

\$~49

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

+ **BAIL APPLN. 231/2020**

ANUJ UPADHAYAY

..... Petitioner

Through: Mr. Prashant Mehta, Adv. (DHCLSC)
with Ms. Divita Vyas, Adv.

versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for State with
ASI Abdul H. And Inspector Manoj
Khanna, AHTO/ Crime Branch

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **28.01.2020**

CRL. M.A. 1877/2020

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

BAIL APPLN. 231/2020

3. The present petition is filed under Section 439 Cr.P.C. for grant of bail on behalf of petitioner in case FIR No. 111/2016 registered at Police Station – Crime Branch, Delhi for the offences punishable under Sections 20/25/29 NDPS Act, 1985.
4. As stated in present petition, the complainant and investigating officer of the present case is the same police official, which shows that the police

official/ Investigating Officer (IO) has not followed the law and the guidelines laid down by the Hon'ble Supreme Court on numerous occasions. It has been made clear that in NDPS cases, complainant and IO should not be same officer.

5. It is alleged that the IO, in the present case, has failed to comply with the mandatory provision of Section 41(1) & 41(2) of NDPS act and further absolutely overlooked the guidelines and statutory compliance of above mentioned sections, which proves that proceeding is fictitious and planted.

6. To strengthen her arguments, learned counsel for the petitioner, has relied upon the case of ***Arif Khan @ Agha Khan V. Staff of Uttarakhand (2018) 18 SCC 380***, whereby the Hon'ble Supreme Court has held that the police officers are not empowered to make search and recovery from the accused of the contraband 'Charas' as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or Gazetted Officer.

7. Admittedly, in the present case, 80 KGs of *GANJA*, which is of commercial quantity, has been recovered from the car of and driven by the petitioner herein. Thus, Section 50 of the NDPS Act is not applicable in the present case.

8. Further, it is not in dispute that complainant and the IO, in the present case is different. Therefore, I find no substance in the arguments of learned counsel for the petitioner.

9. Fact remains that Section 37 of the NDPS Act bar the bail to be granted for offences involving commercial quantity. For ready reference, Section 37 of NDPS Act is reiterated hereunder:

“37. Offences to be cognizable and non-bailable

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless:—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

10. Accordingly, I find no merit in the present petition, the same is accordingly dismissed.

SURESH KUMAR KAIT, J

JANUARY 28, 2020

PB