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

+ BAIL APPL. 3084/2019

KAMLESH @ RAJU @ BABU Petitioner

Through: Mr. Kanhaiya Singhal, Adv.

versus

STATE NCT OF DELHI Respondent

Through: Mr. G.M. Farooqui, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **28.05.2020**

CRL.M.A. 6655/2019 (for early hearing)

By this application the applicant seeks early hearing of B.A. No. 3084/2019. For the reasons stated in the application, the same is allowed. B.A. No. 3084/2019 is taken-up for hearing today. CRL. M.A. 6655/2019 stands disposed of.

BAIL APPL. 3084/2019

2. The applicant is an undertrial in case FIR No. 215/2019 registered under sections 21/61/85 of the Narcotic Drugs and Psychotropic Substances Act 1985, ('NDPS Act', for short) at PS: Narela Industrial Area, New Delhi.
3. The applicant has been in custody since 21.04.2019.
4. Status report, though stated to have been filed, is not on record. A

copy has been forwarded by e-mail and has been perused. Let the status report be placed on record. In the status report, while citing the facts of the case and listing-out other cases in which the applicant is stated to have been involved, the State has opposed grant of bail.

5. Mr. Kanhaiya Singhal, learned counsel appearing for the applicant submits that in charge-sheet dated 14.06.2019 and in the status report filed, it stands confirmed that the total quantity of contraband allegedly recovered from the applicant was 18.91 grams. Counsel points-out that in the FSL report, the chemical has been described as 'Codeine', 'Acetyl codeine' '6- Monoacetylmorphine' & 'Trimethoprim'. Counsel contends that as per notification dated 19.10.2001 issued under section 2 of the NDPS Act, the threshold of a "small quantity" of 'Codeine' is specified as 10 grams and that of "commercial quantity" is 1 kg. Accordingly, the quantity of 18.91 grams allegedly recovered from the applicant (which would include the weight of the polythene in which it was measured) is just above what is considered "small quantity".
6. Insofar as the applicant's involvement in other cases is concerned, Mr. Singhal points-out that the table in the status report itself shows that out of the 4 cases in which the applicant has been involved, 3 have been petty cases under the Delhi Excise Act 2009 for possession/ transportation of small quantities of liquor across borders; for which the applicant was convicted and fined small amounts ranging from Rs. 100/- to Rs. 500/-. Insofar as the other case under the NDPS Act, being case FIR No. 118/2012 under sections 20/61/85 of the NDPS Act is concerned, it is seen from the status report itself that the

applicant was acquitted in that case on 01.10.2013.

7. Moreover, Mr. Singhal contends that the allegation against the applicant is under section 21 of the NDPS Act, which provides for punishment upto 10 years and fine that may extend to Rs. 1 lac ; and that therefore, for a case involving 18.91 grams which is just slightly more than “small quantity” and way below “commercial quantity”, only proportionate punishment would be awarded, if at all, especially since the applicant does not have any past conviction under the NDPS Act.
8. Counsel further contends that under section 37 of the NDPS Act, there is no bar to granting bail to a person who is *not* accused of an offence punishable under section 19 or 24 or 27-A or for an offence which does not involve commercial quantity, even without hearing the public prosecutor. In the present case though, the APP is being heard.
9. It is noted with some consternation, as pointed by Mr. Singhal, that the last date of hearing before the court of Shri Jitender Kumar Mishra, Special Judge (NDPS), Rohini Courts, New Delhi was 03.10.2019 whereas the next date of hearing is now fixed for 28.09.2020 *i.e. almost one year* after the previous date.
10. Considering the quantity involved as alleged by the State itself ; and that the applicant has been in custody for more than a year ; and the fact that there is no past conviction and, in fact the applicant was acquitted in the earlier case under the NDPS Act; and the inordinate delay with which the trial is proceeding in the matter, the court is persuaded to admit the applicant to regular bail during the pendency

of the trial, subject to the following conditions :

- a. The applicant shall furnish a personal bond in the sum of Rs.25,000/- to the satisfaction of the Jail Superintendent. Considering the prevailing lockdown, the furnishing of surety bond as a condition of bail, is dispensed with at this stage *subject* to the applicant furnishing one surety bond of the like amount, within 10 days of lifting/easing of lockdown to the satisfaction of the Jail Superintendent ;
- b. The applicant shall not leave the National Capital Region (NCR) without permission of the court and shall *ordinarily* reside in his place of residence as per prison records;
- c. The applicant shall present himself, on every alternate Wednesday between 11 am and 11:30 am to the Investigating Officer, and in case the Investigating Officer is no longer in service or is otherwise unavailable, then to the SHO PS : Narela Industrial Area to mark his presence ;
- d. The applicant shall furnish to the Investigating Officer/ SHO a cell phone number on which the applicant may be contacted and shall ensure that the number is kept active and switched-on at all times ;
- e. The applicant shall not contact nor visit nor threaten nor offer any inducement to any of the prosecution witnesses. The applicant shall not tamper with evidence nor otherwise indulge in any act or omission that would prejudice the proceedings in the matter.

11. The application stands disposed of in the above terms.
12. A copy of this order be sent to the Jail Superintendent.

ANUP JAIRAM BHAMBHANI, J.

MAY 28, 2020/uj