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

+ **BAIL APPLN. 3167/2019**

RAJVINDER SINGH

..... Petitioner

Through: Mr. Girish Kumar Sharma, Ms.
Sushma Sharma and Mr. Karan
Verma, Advocates.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP with SI
Sanjeev, P.S. Special Cell

And

+ **BAIL APPLN. 3233/2019**

HAHAT @ LILLI

..... Petitioner

Through: Mr. Vikas Negi, Advocate

versus

THE (GNCT OF DELHI)

..... Respondent

Through: Mr. Amit Chadha, APP with SI
Sanjeev, P.S. Special Cell

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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06.02.2020

1. The present petitions are filed on the ground that as per the prosecution story, 450 grams of heroin was alleged to have been recovered from the possession of petitioners at the time of arrest and prosecution took

sample and sought FSL, according to which purity percentage of the alleged contraband is 19% and as such it becomes total 85.5 grams heroin, which is an intermediate quantity and does attract provisions of Section 37 NDPS Act.

2. Learned APP submits that as per the notification of 2019, it is the total quantity which is to be taken into consideration and not the percentage of substance. Learned APP further submits that total recovery from the accused is 5 Kg 450 gm, therefore, as per Section 29 of NDPS total recovery is to be taken into consideration.

3. It is admitted fact that:-

(a) from accused No.1, 450 gm heroin recovered and as per the FSL purity therein is 1.9%. Thus, it comes 85.5 gm substance of the heroin.

(b) From accused No.2, 4 kg of substance has been recovered and purity therein is 1.7%. Thus, it comes 44.5 gm.

(c) From accused No.3, total recovery is 500 gm and purity therein is 1.9%. Thus, it comes 9.5 gm.

(d) From accused No.4, total recovery is 500 gm and purity therein is 2.2%. Thus, it comes around 11 gm.

Thus, total quantity of substance is 150.5 gm (85.5 + 44.5 + 9.5 + 11), which is intermediate whereas the commercial quantity is 250 gm. Hence, provision of Section 37 NDPS Act does not attract.

4. As per the recent judgment passed by this Court in the case of '**Sandeep Kumar vs. Central Bureau of Narcotics**', decided on 08.07.2019, *2019 Lawsuit (DEL) 2001*, after appreciating the law laid down by the Hon'ble Supreme Court in '**Rafiq Qureshi vs. NCB, Eastern Zonal**

Unit', decided on 07.05.2019, *2019 Lawsuit (SC) 1179*, decided the case on the basis of purity percentage available in the contraband.

5. In view of the above, since the purity is less than 250 gm and the petitioners are in custody since 23.03.2019, the petitioners deserve benefit of the aforesaid judgments.

6. Accordingly, they shall be released on bail on their furnishing personal bond of ₹25,000/- each with one surety each of the like amount to the satisfaction of the trial Court.

7. The applications stand disposed of.

8. Order dasti under signatures of the Court Master.

9. Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for necessary compliance.

SURESH KUMAR KAIT, J

FEBRUARY 06, 2020

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