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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 341/2020

REKHA

..... Petitioner

Through: Mr. Jitender Tyagi & Mr. Gaurav
Bidhuri, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State with SI Jasmer Singh, PS
Jahangirpuri.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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03.03.2020

The applicant seeks the grant of bail in terms of Section 439 of the Cr.P.C., 1973 in relation to FIR No.78/2019, PS Jahangir Puri under Section 21/61/85 of the NDPS Act, 1985.

It has been submitted on behalf of the applicant that the provisions of Section 50 of the NDPS Act, 1985 have been given a go by in the instant case and furthermore, the recovery allegedly effected from the applicant is of 7 gms of heroine which does not fall within the embargo of Section 37 of the NDPS Act, 1985, in as much as, it is just 2 gms beyond the small quantity and is an intermediate quantity. *Inter alia* it is submitted on behalf of the applicant that the applicant has been incarcerated for about a year and no

useful purpose would be served by further incarceration as the trial would take time.

Inter alia reliance is placed on behalf of the petitioner on the averments made in the FIR itself to contend to the effect that the provisions of Section 50 of the NDPS Act, 1985 have not been complied with. Reliance is also placed on behalf of the petitioner on the verdict of this Court in Bail Appl. No.3086/2019 titled as **“Inderjit Singh Vs. Narcotics Control Bureau”** and the verdict of this Court in Bail Appl. No.973/2019 titled as **“Akhilesh Bharti Vs. State”** in support of the contentions made on behalf of the applicant.

Reliance is also placed on behalf of the petitioner on the verdict of this Court in Bail Appl. No.58/2017 titled as **“Sonu Vs. The State”** submitting to the effect that in as much as the petitioner has been allegedly found only in possession of 7 gms of heroine, which is just a little above the small quantity, the sentence that would be imposed on the petitioner would have to be proportionately imposed and that thus, further incarceration of the petitioner is not in the interest of justice.

On behalf of the State, the prayer is vehemently opposed submitting *inter alia* to the effect that the provisions of Section 50 of the NDPS Act, 1985 requiring the search of the petitioner before the Gazetted Officer or a Magistrate was not required to be implemented in the circumstances of the instant case, in as much as, it is submitted that the recovery was effected as per the seizure memo dated 06.02.2019 from the **‘panni held in the hand’** of the petitioner and also, from **‘a knot tied on the shawl of the petitioner worn by the**

petitioner' and that the same thus, does not form any extension of the person of the petitioner.

Reliance is also placed on behalf of the State on the status report and submissions made therein vide the status report dated 18.02.2020 submitted under the signatures of the SHO, PS Jahangirpuri to contend to the effect that the petitioner is a habitual offender and that there is a series of 8 cases against the petitioner of which in relation to FIR No.11/2002, PS Jahangir Puri and FIR No.821/2004, PS Jahangir Puri, she has since been convicted qua the offences punishable under Sections 61/1/14 Excise Act and that the proceedings in relation to FIR No.242/2005 and FIR No.249/2005, PS Jahangir Puri under Sections 61/1/14 of the Excise Act; FIR No.88/2017, PS Jahangir Puri, FIR No.534/2017, PS Jahangir Puri under Sections 33/38 Delhi Excise Act; FIR No.582/2017, PS Jahangir Puri under Section 21 of the NDPS Act & 33& 38 Delhi Excise Act as well as the proceedings in relation to FIR No.62/2019, PS Jahangir Puri under Section 77 JJ Act are still pending under trial and it has been submitted on behalf of the petitioner that taking into account the previous involvement of the petitioner in all these several cases, the release of the petitioner on bail would only result in further commission of offences by the petitioner.

Without any observations on the merits or demerits of the trial that may take place, in as much as, it is *prima facie* an indication on the bare perusal of the FIR itself that the alleged recovery of heroine

was effected from a “*panni held in the hand*” of the petitioner as well as “*in a knot tied in the shawl worn by the petitioner*”, the conducting of the search in terms of Section 50 of the NDPS Act, 1985 was apparently *prima facie* incumbent on the State.

In as much as, the petitioner has not been found in possession of any commercial quantity of the contraband, the embargo under Section 37 of the NDPS Act, 1985 would not apply and thus, in the circumstances, the applicant is allowed to be released on bail on filing a bail bond in the sum of Rs.2,00,00/- (Rupees Two Lakhs) with two sureties of the like amount to the satisfaction of the learned Trial Court with directions that she shall not leave the city and shall commit no offence whatsoever and in the event of there being any FIR/complaint or any DD entry lodged against the applicant, the State will bring it to the notice of this Court.

The application is disposed of.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

MARCH 03, 2020

‘neha chopra’