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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 2972/2019

MOHD. LITON

..... Petitioner

Through: Mr. Deepak Ghai, Mr. Vinay Duggal
& Mr. Rahul, Advocates.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State with SI Bahadur Singh, PS
Bhalswa Dairy.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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12.03.2020

The status report has been submitted on behalf of the State in relation to the previous involvements of the applicant as per which it is indicated that in relation to FIR No.79/2009, PS Timarpur under Sections 364/365/34 of the Indian Penal Code, 1860, a cancellation report has been submitted by the State; the applicant is indicated to have been convicted in relation to FIR No.58/2010, PS Bhalswa Dairy under Sections 376/506/34 of the Indian Penal Code, 1860 qua which it has been submitted on behalf of the applicant that he has already undergone the sentence imposed therein. As regards the FIR No.657/2016, PS Alipur under Sections 33/58 of Excise Act, the said case is stated to be pending trial with the petitioner being on bail as submitted on behalf of the applicant.

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PS to HMJ ANU
MALHOTRA.

On behalf of the applicant, it has been submitted that he has been incarcerated since 01.06.2019 in relation to FIR No.299/2019, PS Bhalswa Dairy with allegations against the applicant of having been found in possession of 1250 gms of Ganja. It has been submitted on behalf of the applicant that even if the recovery is presumed to have been so effected, the same is just a little above the small quantity prescribed as being 1000 gms of Ganja and that thus, the sentence, if any, that may be imposed in the instant case, could be a maximum of 10 years of imprisonment with a fine of Rs.1,00,000/-.

On behalf of the State, it has been submitted to the effect that there needs to be strict interpretation of the provisions of law in relation to the NDPS Act, 1985 and that possession of even a gram more of the contraband than the small quantity would suffice to negate the grant of bail to the applicant.

Submissions made on behalf of either side and the status report that has been submitted on behalf of the State, have been considered. Reliance has *inter alia* been placed on behalf of the State on the verdict of the Hon'ble Supreme Court in "***State of Punjab Vs. Baljinder Singh & Anr.***" 2019 SCC OnLine SC 1408 submitting *inter alia* to the effect that the provisions of Section 50 of the NDPS Act, 1985 would not apply and that thus, the absence of the person of any Gazetted Officer or a Magistrate at the time of the conducting of the search of the petitioner would not in any manner vitiate the trial, which is refuted on behalf of the applicant.

On a consideration of the submissions that have been made on

behalf of either side, in as much as, without any observations on the merits or demerits of the trial in progress, taking into account the factum that the applicant is alleged to have been found in possession of an intermittent quantity i.e. of 1250 gms of Ganja beyond the small quantity with the commercial quantity prescribed in terms of S.O.1055(E) dated 19.10.2001 under the NDPS Act, 1985 being 20 kgs, with also the observations of the Hon'ble Supreme Court in "**SK. Raju alias Abdul Haque alias Jagga Vs. State of West Bengal**" (2018) 9 SCC 708 laying down a fine distinction and in the circumstances as observed by this Court in Bail Appl. No.973/2019 in "**Akhilesh Bharti Vs. State**" dated 20.01.2020 where the contraband is recovered from an object which is held by an accused in his hand and the search of the person of such an accused is also conducted which leads to no recovery of any contraband, though, there are recoveries of other personal assets of a person from his personal search, in view of the judgment of the Hon'ble Supreme Court in "**SK. Raju alias Abdul Haque alias Jagga Vs. State of West Bengal**" (supra), *prima facie* there would be requirement of the compliance of Section 50 of the NDPS Act, 1985 strictly.

Reliance is *inter alia* placed on behalf of the applicant on the verdict of this Court in Bail Appl. No.2284/2019 in "**Pulkit Rastogi Vs. State**" to contend to the effect that in as much as the applicant herein as in the said case relied upon was not found in possession of any commercial quantity of contraband, the embargo of Section 37 of the NDPS Act, 1985 would not apply.

On a consideration of the submissions made on behalf of either side, the applicant in the instant case is allowed to be released on bail on filing a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court with directions that he shall not leave the city and shall commit no offence whatsoever. In the event of any FIR being registered against the applicant, the State will bring it to the notice of this Court forthwith.

The application stands disposed of.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

MARCH 12, 2020

'neha chopra'