

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

+ **BAIL APPLN. 150/2021**

Date of decision: 1st February, 2021

IN THE MATTER OF:

MOHD.TAHIR@SAJJAN

..... Petitioner

Through Mr. Salim Malik, Advocate

versus

STATE

..... Respondent

Through Ms. Kusum Dhalla, APP

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This is an application under Section 439 of the Code of Criminal Procedure (hereinafter referred to as "the Code") seeking regular bail in FIR No.140/2018 dated 26.05.2018, registered at Police Station Crime Branch, Delhi for offences under Sections 20, 25, 29 of NDPS Act.

2. The petitioner is in custody from 26.05.2018. The Charge-sheet has been filed. A perusal of the charge-sheet shows that on 26.05.2018, at about 5:30 P.M information was received by ASI Ramdev that one person namely, Mohammad Tahir @ Sajjan, resident of Kannauj, Uttar Pradesh, will bring *ganja* in his Truck No. UP 74T 4877 to supply the same to his customer namely Amit at Sanjay Gandhi Transport Nagar near CNG Pump between 10.00 A.M to 11.00 A.M. Acting on the information, the Police reached the spot at about 9 A.M. It is stated in the Charge-sheet that the raiding party asked the people standing near the place as to whether they would be willing to be part of the raiding party but none of them was prepared to be a part of

the raiding party. The raiding party found the truck bearing No. UP 74T 4877 near the CNG Pump, Lower G.T.K. Road, Sanjay Gandhi Transport Nagar, Delhi. Since no one was found inside the truck the Police team waited. It is stated in the charge-sheet that at about 10:25 A.M two persons coming from Transport Nagar reached near the truck and after sitting in the truck when they were about to go, they were apprehended by the raiding party. The petitioner and Mr. Amit Kumar revealed themselves by giving their names.

3. Notice under Section 50 of the NDPS Act was served on the petitioner and the co-accused and they were informed about their rights to be examined before a Gazetted Officer or Magistrate. The search was conducted and 175 Kg ganja was recovered from their truck. The material was measured and sealed in separate packets and the petitioner was arrested.

4. The FIR was registered at about 5:30 P.M. Seizure Memo was prepared and samples were sent to the FSL. A disclosure statement was obtained from the petitioner wherein the petitioner confessed that he was carrying *ganja* from Orissa which was purchased from two persons namely, Neeru and Babli and the *ganja* seized in the raid was to be supplied to Mr. Amit Kumar and Mr. Nafroz Khan.

5. A perusal of the record also shows that the petitioner has already filed two bail applications which were dismissed on 22.03.2019 and 24.12.2020.

6. Heard Mr.Salim Malik, learned counsel appearing for the petitioner and Ms. Kusum Dhalla, learned APP appearing for the State.

7. Mr.Salim Malik, learned counsel for the petitioner says that a perusal of the personal search memo shows that the mobile phone of the petitioner had been seized but the Police did not take the call detail records of the

mobile phone of the petitioner. He states that the call detail records of the petitioner would have shown whether the petitioner was coming from Orissa, whether he had contacted the persons from whom the *ganja* was purchased and whether he has contacted the person to whom the *ganja* was supplied. He would say that in the absence of call detail records the petitioner cannot be linked with the offence. He further states that a perusal of the charge-sheet would show that the petitioner was apprehended in the morning at 10 A.M and the arrest has been shown late in the evening. He says that in absence of any videography of the event or in the absence of any public witness it cannot be said that it was the petitioner who was driving the truck, and therefore the entire arrest and the story of the prosecution that it was the petitioner who was bringing the goods from Orissa falls to ground. He also states that the co-accused namely, Javed Siddique and NarottamPradhan have already enlarged on bail.

8. On the other hand, Ms. Kusum Dhalla, learned APP appearing for the State would state that the petitioner was apprehended from the spot by the Police officers and a huge quantity of 175 Kg of *ganja* has been found from the truck. She states that the petitioner could call for the production of the mobile phone and the details of the call records under Section 91 of the Cr.P.C.

9. It is well settled that the scope of a court to grant bail under the provisions of NDPS Act is circumscribed by Section 37 of the Act. A perusal of Section 37 shows that bail could be granted in case the petitioner is not guilty and that he is unlikely to commit such an offence while on bail.

10. In State of Kerala v. Rajesh, reported as (2020) 12 SCC 122, the Supreme Court has observed as under:

“18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences under the NDPS Act. In Union of India v. Ram Samujh [Union of India v. Ram Samujh, (1999) 9 SCC 429 : 1999 SCC (Cri) 1522] , it has been elaborated as under:

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. State (UT of Goa) [Durand Didier v. State (UT of Goa), (1990) 1 SCC 95 : 1990 SCC (Cri) 65] as under : (SCC p. 104, para 24)

‘24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of

the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.'

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied.

The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the

limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

11. The petitioner has been arrested from the truck from where 175 Kg ganja has been seized. The petitioner’s case is distinguishable from the case of Javed Siddique and Narottam Pradhan, wherein the accused were arrested only on the basis of the disclosure statement of the petitioner herein. In the present case the petitioner has been arrested from the spot and he was found in the truck which contained 175 Kg ganja.

12. Keeping in view the fact that the accused was found with the vehicle loaded with a huge quantity of *ganja* this court is of the opinion that there are no grounds for this Court to believe that the petitioner is not guilty of the offence.

13. Accordingly, the petition is dismissed.

SUBRAMONIUM PRASAD, J.

FEBRUARY 01, 2021

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