed an offence punishable under Section 201 of the Indian Penal Code, 1860.

8. The co-accused Sanjeev Shah in the instant case was also charged qua the alleged possession of 22 Kilo 200 Grams of the commercial quantity of Ganja while securing the same in the Wagon R car bearing no. DL1CQ 2548 for selling the same and was alleged to have committed offences punishable under Sections 20(b)(ii)(C) & 29 r/w Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

9. The charge-sheet in the instant case indicates that on 09.08.2017 ASI Virender Singh, the Investigating Officer was present in his

Investigating Officer room at the NR/Crime Branch, Sector-18, Rohini, Delhi wherein at about 6.15 p.m., a secret informer met him and informed him that Sanjeev Shah r/o Begusarai, Bihar (i.e. the co-accused herein) was presently living at Village Bakoli and in association with a lady named Arti (i.e. the petitioner herein) used to supply Ganja in Delhi and Haryana and used to make use of Honda Activa Scooty for making the said supply and that even on that date i.e. 09.08.2017, he would come to make the supply between 7.30 p.m. to 8.30 p.m at Village Pitampura, Subzi Mandi near DDA Park in a large quantity and that if a raid was conducted, the said Sanjeev Shah could be apprehended alongwith the Ganja.

10. As per the charge-sheet, ASI Virender Singh on making due enquiries from the secret informer and accepting the information to be correct produced the secret informer before Inspector Satyawar and thereafter information was given to the ACP / NR Sh. D.P. Singh, on whose instructions a raid was organized and thereafter *inter alia* the raiding party was present at the spot Village Pitampura, at the DDA Park near the Subzi Mandi at 7.25 p.m. and attempts were made to join 4-5 rickshaw pullers and passersby to join the raid but they declined and thereafter the raiding team was briefed by the Investigating Officer and at about 8.00 p.m. a person came riding a silver coloured scooty bearing no. DL9SAZ 8538, the driver of which was wearing a helmet and there was a big heavy plastic gunny bag tied to the rear seat of the scooty and that the scooty driver (who was pointed out by the secret informer to be Sanjeev Shah) stopped at a distance of about 15-20 meters from ASI Virender Singh near the wall

of the DDA Park and the scooter driver appeared to be waiting for someone and then attempted to move away by putting on his helmet for 4-5 minutes but he was apprehended by the raiding team at about 8.05 p.m. whereafter requisite formalities were performed by apprehending the co-accused Sanjeev Shah on the secret information and inquiries were made from the co-accused Sanjeev Shah about the possession of the large quantity of the Ganja which on weighing was found to be 22 Kilo 200 Grams of Ganja.

11. As per the charge-sheet during the course of investigation, the co-accused Sanjeev Shah made a disclosure statement to the effect that the recovered Ganja had been given to him by one lady named Arti (i.e. the petitioner herein) who was stated to be the resident of Jhuggi behind Gurudwara, Alipur, Delhi and the Ganja was allegedly disclosed by the co-accused Sanjeev Shah to have been given to him by the petitioner herein, Arti on 08.08.2017 at about 8.00 p.m. after taking out the same into the Wagon R car bearing no. DL1CQ 2548 and that on the next day, the police are indicated to have apprehended him when he was going to meet would be purchaser Guddi and that on 12.08.2017, the co-accused Sanjeev Shah gave a supplementary statement and pointed out to the Jhuggi behind Gurudwara, Alipur, Delhi where the co-accused i.e. the present petitioner Arti used to stay, which house was found to be locked and that the Investigating Officer along with the other staff had visited the house of the present accused Arti and it was learnt during the investigation that since the arrest of the co-accused Sanjeev Shah, the petitioner herein Arti was absconding and thus her husband had also fled from there.

12. As per the prosecution version, the husband of the petitioner Sh. Buddan Paswan as being traced out also disclosed that his wife i.e. the petitioner was absconding from the day when the co-accused Sanjeev Shah had been apprehended and thus he too had run away and that she moved an application for surrender on 11.09.2017 in the Court of learned CMM, North West but she did not surrender on that day and that the co-accused Arti i.e. the present petitioner was apprehended on 15.09.2017.

13. As per the charge-sheet, the petitioner herein Arti was involved in FIR No. 267/16, PS Kundli, Sonapat (Haryana) qua the offence punishable under Sections 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

14. Reliance was also placed on behalf of the State on the call detail record and the conversation between the petitioner herein Arti and the co-accused Sanjeev Shah vide mobile phone no. 8800477358 used by the petitioner herein Arti to mobile phone no. 8510093120 and it was also further submitted through the charge-sheet that as per the analysis of the CDR of the mobile phone no. 8800477358 used by the petitioner herein Arti as per the disclosure statement of the co-accused Sanjeev Kumar, the position of the user of the petitioner herein Arti was at Alipur, Delhi on 08.08.2017 and that the position of the user of the mobile phone no. 8750623462 was at Alipur Village, main Narela Road, Delhi on 08.08.2017.

15. The FSL result also indicates that the contraband found in possession of the co-accused was Ganja which was sent to FSL for examination which FSL result dated 10.11.2017 indicates that the

substance sent was found to be Ganja (i.e. cannabis).

16. The investigation conducted by the Investigating Agency indicates also that the Wagon R car bearing no. DL1CQ 2548 was also in the possession of the police and was registered in the name of the petitioner herein Arti and that the evidence indicates that the co-accused Sanjeev Shah was in conversation with the petitioner herein Arti.

17. The status report also indicates that the mobile phone no. 8800477358 used by the petitioner herein Arti was found to be in contact with the co-accused Sanjeev Shah and the investigation conducted indicates that even the co-accused Sanjeev Shah had allegedly disclosed that he was using the mobile no. 8750623462 and 9911365802, which mobiles were recovered from him and that as the CDR analysis of the mobile phone no. 8750623462 recovered from the possession of the co-accused Sanjeev Shah indicates that both the mobile phones were positioned at Alipur Village, Main Narela Road between 6.06 p.m. to 7.55 p.m. and as per the CDR analysis of the mobile phone no. 8800847358, the position of the user i.e the petitioner herein Arti was also in Alipur on 08.08.2017 and the position of the co-accused Sanjeev Shah and source of the contraband i.e. the petitioner herein was in accordance with the facts asserted in the disclosure and both were found in contact with each other continuously.

18. *Inter alia*, the complaint made by Sh. Buddan Singh husband of the present petitioner herein Arti to the DCP / Rohini District alleges that illegal business of selling Ganja was being conducted by the

petitioner herein Arti i.e. his wife along with his brother-in-law Sumit and co-accused Sanjeev Shah and that the investigation also revealed the previous involvement of the petitioner herein Arti in FIR No. 267/16, PS Kundli, Sonapat (Haryana) dated 09.08.2016 qua the alleged commission of offence punishable under Sections 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

19. It was contended during the course of the arguments addressed on behalf of the petitioner that apart from the disclosure statement made by the co-accused Sanjeev Shah, there was nothing that the State had to bring forth in relation to the allegations against the petitioner herein Arti and that the disclosure statement of the co-accused Sanjeev Shah was inadmissible in evidence and the mobile phone alleged to have been utilized by the petitioner herein Arti was not registered in her name and that the continuous incarceration of the applicant / petitioner in custody would result in serious miscarriage of justice. It was further contended on behalf of the petitioner that there was no conversation between the petitioner and the co-accused Sanjeev Shah.

20. The Trial Court Record which has been requisitioned *inter alia* contains a statement of Pankaj Kumar s/o Ramesh Kumar which was recorded, who stated that he used to deal in making lighting arrangements in marriages and parties and often made arrangements in Alipur also for the same and several persons thus knew him and that a month prior to the recording of the statement under Section 161 of the of the Criminal Procedure Code, 1973, a lady named Arti resident of Alipur Gurudwara had taken a sum of Rs.1 lakh from him to purchase a plot which money she had not returned and thus he had been calling

the said Arti on mobile phone no. 8800477358 from his own mobile phone no. 8510093120 which was being utilized by him from 01.08.2017 and which mobile was in the name of his friend Shiv Gupta and that he had made the statement as the police was making inquiries from him for his contact in his mobile no. 8510093120 with mobile phone no. 8800477358.

21. The CDR details collected by the Investigating Agency are indicated to contain communications between the co-accused Sanjeev Shah vide mobile phone no. 8750623462 from 07.08.2017 to 09.08.2017 with mobile phone no. 8800847358 of the petitioner herein Arti showing the presence of both these mobile numbers on 09.08.2017 between 15:32:41 to 18:28:56 hours and also on 08.08.2017 between 19:04:52 to 21:11:46 hours.

22. Taking into account the totality of the circumstances of the case and the provision of punishment for abetment and criminal conspiracy under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the aspect that Section 37 of the said enactment makes offences punishable under Sections 19, 29, 27A and offences involving commercial quantities to be non-bailable, in as much as a commercial quantity of the contraband is alleged to have been recovered from the co-accused Sanjeev Shah, which is alleged to have been entrusted to the co-accused Sanjeev Shah by the petitioner herein Arti for sale to one Guddi, coupled with the factum that the said contraband is alleged to have been supplied by the petitioner herein Arti to the co-accused Sanjeev Shah in the Wagon R car bearing no. DL1CQ 2548 in relation to which the co-accused Sanjeev Shah had

earlier been arrested for driving the same in a rash and negligent manner in relation to the FIR No. 416/16, PS Alipur, Delhi for the offences punishable under Sections 279/337 of the Indian Penal Code, 1860 coupled with the factum that the said vehicle is registered in the name of the petitioner herein Arti and coupled with the factum that there were repeated conversations between mobile phone no. 8800477358 utilized by the petitioner herein Arti with the mobile phone no. 8750623462 and mobile phone no. 9911365802 utilized by the co-accused Sanjeev Shah coupled with the statement under Section 161 of the Code of Criminal Procedure, 1973 of one Pankaj Kumar dated 15.11.2017, who used to deal in making lighting arrangements in marriages and parties of conversation by him vide his mobile no. 8510093120 the number of the petitioner herein Arti on the mobile number 8800477358 and coupled with the alleged destroying of the said mobile phone by the petitioner herein Arti, the totality of the circumstances in the instant case do not bring forth reasonable grounds to this Court to believe that the petitioner herein Arti is not guilty of any offences involving commercial quantity of contraband nor that the petitioner herein Arti would not be likely to commit any offence, if on bail. Thus as the parameters of Section 37(i)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 are not brought forth in the instant case, the petitioner herein Arti is not entitled to be released on bail.

23. The bail application no. 2283/2017 is thus dismissed.

24. The Trial Court Record be returned forthwith along with the

copy of this order.

ANU MALHOTRA, J

JUNE 8th, 2018/mk

