

\$~7

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

+ **BAIL APPLN. 1423/2019**

S. GANESH

..... Petitioner

Through: Mr Apoorv Agarwal, Mr Abhimanyu
Jhalani and Ms Ishani Singh,
Advocates.

versus

THE STATE

..... Respondent

Through: Mr Amit Gupta, APP for State.
Inspector Sarita and ASI Bal Kishan,
PS New Ashok Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

12.09.2019

1. The petitioner has filed the present petition seeking that he be released on bail in FIR No. 410/2017 under Section 20 of the Narcotics, Drugs and Psychotropic Substances Act, 1985 (NDPS Act), registered with PS New Ashok Nagar.
2. The said FIR was registered on 03.08.2017 and the petitioner has been in custody since the said date. It is stated that the petitioner and the co-accused, were found carrying three gunny bags. The co-accused was carrying one bag, which is alleged to contain five packets weighing 9.5 kgs and the petitioner is alleged to have carried two bags containing the contraband – 11.7 kgs in one bag and 9.5 kgs in the other bag.
3. It is stated that both the petitioner and co-accused were issued separate notices under Section 50 of the NDPS Act and were asked whether they desired to be searched by a Magistrate or a Gazetted Officer, and

whether they desired to search the raiding party (police officers or their vehicles). It is stated that the petitioner and his co-accused declined the said opportunity in writing. They had expressly stated that they neither wanted to be searched by a Gazetted Officer/ Magistrate nor did they want to search the police officials or their vehicles.

4. It is stated that the chargesheet had already been filed. All the witnesses are police officials and there no independent public witnesses are required to be examined.

5. The learned counsel appearing for the petitioner contends that the petitioner is to be discharged since Section 50 of the NDPS Act has not been complied with. He relies upon the decision of the Supreme Court in *Arif Khan v. State of Uttarakhand: (2018) 18 SCC 380*. The petitioner also relies on the decision of the Coordinate Bench of this Court in *Sikodh Mahto v. State: Crl. A. 660/2017* and *Prabhu Mahto v. State: Crl. A. 698/2017, decided on 06.06.2019*. It is contended on behalf of the petitioner that in view of the aforesaid decisions, notwithstanding that the petitioner had declined the opportunity to be searched by the Magistrate or a Gazetted Officer; he was, nonetheless, required to be searched by the Magistrate or a Gazetted Officer.

6. Clearly, the issues raised by the petitioner requires consideration. However, it is not necessary to examine them at this stage; suffice it to state that the contentions raised by the petitioner are substantial. The petitioner has been in custody since 03.08.2017. It is also stated that during the aforesaid period, the petitioner had completed his graduation with first

division. Out of the three-year B.A. Programme, he has completed two years while in judicial custody.

7. Considering that there is little possibility of the petitioner tampering with any evidence or influencing any witness, this Court considers it apposite to allow the present petition and grant bail.

8. Accordingly, the present petition is allowed.

9. It is directed that the petitioner be released on bail on furnishing a personal bond in the sum of ₹25,000/- and a surety of a like amount to the satisfaction of the Trial Court. The petitioner shall ensure that he appears before the Trial Court on all occasions. The petitioner shall also not leave the National Capital Territory of Delhi without approval from the Trial Court.

10. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

SEPTEMBER 12, 2019
RK