



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

% **Pronounced on: 26th July, 2022**

+ **BAIL APPLN. 884/2022**

MOHD. MANSOOR

..... Petitioner

Through: Mr. Rahul Sharma, Mr. Masood
Alam & Mr. Sanjay Jain,
Advocates.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Rajesh Mahajan, ASC for State
with SI Ram Kumar.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

1. This application under Section 439 Cr.P.C. seeking regular bail has been moved by the applicant/accused in FIR No.192/2019, registered under Section 20 NDPS Act, 1985 at Police Station Sun Light Colony, Delhi.

2. The allegation against the applicant is that on 25th July, 2019 at about 7:20 PM, a police party comprising ASI Viju, Head Constable Deshraj, Constable Arvind and Constable Dharmender proceeded from Sun Light Colony with arms and ammunition for Independence Day checking. At a place, which was 50-60 meters away from Sarai Kale Khan Bus stand, on ITO to Ashram Road, they noticed a person who was holding a plastic bag. Doubting the presence of the said person, who was none other than the applicant, they proceeded towards him, but the



applicant threw his bag and began running away. The police team managed to apprehend him. Thereafter, when the passersby refused to join the raid, they opened the plastic bag and noticed some material which as per colour and smell was suspected to be *Ganja* and it was weighted and found to be 21 Kgs. Notice under Section 50 NDPS Act was served and Officer AATS/SED was informed and the accused produced before the ACP and other proceedings were commenced and the accused sent to judicial custody.

3. It is the contention of Mr. Rahul Sharma, learned counsel for the applicant that the applicant has falsely been implicated. It is also urged that Section 57 of NDPS Act has not been complied with and, on that basis alone, the applicant was entitled to bail. It was submitted that there was nothing to show from where the weighing machine had been obtained. The absence of independent witness to the alleged recovery was also casting suspicion on the alleged recovery. Moreover, in the intimation under Section 57 of NDPS Act, the name “Herry” was mentioned and there is no clue as to who this “Herry” mentioned in the information was (Annexure-C Colly.)

4. Mr. Rajesh Mahajan, learned ASC for the State, on the other hand submitted that compliance under Section 50 of NDPS Act was not required in the facts of the present case and, all other claims were to be determined during trial. The rigors of Section 37 of NDPS Act had to be applied, as 21 Kgs. *Ganja* that had been recovered was of a commercial quantity. “Herry” was only a typographical error and this was a case of chance recovery by a patrolling party. It was, thus, submitted that the bail application be dismissed.



5. Section 37 of the NDPS Act limits the grant of bail when a person has been apprehended with commercial quantity of prohibited Narcotic Drugs or Psychotropic Substances.

6. In this case, the charge has already been framed against the applicant. In other words, there are reasonable grounds for believing that the applicant has committed the offence and the applicant has not been able to convince the court that there are reasonable grounds for believing that he is not guilty of such an offence.

7. In fact, the facts of this case seem natural and the apprehension of the accused prima-facie do not seem to be evoking suspicion. The police party has proceeded from the Police Station for keeping an eye on the law and order situation prior to the Independence Day and seeing a person with a bag, suspicions arose and the police exercising its powers sought to question the person holding a plastic bag, but that person i.e. the applicant/accused added to the suspicion by flinging the bag down and trying to escape. He was apprehended and the bag opened and found to be containing *Ganja*. Section 50 of NDPS Act would not be applicable in the present case, as the recovery was not from the person of the applicant. The FIR records that on inquiry from the applicant/accused, he himself said that the bag is containing *Ganja*. If that be so, then, it would be a highly incriminating fact against the applicant/accused. With regard to mention of “Herry” in the intimation under Section 57 of NDPS Act, it appears to be a mere typographical error. At this stage, nothing turns on it.

8. All these facts disclose the involvement of the accused in the commission of the offence, disentitling him to bail. While considering the question of bail the Court has considered the facts alleged to be true and



whether on the record, ex-facie, the applicant/accused has committed the offence. The trial is yet to commence too.

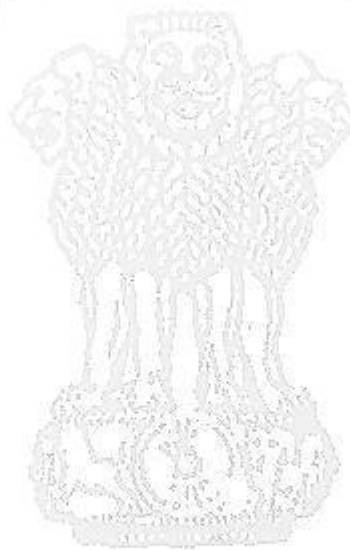
9. No ground is, therefore, found to grant bail to the applicant/accused. Accordingly, the bail application is dismissed.

10. Nothing in this order shall tantamount to a finding on the merits of the case.

11. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 26, 2022
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