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

Date of decision: 29.08.2019

+ BAIL APPLN. 1662/2019

MD MUSLIM

..... Petitioner

Through Mr.Sulaiman Mohd. Khan, Adv.
(DHCLSC) with Mr.MOhit Rastogi,
Adv.

versus

STATE

..... Respondent

Through Mr.Hirein Sharma, APP for State.
SI Chandar Kumar ST ARS-I/Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present application, the applicant/accused seeks bail in SC No.1324/2016 in pursuance to FIR No.148/2015 registered at Police Station, Crime Branch, Saket Courts for the offences punishable under section 20/25/29 of NDPS Act, 1985.

2. The facts of the case are that on 28.09.2015 at about 7:35 pm, under Barapulla Flyover, Ring Road, New Delhi, Vehicle no. CG-10X-6620 was intercepted by the police party. Accused Nitesh Ikka, Virender Kumar,

Sanjay Chuahan, and Sharif Khan were found sitting in the vehicle and 180 kg of ganja was recovered. On 03-04.10.2015, accused Nitesh Ikka was taken to Chattisgarh. Accused Md Muslim (petitioner herein) was arrested whose disclosure statement was recorded. Accused Virender @Vire was arrested at the pointing out of the petitioner. Accused Virender @Vire's disclosed the name of the accused Nepal Yadav. On 08.01.2016, accused Nepal Yadav was arrested, but no contraband was recovered from his possession. Original RC and insurance papers of the vehicle no. CG-10X-6620 were recovered. The accused namely Nitesh Ikka, Virender Kumar, Sanjay Chauhan, Sharif Khan and the petitioner disclosed that they had brought the contraband for supplying to Virender @Vire. The disclosure statement of Virender @Vire shows that he has kept the documents of the vehicle in a flat whereas it has been allegedly shown to have recovered from the accused Nepal Yadav.

3. Learned counsel appearing on behalf of the petitioner submits that the learned Trial Court has failed to appreciate the facts and circumstances of the case while deciding the bail application filed by the petitioner. There is no incriminating evidence against the petitioner. There is no recovery of contraband from the possession of the petitioner. The co-accused Nepal

Yadav and Virender @Vire have already been granted bail by this Court vide order dated 26.07.2018 and 10.12.2018 respectively. The petitioner has been assigned similar role by the prosecution, as there is no recovery from the possession of the petitioner, however, he was arrested on the disclosure of accused Nitesh Ikka.

4. The petitioner has been arrested on 03-04.10.2015 from Chattisgarh and since then he is in judicial custody.

5. Learned counsel further submits that the petitioner is seeking bail on parity with Nepal Yadav and Virender @ Vire.

6. He further submits that compliance of section 50 was not done by the police, therefore, the petitioner is entitled for bail.

7. To strengthen his argument, counsel for the petitioner has relied upon the case of *Arif Khan @ Agha Khan vs. State of Uttarakhand* in *Criminal Appeal No.273/2007 decided on 27.04.2018* wherein the Hon'ble Supreme Court has observed that compliance of section 50 is mandatory, however, in the present case, section 50 has not been complied with.

8. The fact remains that the petitioner is a supplier and he received sale consideration from the accused persons through his bank account.

9. In case of *Arif Khan @ Agha Khan (supra)*, recovery of 2.5 kgs. of

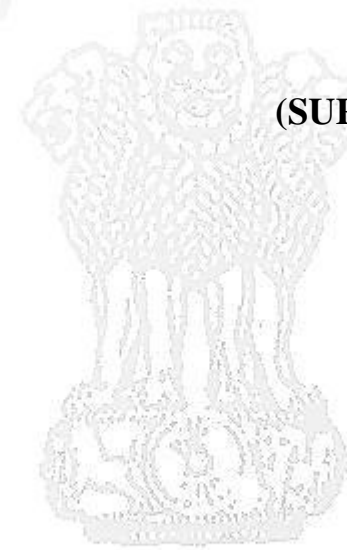
charas was from the person whereas in the present case, recovery is from the vehicle, therefore, I am of the considered opinion that compliance of section 50 of NDPS Act is not required.

10. Keeping in view the fact that the petitioner is supplier of ganja who received sale money, I am not inclined to grant bail to the petitioner.

11. The application is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 29, 2019
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न्यायमेव जयते