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

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Judgment delivered on: 05.07.2019

+ BAIL APPLN. 1437/2019

RAHUL GUPTA @ ROSHAN @ KHALLA Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Manjeet Singh Ahluwalia and Mr. Arbind Kumar Gaur, Advs.

For the Respondent : Ms. Meenakshi Dahiya, Addl. PP for the State with Insp. Gursewak Singh

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks regular bail in FIR No. 100/2018 under Section 21 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short), Police Station Hari Nagar.

2. As per the FIR, secret information was received that one Salman Tyagi would be coming to supply large quantity of Heroine on his motorcycle. Acting on the information a raiding party was prepared. The raiding party reached the spot and laid a trap.

3. Subsequently, one person came on a Splender Motorcycle and was

identified by the informer as Salman Tyagi. Subsequently, he was apprehended. On a search conducted, after compliance of the provisions of Section 50 NDPS Act, 260 grams of heroine was recovered from his possession (commercial quantity being 250 grams).

4. As per the prosecution Salman Tyagi in his confessional stated that he used to source his heroine from the petitioner.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated. He submits that the police have been in the habit of implicating him in several cases and even in the present case he has been falsely named. He further submits that there is no material against the petitioner collected during investigation which would connect him with the alleged offence except the alleged statement of co-accused.

6. Learned counsel further submits that even Salman Tyagi has filed an affidavit before the concerned Court retracting from his statement and stating that he was brutally beaten up and his signatures were obtained on some blank papers.

7. Learned counsel for the petitioner relies upon the judgment of the Supreme Court in *Surinder Kumar Khanna Vs. Directorate of Revenue Intelligence (2018) 8 SCC 271* to contend that mere statement of co-accused cannot be used as substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court, after Court has formed an opinion based on other evidence collected.

8. Status report has been filed. As per the status report the petitioner is alleged to be involved in 17 other FIRs.

9. Learned counsel for the petitioner submits that all cases have been planted on the petitioner and in 10 cases he has been acquitted and in 7 cases trial is pending. He submits that the petitioner is not involved in any cases under the NDPS Act apart from the present FIR.

10. Learned Addl. PP concedes that apart from the confessional statement there is no other material with the prosecution to show the connection of the petitioner with the subject offence.

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

12. Accordingly, on petitioner furnishing a bail bond in the sum of Rs. 50,000/- with one surety of the 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. Petitioner shall surrender his passport, if any, to the IO, if not already done so.

13. The petition is allowed in the above terms.

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

SANJEEV SACHDEVA, J

JULY 5, 2019

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