

\$~52

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

+ **BAIL APPLN. 23/2020**

VIKAS

..... Petitioner

Through: Mr. C. M. Sangwan, Adv.

versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, APP for State

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

%

08.01.2020

CRL.M.A. 212/2020

Allowed, subject to all just exceptions.

Application is disposed of.

BAIL APPLN. 23/2020

The present petition is filed under section 439 Cr.P.C. for grant of bail in pursuance to FIR No. 214/19, registered at Police Station Narela Industrial Area, Delhi, for the offences punishable under Sections 21/61/85 of NDPS Act.

Case of the prosecution is that on 21.04.2019, ASI Ram Narain, who was posted at PS Narela Industrial Area, made a statement that on that day, he along with Ct. Kulbir were patrolling at Kabristan, A Block, JJ Colony, Bawana. One boy i.e. accused, after seeing the police, started walking fast towards the Flat at Bawana Sirka, DDA Flats and when he was asked to

stop, he started running and on suspicion, ASI Ram Narain with the help of Ct. Kulbir apprehended the accused on the way, which leads towards the Gate no. 1, DDA Flats and on personal search of the petitioner, one white colour polythene having some wet red colour material was recovered. On inquiry, the petitioner told his name as Vikas R/o E-22/17, Shahbad Dairy and on further inquiry about the recovered material, it was told that it is smack, which he purchased from Barwala, Delhi and was going to sell it to Bawana. Thereafter, information was sent to the Duty Officer and after some time, IO SI Rampal Singh reached at the spot and the petitioner as well as the recovered smack was handed over to him. The IO recorded the statement of ASI Ram Narain in this regard. Thereafter, IO requested 4/5 passersby to join the proceedings after telling them about the recovery of smack, but they refused while disclosing valid reasons and left the spot without telling their names and addresses. Accordingly, IO could not serve any notice upon them. Thereafter, without wasting the time, IO conducted further proceedings, he served a notice u/s 50 NDPS Act upon the petitioner and told him about his legal right, but the accused refused to avail the said legal rights. On weighing the recovered smack came out to be 21.55 gms. Samples were taken and sealed. FSL form/documents were filled in and thereafter the petitioner was arrested in the aforesaid case on 21.04.2019, since then the petitioner is in judicial custody.

Case of the petitioner is that the alleged contraband i.e. smack quantity 21.55 gms has been recovered from the petitioner. The quantity of smack recovered is intermediate quantity, therefore, Section 37 NDPS Act is not applicable.

The petitioner is in judicial custody since 21.04.2019 and petitioner is

having clean antecedent and no previous involvement in any other case.

The investigation has already been completed and charge sheet has been filed and no further custodial interrogation is required in the present case.

Learned APP has opposed the present petition and submits that the quantity mentioned above is not commercial but intermediate and that the petitioner is a habitual offender. Earlier FIR No.1164/2014 was registered at PS Shahbad diary, for the offences punishable under Section 33 & 58 of Delhi Excise Act. If the petitioner is released on bail, he will indulge in the same activities again.

As per the case of the prosecution, the petitioner was apprehended by the police and recovered substance thereafter handed over to the IO.

Case of the prosecution is that under Section 50 of NDPS Act, the rights of the petitioner was apprised but he declined to avail the same. But the fact remains that the petitioner and the substance was handed over to the IO by patrolling party, therefore, Section 50 of the NDPS Act seems to have not been complied with.

However, without commenting on the case of the prosecution since the petitioner is in jail since 21.04.2019, I am of the view that the present case is fit for bail. Therefore, the petitioner shall be released on bail on his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Trial Court.

It is made clear that since no evidence has come before this Court, therefore, this Court has not made any opinion upon Section 50 of the NDPS Act.

Before parting with the order, it is relevant to mention that nothing

contained in this order shall be construed as an expression on the merits of the case. The Trial Court shall not get influenced by the observations made by this Court, while passing the final orders in the trial.

The present bail application is allowed and disposed of.

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

Order *dasti* under the signatures of Court Master.

SURESH KUMAR KAIT, J

JANUARY 08, 2020

ms