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

+ **BAIL APPLN. 2606/2017**

GANGA PRASAD

..... Petitioner

Through: Mr. Tamay Mehta, Adv with CM
Sangram & Mr. S. Anand, Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Ashish Dutta, APP for State with
ASI Dalbir Singh,, AATS/Rohini.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

30.01.2018

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In terms of the proceedings dated 18.12.2017, the status report has been submitted by the State.

On behalf of the applicant, it has been submitted that the applicant has been falsely implicated in the instant case and even if he was the driver and owner of the vehicle in question bearing no. DL1ZA7889 on the date of the alleged commission of offence by the co-accused Md. Shanu Rehman @ Shanu @ Irshad, the appellant was only the driver of the said vehicle and that the alleged contraband, i.e., 120 grams of heroine recovered from the co-accused does not fall within the ambit of commercial quantity to which the embargo of Section 37 of the NDPS Act, 1985 would not apply and it has thus been submitted on behalf of the applicant that he be released on bail submitting *inter alia* to the effect that he has been incarcerated since 22.11.2017.

On behalf of the State, the application has been vehemently opposed submitting to the effect that in terms of Section 29 of the NDPS Act, 1985, the applicant would fall within the category of an abettor and that the submission which was made on behalf of the applicant on 18.12.2017 to the effect that he runs a travel agency and was thus driving the vehicle in question and had no knowledge that the co-accused was carrying heroine, cannot be accepted inasmuch as the applicant was transporting the narcotic drug along with the accused and that even as per the agreement between the OLA cabs, the applicant is indicated to have taken bookings from the OLA cabs on 21.11.2017 only till 9.13 P.M. and not thereafter, whereas the alleged incident and recovery is on the date 22.11.2017 at 15.15 hours.

It has also been submitted through the status report that the applicant is not a permanent resident of Sector-16, Rohini, New Delhi. It is however, submitted by the Investigating Officer in reply to a specific court query that the address mentioned in the petition of the applicant is however correct.

Without any observation on the merits or demerits of the case, taking into account the factum that the presumption under Section 37 of the NDPS Act, 1985 would not apply to the facts and circumstances of the instant case inasmuch as the alleged recovery of contraband does not fall within the ambit of commercial quantity and the factum that the applicant is the registered owner of the vehicle in question and he states that he had only taken the co-accused on hire without any knowledge of the contraband in possession of the co-accused, which aspect is a matter of trial, the applicant is allowed to be released on bail on his furnishing a bail bond in the sum of Rs. 1,00,000/- with two sureties of like amount to the satisfaction of the

Trial Court, subject to the conditions that he shall not leave the country, shall not tamper with the evidence in any manner and shall not be involved in the commission of any offence.

In the event of any FIR being registered against the applicant, the State is directed to bring the same to the notice of this Court.

The application is disposed of.

Dasti.

ANU MALHOTRA, J

JANUARY 30, 2018
Neha Chopra