

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

Reserved on : 16.01.2020
% *Pronounced on* : 28.02.2020

+ **BAIL APPLN. 2284/2019**

PULKIT RASTOGI

..... Petitioner

Through: Mr. Alok Bachawat and Mr.
Uday Singh, Advocates.

versus

STATE

..... Respondent

Through: Mr. M.S. Oberoi, APP for the
State with Insp. Ved Prakash
and SI Satender, PS Mehrauli.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. This is an application filed under Section 439 Cr.P.C on behalf of the applicant/petitioner for grant of regular bail in case FIR No. 349/19 dated 09.06.2019 under Sections 33/38/58 Delhi Excise Act & 20/21/29 NDPS Act, registered at Police Station Mehrauli, New Delhi.

2. In brief the facts as alleged by the prosecution are that on 09.06.2019 a raid was conducted by the ACP/Excise Intelligence Bureau alongwith his team at Dhan Mill, 100 Foota Road,

Chhattarpur. During the raid, raiding party recovered huge amount of liquor, cash around Rs. 4.04 Lakh. During the personal search of the petitioner by ACP/EIB, 17 dark brown colour small balls from the right pocket of his trouser in a plastic transparent polythene were recovered and 20 pink colour tablet from his left pocket of his trouser in a transparent polythene was also recovered. The same was tested with the Narcotic Field Testing Kit and were confirmed as Charas and morphine.

3. On interrogation, the petitioner disclosed that the main organizer of the party was Gaurav Mavi who had provided him the above said tablets to sell at the start of the party. It is alleged that co-accused Gaurav Mavi also instructed the petitioner to collect more charas and morphine tablets from him. ACP/EIB alongwith the petitioner went in the parking area where a Land Cruiser bearing No. DL-1CT-4678 belonging to co-accused Gaurav Mavi and a Honda City Car of the petitioner were found parked. It is alleged that from the boot of Honda City 12 bottles of Absolute Vodka alongwith one small silver colour and one big sky blue colour weighing machine were recovered. ACP/EIB informed the local police who came at the spot and the articles produced by ACP/EIB were seized vide seizure memo and sealed with the seal of YD and the present FIR U/s 33/38/58 Delhi Excise Act and 20/21 NDPS Act was registered. The

morphine tablets were weighed and the same was found to be 6.2 grams approximately.

4. It is submitted by the Ld. counsel for the applicant/petitioner that the recovery of 6.2 grams of morphine falls in non commercial quantity, therefore the embargo of Section 37 of the NDPS Act is not attracted. It is further submitted that the petitioner is in J.C. since 09.06.2019 and he has no criminal antecedents and has been falsely implicated at the instance of the police officials. It is further submitted that no public person has been joined in the raiding party despite the secret information. It is further submitted that there is non compliance of Section 42 and 50 of the NDPS Act. It is further submitted that as per the allegations of the prosecution besides narcotic substances huge quantity of illicit liquor was recovered but the co-accused from whom much more quantity of alleged illicit liquor was recovered as compared to the petitioner has already been admitted to bail. It is further urged that there is no apprehension of the petitioner tampering with the evidence or threatening the witnesses as all the witnesses are police officials.

5. It is submitted by the Ld. APP for the state that the petitioner is one of the organizer of the party and in his name the license of the party was taken from the authorities. He further

urged that the allegations against the petitioner are grave and serious in nature and if released on bail, the petitioner may tamper with the evidence and there is likelihood of the petitioner fleeing away from justice.

6. At this juncture it may be mentioned that the Supreme Court in *Basheer @ N.P. Basheer v. State of Kerala* MANU/SC/0117/2004 : 2004 Cri LJ 1418 noticed that as a consequence of the Amending Act coming into force on 2.10.2001, the sentencing structure has undergone a drastic change. The Act introduced the concept of "commercial quantity" in relation to narcotic drugs or psychotropic substances by adding Clause (vii-a) in Section 2, which defines this term as any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. Further, the expression "small quantity" is defined in Section 2, Clause (xxiii-A), as any quantity lesser than the quantity specified in the Notification. Under the rationalised sentencing structure, the punishment would vary depending on whether the quantity of offending material was "small quantity", "commercial quantity" or something in between. This is the effect of the rationalisation of sentencing structure carried out by the Amending Act 9 of 2001, in Section 27. A notification was issued on 9.10.2001, specifying in respect of 239 narcotic drugs and psychotropic substances, as to what would be "small quantity" and

"commercial quantity". The application of strict bail provisions was also restricted only to those offenders who indulged in serious offences. Thus, Section 37 was amended so as to limit its rigors to offences involving "commercial quantity" and to those where a minimum term of imprisonment of 10 years or more was prescribed under the Act. Neither to before, Clause-b of Sub-section 1 of Section 37 provided as under:

"37. Offences to be cognizable and non-bailable. - Not with standing anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a)...

(b) no person accused of an offence punishable for "a term of imprisonment of five years or more under this Act", 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.

The said clause w.e.f. 2.10.2001 was amended to read as follows:

(b) Offences to be cognizable and non-bailable. - Not with standing anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a)...

(b) no person accused of an offence punishable for [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.

7. Thus, the legislature clearly indicated that in cases other than those involving "commercial quantity" , bail may be granted to the accused persons in appropriate cases.

8. In the present case, the petitioner is in J.C. since 09.06.2019. The petitioner was also found in possession of liquor and has been booked U/s 33/38/58 of Delhi Excise Act and the punishment provided U/s 33 of the Act is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine, which shall not be less than fifty thousand rupees which may extend to one lakh rupees and punishment provided U/s 38 of the of the Act is imprisonment for a term which may extend to six months and fine which may extend to one lakh rupees.

9. A little more than small quantity of morphine was recovered from the petitioner and the punishment for small quantity of morphine U/s 21 (b) of the NDPS Act is rigorous imprisonment for a term which may extend to 10 years and with fine which may extend to one lakh rupees. The small quantity as far as morphine is concerned is 5 gram and the commercial quantity is 250 gram. The morphine recovered from the petitioner as per the prosecution is 6.2 gram which is just above the small quantity.

10. 17 dark brown colour small balls (charas) have also been recovered from the petitioner. The total weight of these balls is 60.37 grams which is below the small quantity as the small quantity of charas as per the Act is 100 gram and the commercial quantity is 1 Kg. The punishment provided in this regard is as per Section 20 (A) which is rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees, or with both.

11. Therefore, looking into the facts and circumstances of the case and also the fact that the petitioner is in J.C. since 09.06.2019 and 7 co-accused who had been booked U/s 33/38/58 Delhi Excise Act have been granted bail, the application is allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 1,00,000/- with one surety of the

like amount subject to the satisfaction of the concerned court below. The application is disposed of accordingly.

12. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

FEBRUARY 28, 2020

Sumant

