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

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Order pronounced on 26.08.2022

+ BAIL APPLN. 1295/2022

AVDHESH

..... Petitioner

Through: Ms. Sushma Sharma, Mr. Girish
Kumar Sharma, Mr. Karan Verma
and Ms. Aaushi Gaur, Advocates.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. N.S. Bajwa, APP for State.
SI Manish Kumar, PS Crime Branch.

CORAM:**HON'BLE MR. JUSTICE TALWANT SINGH****Talwant Singh, J.:**

1. This is a regular bail application under Section 439 read with Section 482 Cr.P.C. on behalf of the petitioner in FIR No. 39/2020 under Sections 15/25/29 NDPS Act, PS Crime Branch. It has been submitted that the applicant was arrested on 28.11.2020 after he surrendered before the Court after the dismissal of his anticipatory bail application by this Court and since then he is in judicial custody.

1.2. The facts regarding the case of the prosecution are that on the receipt of secret information against one Omkar resident of Alipur, a raiding team was constituted and co-accused Omkar was apprehended near a godown at Leezeram Colony, where he was found moving with a plastic *katta* (bag) outside the godown. Total 13 kattas were recovered, which contained 16 kg *Poppy straw* in each one of them. 22 other *katas* were recovered from



inside the godown which contained *poppy straw* weighing 16 kg. each. In total, 560 kg. *poppy straw* was recovered.

1.3. As per the prosecution, the said contraband was received by Omkar from the present petitioner and Omkar had transferred certain payments in the bank account of the wife of the present petitioner. The bail application filed by the present petitioner was dismissed on 02.04.2022 by the learned Trial Court, so the present bail application has been moved on the grounds that no contraband was recovered from the present applicant/accused; disclosure statement was given by the main accused Omkar against the present applicant/accused, which is not admissible as there is no supporting evidence; search, seizure and arrest were made by a non-authorised officer, rendering the trial to be vitiated; there is no compliance of Section 42 of the NDPS Act; there is no evidence on record to prove the involvement of the present applicant/accused; Section 37 of NDPS Act is not attracted; the charges are yet to be framed; 24 witnesses are to be examined and speedy justice is fundamental right. Under these circumstances, the petitioner has prayed for bail in the above mentioned case.

2. Notice was issued. Status Report has been filed. Nominal roll has been summoned from Jail. The said nominal roll shows that as on 02.07.2021, the petitioner has undergone 1 year, 7 months and 5 days incarceration. In the Status Report, the facts regarding receipt of secret information, constitution of raiding team, apprehension of Omkar and recovery of 560 kg poppy straw from him have been reiterated.

2.1. It has been mentioned that case FIR No. 39/2020, under Sections 15/25 NDPS Act was registered in this regard. The said Omkar made a



disclosure statement that he was supplied *poppy straw* by one Avdesh@Sagar, resident of Aurangabad, Bihar, who is the present petitioner. Omkar also provided mobile number of Avdesh. The Customer Application Form (CAF) of the said mobile number was obtained, which was having the photograph of the present petitioner. Investigation revealed that accused Omkar and the present applicant/petitioner were in regular touch with each other through mobile phones and there were 191 calls between them between 01.12.2019 to 03.02.2020.

2.2. As per the prosecution, accused Omkar had transferred money to the bank account of the wife of the present petitioner as the cost of buying poppy straw. The transfer of Rs. 73,000/- was sought to be established on the basis of evidence on record. The charge-sheet stands filed on 15.07.2020. Since the present petitioner did not appear, so non-bailable warrants were issued and process under Section 82 Cr.P.C. was initiated. The petitioner surrendered in Court on 28.11.2020 and was arrested. PC remand was taken. The document like pass book, ID card etc. of the wife of the present petitioner were recovered from Aurangabad, Bihar. Supplementary charge-sheet was filed on 03.02.2021.

2.3. It has been submitted that accused Avdesh has committed a serious offence by supplying narcotic drugs substances weighing 560 kgs; the trial is at the initial stage and material witnesses are yet to be examined, so, the bail has been strongly opposed.

3. It has been argued on behalf of the petitioner that Rs. 73,000/- was deposited by Omkar in the bank account of the wife of the accused/applicant for sale of vegetables crates as the petitioner is dealing in the same. The petitioner has been falsely implicated only on the basis of a disclosure made



by the main accused Omkar, who was caught with 560 Kg. *poppy straw*.

3.1. It has been further submitted by counsel for the petitioner that the prosecution is relying only on the CDRs without there being any recording of the calls and the same is of no use.

4. On behalf of the State, it has been argued that there was a regular contact between the main accused Omkar and the present petitioner. There were 191 calls between the two within a short span of time. The petitioner did not comply with the notices or the warrants issued against him and proceedings under Section 82 Cr.P.C. were initiated. The value of the consignment is above Rs. 56 lakhs and the petitioner as well as the main accused Omkar both are involved in the present case.

5. Learned counsel for the petitioner has relied upon a judgment of High Court of Gujarat in R/Cr.M.A.1234/2022 titled *Yash Jayeshbhai Champaklal Shah vs. State of Gujarat*, decided on 02.03.2022, wherein it was observed that the applicant was not found in possession of any contraband article, the call detail records may reveal that around the time of incident the petitioner was in contact with the co-accused who was found in possession of contraband but there was no recording of conversation between the main accused and the present petitioner. Hence, merely, contacting the co-accused who was in possession cannot be treated as corroborative material in the absence of substance material found against the accused/applicant.

6. After hearing both the parties, it is clear that Omkar, the main accused was apprehended on receipt of secret information by raiding party and at his instance 560 Kg. *poppy straw* was recovered and he made a disclosure statement naming the present petitioner as the supplier of the said *poppy*



straw. Prima facie, it is also on record that a sum of Rs. 73,000/- was deposited in the bank account of the wife of the accused/petitioner by brother of the accused Omkar around the relevant time; both of them were in contact with each other and there were 191 calls between the two during the period 01.12.2019 to 03.02.2020. The recovery made from the main accused falls under commercial quantity and it is apparent that there is bar under Section 37 NDPS Act.

6.1. The first ground taken in the bail application is that the applicant/accused was not named in the secret information. It is true that the name of the petitioner was not there in the secret information, however, the main accused during his disclosure statement has named the present petitioner as supplier of *poppy straw*, so not naming the applicant in secret information is not itself a ground to release the present petitioner on bail. Similarly, it is true that no contraband was recovered either from the possession of the present petitioner or at his instance as the recovery was made at the instance of main accused Omkar but the present petitioner has been named as supplier of poppy straw at the instance of the main accused, so both of them were in conspiracy with each other.

6.2. The next ground taken in the application is that the disclosure statements are not admissible and there is no supportive evidence.. The question of disclosure statement being admissible or not admissible, will be decided at appropriate stage. Moreover, the said statement is supported by evidence regarding payment made by main accused in the bank account of the wife of the present petitioner and 191 calls being exchanged between the main accused and the present petitioner.

6.3. The next ground is that search, seizure and arrest made by a non-



authorised officer, renders the trial vitiated. The matter regarding compliances will be considered during trial and the petitioner has every right to put up his defence. The stand of the State is that full compliance under Section 42 of the NDPS Act has been made. The secret information was received in writing by SI Sandeep and thereafter forwarded to the superior inspector Ashok Kumar and ultimately the information was forwarded to ACP Arvind Kumar. However, it is open to the petitioner to address arguments on this issue at the time of argument on charge.

6.4. The next ground for bail is that there is no evidence on record to prove involvement of the accused. It is for the prosecution to prove its case which has based the same on the basis of disclosure statement of co-accused, bank account transactions and the CDRs. The stand of the petitioner is that payment of Rs. 73,000/- was made by the main accused for buying vegetables crates can be his defence during trial and he has every right to lead evidence to prove the same.

6.5. As per the State since commercial quantity of the contraband was recovered, so the stringent provisions of Section 37 of the NDPS Act are attracted but the case of the petitioner is that the said stringent provisions are not attracted to the present case.

6.6. Prima facie, keeping in view the recovery of 560 Kgs. of *poppy straw* from co-accused, who has made a disclosure statement that it is the petitioner who had supplied the same to him, duly supported by trial, money trail from the main accused to the bank account of the wife of the present petitioner, as well as 191 calls between main accused and the petitioner within a short span of time, leads to the conclusion that both the accused persons were deeply engaged in supply of contraband in conspiracy with



each other and stringent provisions under Section 37 of NDPS Act are attracted. The long incarceration of the petitioner cannot be attributed only to the prosecuting agency, because due to Covid 19, the Court working was affected and that may be one of the reasons for delay in hearing arguments on charge.

7. In view of the above, since Section 29 NDPS Act has been invoked against the present petitioner and the co-accused Omkar, the recovery of commercial quantity, the trial is yet to begin and stringent provisions of Section 37 NDPS Act are attracted, so, this is not a fit case for grant of bail at this stage.

8. The bail application is dismissed.

TALWANT SINGH, J

AUGUST 26, 2022

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