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

+ **BAIL APPLN. 1766/2019**

LAL BABU @ RAJESH @ RAJU

..... Petitioner

Through: Mr Shiva Bhardwaj and Ms Aditi
Chopra, Advocates.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms Meenakshi Chauhan, APP for
State with ASI Kanwal Singh, Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.10.2019

1. The petitioner has filed the present petition, *inter alia*, praying that he be granted bail under Section 439 of the Code of Criminal Procedure, 1973 in FIR No.103/2017 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It is the prosecution's case that secret information was received by SWR, Crime Branch, Dwarka that the petitioner was involved in the supply of *ganja* in the Delhi/NCR region. The said information indicated that the petitioner would visit an area near Rohini Jail Morh from the Outer Ring Road in order to supply a huge quantity of *ganja*. Accordingly, a raid was conducted.
2. It is alleged that the petitioner was apprehended and twenty-seven kilograms of *ganja* was recovered from his possession. It is stated that prior to recovery of the said substance, the petitioner was apprised of his rights

under Section 50 of the NDPS Act. However, he declined the opportunity to be searched by a Gazetted Officer or a Magistrate.

3. It is the petitioner's case that provisions of Section 50 were not complied with. The petitioner disputes that any such offer to be searched in the presence of a Gazetted Officer/Magistrate was made and he had declined the same. The learned counsel appearing for the petitioner further submits that even if it is assumed that an opportunity was granted to the petitioner to be searched before a Magistrate or a Gazetted Officer and he had declined the same, the same would not comply with the requirements of Section 50 of the NDPS Act. He relies on the decision of the Supreme Court in ***Arif Khan @ Agha Khan v. State of Uttarakhand*: 2018 AIR (SC) 2123**.

4. In addition, he also submits that the petitioner was apprehended at a distance of merely twenty metres from a police station and therefore, he could have been produced before a Magistrate.

5. Ms Chauhan, learned APP opposes the petitioner's application for grant of bail. She submits that commercial quantity of the illicit substance was recovered from the petitioner and he ought not to be granted any bail. She also referred to Section 37 of the NDPS Act and submitted that unless the Court is satisfied that there are reasonable grounds to believe that the petitioner is not guilty of the offence and/or is not likely to commit any offence while on bail, bail cannot be granted.

6. The petitioner has been in custody since 04.07.2017. The petitioner has raised contentious issues with regard to the applicability of the decision of ***Arif Khan @ Agha Khan*** (*supra*). The grounds raised by the petitioner are substantial. The status report does not indicate any material, which would lead this Court would believe that if the petitioner is released on bail,

he would commit an offence which is alleged against him.

7. In view of the above, the preset petition is allowed and the petitioner is admitted to bail on his furnishing a bail bond in the sum of ₹1 lakh and a surety of the like amount to the satisfaction of the concerned Trial Court. This is also subject to a further condition that the petitioner shall not leave the National Capital Territory of Delhi. He shall also report to the concerned Investigation Officer once every fortnight. It is further clarified that if the petitioner gets involved in any other FIR during the period he is released on bail, the present bail shall stand cancelled.

8. The petition is allowed in the aforesaid terms.

9. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

OCTOBER 15, 2019
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