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

Reserved on: September 14, 2022

Decided on: October 11, 2022

+ **BAIL APPLN. 1584/2022**

SIMRANJEET KAUR

..... Petitioner

Through: Mr. Satyam Bhatia, Mr. Aman Madan, Mr. Pranav Gupta and Mr. Shubham Bhatia, Advocates.

versus

STATE OF GOVT OF NCT OF DELHI Respondent

Through: Mr. Sanjeev Bhandari, ASC for the State with Mr. Sushant Bali, Mr. Kunal Mittal and Mr. Maitreya Saha, Advocates alongwith S.I. Abdul Barkat, Crime Branch.

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CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The petitioner filed a bail application under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) for grant of regular bail in FIR bearing No. 174/2017 dated 19.09.2017 registered under sections 21/25 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as “**the NDPS Act**”).

2. As per investigation, a secret information was received on 29.09.2017 through secret informer that one person, namely, Imran, who is staying at Dakshinpuri, Delhi will bring Heroin in large quantity from Bareilly, U.P. at the instance of Vinod@Rinku@Mota Bhai and he can be apprehended on the road from Kalindi Kunj to Sarita Vihar near Nala(drain) and opposite Shaheen Bagh at about 12:15 PM. After following necessary formalities, a raiding party was prepared and Imran on pointing out the secret informer was apprehended when he came in vehicle bearing No. DL-4C-NB-8596 and on search, about 500 g of Heroin was recovered from him. Imran was arrested and after completion of investigation, the charge-sheet was filed under sections 21/25 of the NDPS Act on 06.03.2018. During investigation, Vinod@Rinku@Mota Bhai and the petitioner were also implicated and in respect of both of them, a supplementary charge-sheet was filed under sections 21/25/29 of the NDPS Act on 07.06.2021. The petitioner/applicant Simranjeet Kaur was arrested on 10.01.2021 and since then, she is in judicial custody.

3. The petitioner/applicant in bail application, stated that the bail application under section 439 of the Code was dismissed by the Court of Shri Mohinder Virat, Additional Sessions Judge-04, Special Judge (NDPS), South-East District, Saket Court vide order dated 31.03.2022 passed in bail application bearing no. 943/2022. The vehicle bearing No. DL-4C-NB-8596 which was allegedly used in procuring and transportation of the contraband was found to be registered in the name of applicant/petitioner who happened to be the spouse of the co-accused Vinod@Rinku@Mota Bhai. The only incrementing evidence against the petitioner/applicant is that she was the registered owner of the vehicle bearing No. DL-4C-NB-8596 in which the alleged contraband was transported by co-accused Imran. The petitioner/applicant is the mother of a 9 years old child who is suffering from acute Asthma. The petitioner/applicant was living separately from her husband i.e. Vinod@Rinku@Mota Bhai since January, 2020 on account of matrimonial differences. It is prayed that the petitioner/applicant be released on bail. The petitioner/applicant also pleaded various other grounds for grant of bail.

4. The respondent/State filed the Status Report dated 28.07.2022 signed under the signature of Insp. Hariwansh Singh, ANTF, Crime Branch, Delhi wherein besides mentioning the facts leading to the arrest of co-accused Imran and subsequently, co-accused Vinod@Rinku@Mota Bhai, it is mentioned that the petitioner/applicant was found to be registered owner of the vehicle bearing No. DL-4C-NB-8596 which was used for transportation of recovered contraband. The petitioner/applicant and her husband Vinod@Rinku@Mota Bhai have not joined investigation and fled from their house and were declared proclaimed offenders (PO) on 23.09.2019. The petitioner alongwith her husband Vinod@Rinku@Mota Bhai was arrested on 10.01.2021 by P.S. Fatehpur Beri. The charges have already been framed and the case is pending for trial. Vinod@Rinku@Mota Bhai is also found to be involved in number of other cases and is a habitual offender. Section 37 of the NDPS Act is applicable as the quantity of the contraband recovered at the instance of the other co-accused was of commercial quantity. Another co-accused is still to be arrested. It is stated in the Status Report that the present bail application be dismissed.

5. The counsel for the petitioner argued that the petitioner/applicant cannot be held liable for offences as she was not having knowledge about the incident that is recovery of contraband on 29.09.2017 as such, the aspect of “knowingly permitted” as per mandate of section 25 of the NDPS Act qua the use of the vehicle for allegedly transporting the contraband is completely missing. The counsel of the petitioner relied upon **Sujit Tiwari V State of Gujarat** passed in Criminal Appeal No. 1897/2019 decided on 28.01.2020 and **Balbir Singh V Asst. Commissioner, Customs & Excise** passed in Criminal Misc. Case No. 1470/1993 decided on 30.11.1994 and other decisions rendered by the Hon’ble Supreme Court.

6. The Additional Standing Counsel for the State/respondent advanced arguments on the basis of facts that the co-accused Imran was arrested on 29.09.2017 on the basis of secret information received by ASI Krishan, NCB. During investigation, it was revealed that the vehicle bearing No. DL-4C-NB-8596 used for transportation of recovered contraband was found to be registered in the name of applicant/petitioner. The co-accused Imran had gone to Bareilly,

U.P. for procuring Heroin at the instance of co-accused Rinku@Vinod@Mota Bhai by driving the car which was registered in the name of petitioner/applicant. Accordingly, the vehicle bearing No. DL-4C-NB-8596 registered in the name of petitioner/applicant was used for transpiration of recovered contraband. The petitioner/applicant alongwith her husband Vinod Kumar has not joined the investigation and had fled from the house. The petitioner/applicant alongwith her husband was arrested on 10.01.2021 by P.S. Fatehpur Beri and was also arrested in the present case. The supplementary charge-sheet in respect of petitioner/applicant and Vinod Kumar has already been filed. The charges have already been framed against the petitioner/applicant vide order dated 31.03.2022 passed in Sessions Case No. 107/2018 under section 25 of the NDPS Act and section 174A IPC. The case is now listed for recording of evidence. The petitioner/applicant has “knowingly permitted” her husband to use the vehicle in question for transportation of recovered contraband. The petitioner/applicant was having the full knowledge that the said vehicle was used by co-accused for transporting the recovered contraband. The

petitioner/applicant has stood surety for her husband i.e. co-accused Vinod@Rinku@Mota Bhai in FIR bearing No. 0317/2017 dated 09.06.2017 registered at P.S. Neb Sarai as such, the petitioner/applicant was having the full knowledge about the illegal activities of her husband Vinod @Rinku@Mota Bhai who is a habitual offender and involved in other four cases. The petitioner/applicant cannot be granted bail as per mandate of section 37 of the NDPS Act. It is prayed argued that the bail application be dismissed.

7. It is appearing from the record that the co-accused Imran was apprehended on 29.09.2017 on the basis of secret information received by the raiding party when he was transporting the contraband i.e. 500 g of Heroin in vehicle bearing No. DL-4C-NB-8596 which was found to be registered in the name of the petitioner/applicant. Vinod@Rinku@Mota Bhai who is the husband of the petitioner/applicant was also implicated in the said FIR during the further investigation alongwith the petitioner/applicant. The petitioner/applicant was not apprehended at the spot and no recovery was affected at the instance of the petitioner/applicant during

investigation. The only allegation against the petitioner/applicant is that she was the registered owner of the vehicle bearing No. DL-4C-NB-8596 in which the co-accused Imran was transporting the contraband i.e. Heroin weighing 500 g.

8. The Additional Standing Counsel for the State/respondent placed reliance on sections 25 and 37 of the NDPS Act which reads as under:-

25. Punishment for allowing premises, etc., to be used for commission of an offence.—Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

9. It was held in **Surjit Tiwari V State of Gujarat** as relied upon by the counsel for the petitioner as under:-

10. The prosecution story is that the Appellant was aware of what his brother was doing and was actively helping his brother. At this stage we would not like to comment on the merits of the allegations levelled against the present Appellant. But other than the few WhatsApp messages and his own statement which he has resiled from, there is very little other evidence. At this stage it appears that the Appellant may not have even been aware of the entire conspiracy because even the prosecution story is that the brother himself did not know what was loaded on the ship till he was informed by the owner of the vessel. Even when the heroin was loaded in the ship it was supposed to go towards Egypt and that would not have been a crime under the NDPS Act. It seems that Suprit Tiwari and other 7 crew members then decided to make much more money by bringing the ship to India with the intention of disposing of the drugs in India. During this period the Master Suprit Tiwari took the help of Vishal Kumar Yadav and Irfan Sheikh who had to deliver the consignment to Suleman who had to arrange the money after delivery. The main allegation made against the Appellant is that he sent the list of the crew members after deleting the names of 4 Iranians and Esthekhar Alam to Vishal Kumar Yadav and Irfan Sheikh through WhatsApp with a view to make their disembarkation process easier. Even if we take the

prosecution case at the highest, the Appellant was aware that his brother was indulging in some illegal activity because obviously such huge amount of money could not be made otherwise. However, at this stage it cannot be said with certainty whether he was aware that drugs were being smuggled on the ship or not, though the allegation is that he made such a statement to the NCB Under Section 67 of the NDPS Act.

10. The trial Court in bail application under section 439 of the Code which was dismissed vide order dated 31.03.2022, observed as under:-

Perusal of the record reveals that first bail application of the present accused has been dismissed by Ld. Predecessor of this Court on 17.2.2021 and her second bail application has been dismissed on 7.8.2021.

Today, charge u/s 25 NDPS Act and 174A IPC has been framed against the applicant/accused and after framing of the charge, bar of section 37 NDPS Act shall come into play. The contentions raised by Ld. Counsel for the applicant/accused touch the merits of the case which cannot be decided at the time of disposal of the bail application.

11. In the present case, the only allegation against the petitioner/applicant is that she was the registered owner of the vehicle bearing No. DL-4C-NB-8596 in which the co-accused Imran transported the contraband items i.e. 500 g of Heroin from Bareilly, U.P. to Delhi at the instance of co-accused Vinod@Rinku@Mota Bhai who happened to be the husband of the petitioner/applicant.

The respondent has not attributed any other role to the petitioner/applicant which may be related to the transportation of the contraband. The issue that the petitioner/applicant has “knowingly permitted” her vehicle bearing No. DL-4C-NB-8596 registered in her name as conveyance to be used for transportation of the contraband i.e. 500 g of Heroin is a matter of consideration and requires evidence. After considering all facts and particularly, the law laid down in **Sujit Tiwari** case as referred hereinabove, the petitioner/applicant is admitted to bail on furnishing a personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the concerned trial Court with the following conditions:-

- i. The petitioner/applicant shall not leave India without the prior permission of the Court;
- ii. The petitioner/applicant shall surrender her passport, if any, and not already seized during the investigation, before the Court;
- iii. The petitioner/applicant shall not temper with the evidence and try to influence the prosecution witnesses;
- iv. The petitioner/applicant shall mark her presence before the concerned Investigating Officer on every alternate Saturday during the day time;
- v. The petitioner/applicant shall keep her mobile phone in operational mode and shall also supply the mobile

number to the concerned Investigating Officer so that she can be contacted at any time;

- vi. The petitioner/applicant shall not indulge in any criminal activity.

12. Accordingly, the present bail application alongwith pending applications, if any, stands disposed of.

SUDHIR KUMAR JAIN
(JUDGE)

OCTOBER 11, 2022
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