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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 12.10.2022

Judgment delivered on: 04.11.2022

+ BAIL APPLN. 2543/2021

DINESH KUMAR

..... Petitioner

Through: Ms. Kanwaljeet Kochar, Mr. Shivam Jasra and Mr. Utkarsh Vats, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Laksh Khanna, APP for State with SI Sukhvinder Singh from Crime Branch.

+ BAIL APPLN. 828/2022

VINOD KUMAR PANDEY ALIAS ANAND
PANDAY

..... Petitioner

Through: Mr. Pankaj Sinha and Mr. Vineet, Advocates.

versus

STATE OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Laksh Khanna, APP for State with SI Sukhvinder Singh from Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Separate Bail applications 2543/2021 and 828/2022 have been preferred on behalf of the petitioners Dinesh Kumar and Vinod Kumar Pandey @ Anand Panday under Section 439 Cr.P.C. for grant of regular bail in FIR No. 202/2019, under Section 471/474/482 IPC and Section 20, 25 & 29 of NDPS Act, registered at PS Crime Branch, Rohini North.

2. In brief, as per the case of prosecution, on 11.07.2019, acting upon a secret information regarding supply of contraband marijuana i.e. Ganja in Delhi, a trap was laid near Gate No. 1, Bawana Industrial Area. The person who got down from driver side of the truck bearing No. NL-07A-7611 was identified as Dinesh and the one who got down from the other side was identified as Mohd. Kazim @ Laddan by the secret informer and were apprehended by the raiding party. After completion of legal formalities, formal search of the truck was made and 16 bags of contraband marijuana i.e. Ganja were recovered from the said truck, which weighed 800 Kgs. Accordingly, FIR No. 202/2019, under Section 20/25/29 NDPS Act was registered and both the accused Dinesh Kumar and Mohd. Kazim @ Laddan were arrested at the spot.

3. During investigation, Mohd. Kazim @ Laddan disclosed that the recovered Ganja belonged to one Salaam Mansoori, R/o Ranhola, Delhi and Anwar S/o Karim Khan. Further, petitioner Dinesh Kumar disclosed that the alleged truck belonged to petitioner Vinod Kumar Pandey, R/o Mirzapur, U.P. Later on, accused Salaam Mansoori was also arrested on 19.09.2019 in the present FIR. The Chassis number of the truck was found to be tampered/erased and the documents of the truck were found to be fake. Accordingly, sections 471/474/482 IPC were invoked. Vinod Kumar Pandey

was initially declared PO on 06.02.2020. Subsequently, it was revealed during investigation that the petitioner/accused Vinod Kumar Pandey was in J.C. in District Jail Mirzapur, U.P. in another case and was formally arrested in the present FIR on 24.02.2021.

4. During investigation, it was also revealed from the owner of the truck that the documents regarding sale and purchase were executed in favour of Vinod Kumar Pandey, who tampered with the registration number, chassis number and engine number to hide its identity. Besides above, on the basis of CDR analysis, mobile numbers 7233873693 & 8765237235 used by Vinod Kumar Pandey were found in constant touch with Anwar Ali (Mobile No.6371414527 & 8480491834), who was the main supplier of the contraband from Orissa and has been declared Proclaimed Offender in the present FIR. Further these numbers were also found in touch with mobile numbers of petitioner Dinesh Kumar i.e. 9696670170 & 6305755320.

5. Learned counsel for petitioner Vinod Kumar Pandey submits that the accused has been falsely implicated and made following submissions for consideration of bail:

- i. That mobile numbers 7233873693 & 8765237235 were registered in the name of one Sandeep and Satanoo Yadav and no evidence has been led to indicate in case the aforesaid numbers were being used by petitioner Vinod Kumar Pandey.

Reliance is further placed upon *Shravan Kumar vs. State of NCT of Delhi, Bail Application No. 175/2018*, decided by Hon'ble Mr. Justice S.P. Garg, vide order dated 12.03.2018. It is urged

that Call Detail Records may not be enough to deny the benefit of bail to the petitioner.

- ii. The ownership of the truck in question from which the contraband was recovered, has been further denied on behalf of the petitioner. It is pointed out that the alleged documents of sale were never notarized in the presence of petitioner Vinod Kumar Pandey even as per the statement of Notary Public. Further, the document is stated to have been executed on 04.06.2019, though the attestation as per the statement of the Notary Public, has been made on 14.06.2019.
- iii. The case of the petitioner is claimed to be on parity with Salaam Mansoori, who is stated to have been released on bail by the learned Trial Court vide order dated 19.12.2020. It is submitted that no adverse inference can be taken against the accused only on the basis of alleged disclosure statement of co-accused.

Reliance is further placed upon *Amit Ranjan vs. Narcotics Control Bureau, Delhi*, in BAIL APPLN. No. 1189/2020 decided by Hon'ble Ms. Justice Anu Malhotra on 23rd May 2022.

6. Learned counsel for petitioner Dinesh Kumar assails the case of the prosecution on the following grounds:

- i. That the petitioner was merely an employee of co-accused/petitioner Vinod Kumar Pandey and was unaware as to the contents of the bags which were loaded beneath the cashew husk. It is urged that no conscious possession can be attributed to

the petitioner as he was completely unaware of the contents contained in the alleged bags.

- ii. It is further pointed out that the petitioner has clean past antecedents and the ownership of the truck was unknown to him, though he was employed by co-accused Vinod Kumar Pandey as a driver.
- iii. That as per the invoice, which was handed over to the driver, the contents were reflected as cashew husk/peels.
- iv. That the prosecution has failed to bring out nexus between the petitioner with co-accused. Petitioner is further stated to be in custody since 07.03.2019.

Reliance is also placed upon *Avtar Singh & Ors. vs. State of Punjab, (2002) 7 SCC 419*, *Premnarayan Prabhulal Mina & Anr. vs. State of Maharashtra, 2008 SCC OnLine Bom. 1938* in support of the contentions.

7. On the other hand, the bail applications have been vehemently opposed by learned APP for the State and it is submitted:

- i. That no presumption can be drawn that the driver of the truck was unaware as to the contents being carried in the truck. Further, the driver was apprehended at the spot at the time of recovery of the contraband.
- ii. That the CDR analysis indicates connectivity of the petitioner Dinesh Kumar on mobile numbers 7233873693 and 8765237235

being used by him with petitioner Vinod Kumar Pandey from his mobile numbers 9696670170 & 6305755320.

- iii. That both the mobile numbers allegedly being used by Vinod Kumar Pandey, though in the name of one Sandeep and Satanoo Yadav, were issued in Mirzapur and similar modus operandi has been used by petitioner Vinod Kumar Pandey by forging the documents in respect of the carriers/conveyance carrying the contraband in other FIRs in which his involvement has been found. It is also urged that so far as the documents of ownership of the truck are concerned, the verification was duly made from the last owner namely Shashank Giri, who sold the truck to the petitioner which was initially registered on 07.03.2009 and the registration was valid upto 07.03.2020. As such the amount of sale consideration is stated to have been by cash on nominal consideration.
- iv. It is further submitted that the petitioner Vinod Kumar Pandey is involved in FIR No. 39/2015, under Section 419/420/34 IPC, registered at PS Madihan, District Mirzapur, U.P. and even in the aforesaid case, a similar modus operandi was adopted whereby the ownership of the alleged vehicle was disputed on behalf of Vinod Kumar Pandey. It is urged that the petitioner is habitual offender and similar modus operandi is being adopted, in order to escape the rigors of law.
- v. It is pointed out that CDR analysis reflects that the petitioner Vinod Kumar Pandey was in constant touch with Anwar Ali, who

is main supplier of the contraband from Odisha and has been declared proclaimed offender in the present case.

8. I have given considered thought to the contentions raised.

Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are :-

- (i) *The Prosecutor must be given an opportunity to oppose the application for bail; and*
- (ii) *There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.*

Based upon the precedents, the test which this Court is required to apply while granting bail is whether there are reasonable grounds to believe that accused is not guilty of such an offence and whether he is likely to commit any offence while on bail.

9. The knowledge of the possession of contraband has to be gleaned from the facts and circumstances of a case.

This Court is cautious of the fact that physical possession means physical possession with animus, exercise of dominion and control as a result of concealment or personal knowledge as to existence of the contraband and the intention based on this knowledge.

In order to appreciate the contentions raised by the learned counsel for the petitioner, it is important to refer to the observations of the Hon'ble Supreme Court in *Madan Lal and Anr. v. State of Himachal Pradesh*,

(2003) 7 SCC 465, with reference to the concept of possession as occurring in Section 20 to 22 of NDPS Act.

“20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038 : AIR 1980 SC 52] to work out a completely logical and precise definition of “possession” uniformly applicable to all situations in the context of all statutes.”

10. It is pertinent to note that possession of the contraband in the present case is from a private truck which was driven by the petitioner (Dinesh Kumar), which co-accused Mohd. Kazim @ Laddan was an occupant therein. The petitioners were apparently arrested on the basis of secret information and recovery of 800 Kgs. Ganja was effected in their presence.

In the facts and circumstances, at this stage, it is difficult to presume that the petitioner Dinesh who had been driving truck with contraband, was unaware of the concealment of contraband in the bags, since the trucks are generally loaded in the presence of the driver. The defence of the accused

that he was not in conscious possession, can be appreciated after the evidence is led on record.

11. So far as accused Vinod Kumar Pandey is concerned, he has been linked with contraband on the basis of ownership of the truck as well as on the basis of Call Detail Records through mobile numbers 7233873693 & 8765237235 with Vinod Kumar Pandey and other co-accused.

It may be observed that merely because the aforesaid mobile numbers were registered in the name of one Sandeep and Satanoo Yadav, do not lead to an inference that the same were not used by Vinod Kumar Pandey.

12. Learned counsel for petitioner Vinod Kumar Pandey has also taken a stand that the petitioner cannot be linked with the ownership of the truck and the same is not established through documentary evidence. It has also been contended that the documents were never registered in his name and the conveyance documents do not confirm his signatures or presence at the time of attestation through Notary Public.

In the aforesaid context, it may be noticed that petitioner Vinod Kumar Pandey had been earlier arrested in FIRs bearing Nos. 39/15, under Section 419/420/34 IPC, PS Madihan District Mirzapur, U.P.; 199/2019, under section 8/20 NDPS Act & 207 M.V. Act, PS Lalganj, District Mirzapur, U.P. (involving recovery of 1004.5 Kgs Marijuana); 325/20, under Section 8/20 NDPS Act, PS Lalganj, District Mirzapur, U.P. (involving recovery of 1.8 Kgs. Marijuana & Rs. 1,41,000/- cash); and case no. 08/2019, Directorate of Revenue Intelligence, Varanasi, U.P. (involving recovery of 1185.00 Kgs. Marijuana), wherein the prosecution has pointed out that a similar *modus operandi* of disfiguring the chassis number and

faking the registration number, has been adopted by the accused. It cannot be a matter of co-incidence that in all the cases relating to the NDPS Act, registered at different points of time, the name of petitioner stands involved. The petitioner, at this stage, appears to be clearly hoodwinking the law by adopting unique *modus operandi*. The statement of the registered owner clearly reflects that he sold the truck to petitioner Vinod Kumar Pandey and at this stage it is sufficient to indicate the involvement of petitioners in transportation of the contraband. Merely because the documents of conveyance were got subsequently notarized through Notary Public, does not lead to a presumption that the documents have been fabricated to implicate the petitioner. There was no motive for the registered owner of the truck to implicate petitioner Vinod Kumar Pandey. The petitioner had also been absconding in the present proceedings during the course of investigation and was arrested almost after 1½ years of the alleged recovery.

13. There is no dispute as to the proposition of law with reference to authorities cited by learned counsel for the petitioners, but the facts and circumstances in the present case point out to the involvement of both the accused, at this stage.

In the facts and circumstances, considering the evidence on record, I am of the considered opinion that no grounds for grant of bail are made out in the light of twin conditions laid down in Section 37 of the NDPS Act.

Nothing stated hereinabove shall tantamount to any expression of opinion on merits of the case. The applications are accordingly dismissed.

November 04, 2022/akc

**(ANOOP KUMAR MENDIRATTA)
JUDGE**