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

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Order pronounced on 21.09.2022+ **BAIL APPLN. 1675/2022****VIR CHANDRA KUMAR**

..... Petitioner

Through: Mr. Pushkar Priyadarshi, Advocate.

versus

**STATE (NCT OF DELHI)**

..... Respondent

Through: Mr. Yudhvir Singh Chauhan, APP.

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

1. The petitioner has prayed for bail in FIR No.48/2021, PS Mahendra Park under Section 20/25/29 NDPS Act. The petitioner is stated to be in custody since 05.02.2021.

2. In brief facts, it is mentioned that the case of the prosecution is that information was received on 29.01.2021 at 7:50 PM at Narcotics Cell, Pitampura that one Mr. Badri Singh and Mr. Rohan Kumar will be driving a truck which is used to transport psychotropic substance 'Ganja' and the said truck will reach on 30.01.2021 at about 4:00-5:00 AM near Jahangir Puri Metro Station to supply 'Ganja'.

2.1 A raiding party was constituted at about 4:40 AM. The alleged truck reached the spot. The police official authorised under Section 42 of the NDPS Act searched the truck and found 2 bags containing 12 packets each and 2 packets outside on the roof of the cabin of the truck. The total quantity of contraband recovered was 52.7 Kg.

2.2 On physical examination and after smelling, it was suspected to be 'Ganja' and after due legal process, the present FIR was registered and the 2



accused, namely, Badri Singh and Rohan Kumar, who were driving and loading the said truck were arrested. During investigation, Badri Singh disclosed that he met the present petitioner and asked for money on which the petitioner lured him to become a partner in this plan to transport 'Ganja' from Hyderabad to Delhi.

2.3 Further case of the prosecution is that Badri Singh convinced Rohan Kumar to be part of the plan. Both of them reached with the truck on 26.01.2021 at Hyderabad from where they loaded the goods for transport and then after loading the consignment of psychotropic substance, the vehicle reached Delhi on 30.01.2021, when they were apprehended. On the basis of this disclosure, the present petitioner was arrested on 05.02.2021 from Kolkata. Nothing illegal was recovered from his possession.

2.4 It is pleaded that the applicant has clean antecedents and character. The CDR filed by the prosecution does not show that the petitioner was in touch with other accused; the tower ID of the petitioner was not verified; there is no recovery of contraband from his place or person; he is in custody for more than a year; the trial would take some time to conclude and there is no evidence against the applicant.

2.5 The bail application of the petitioner was dismissed on the basis of his location, which was taken as circumstantial evidence against him.

3. The investigation is already complete and the charge sheet has been filed, so the petitioner is not required for any further investigation. He is the sole bread earner of the family. The accused is presumed to be innocent till he is proved guilty; all the witnesses are police officials; so there is no possibility of tampering with the evidence and the petitioner undertakes to abide by all terms and conditions of the bail.



4. Notice was issued. Status Report has been filed. Nominal roll was also called.

5. Arguments heard.

6. In the Status Report it is mentioned that the call detail records of the mobile phone of Badri Singh and the present petitioner were obtained and the analysis shows that the present petitioner was constantly in touch with the co-accused Badri Singh. Around 19 calls were made between the accused Badri Singh and the present petitioner within 23 days from 06.01.2021 to 29.01.2021 and the petitioner was also present in Vishakhapatnam during the time when the 'Ganja' was loaded on the truck. During interrogation, the present petitioner has also accepted his involvement in the case. When he came to know that the 'Ganja' was seized by the police, he fled away from Vishakhapatnam to Kolkata.

7. FSL report has been received which verifies the psychotropic substance to be 'Ganja'. The present petitioner is stated to be a purchaser as well as supplier of 'Ganja'. His two bail applications have been already dismissed on 07.10.2021 and 06.04.2022 by the learned ASJ. On these grounds, the bail application of the present accused has been strongly opposed.

8 I have gone through the orders dated 07.10.2021 and 06.04.2022 passed by the learned ASJ, by which two consecutive bail applications moved by the present petitioner were dismissed. The first legal aspect raised on behalf of the applicant/accused is regarding non-compliance of mandatory provisions regarding drawing of samples at the spot.

8.1 The learned ASJ has observed that the samples were drawn before learned SDM while conducting proceedings under Section 52A of the NDPS



Act and the guidelines laid down by the Hon'ble Supreme Court in the matter of '*Union of India v. Mohan Lal*' in Criminal Appeal No.652/2012 dated 28.01.2016 were duly followed.

8.2 Another point raised before the learned ASJ was that SI Virender Kumar, who had drawn the sample and prepared inventory, etc. was not competent to do so. The learned Court did not agree with the petitioner.

8.3 The third argument raised before learned ASJ was regarding individual liability of the accused/applicant as he was arrested merely on the basis of the disclosure statement. The learned Sessions Judge has pointed out that it is not only a case of mere exchange of calls between the applicant and co-accused, rather the location of the accused/applicant was at Hyderabad, from where the contraband was loaded in the truck in question. No explanation has come forward as to how and why he was found in Hyderabad at the same time, whereas he is a permanent resident of district Vaishali, Bihar.

8.4 Some doubt was expressed regarding the date of seizure. The information was received at 8:30 PM by SI Virender Kumar on 29.01.2021. Recovery was made on 30.01.2021 early in the morning, so that is the reason that all the four pulandaas were sealed at the spot, so that when the information was received, no FIR was registered till that time. It was also noted that bar under Section 37 of the NDPS Act is attracted to the case which the accused/applicant had failed to overcome, so, earlier application was dismissed on 07.10.2021.

8.5 The petitioner had again applied for bail which was considered and dismissed on 06.04.2022 by a reasoned order passed by the learned Special Court under NDPS Act. The petitioner had relied upon the following



judgements while arguing the case before the learned ASJ:

- (i) '*Master Bholu v. State of Haryana and Anr.*', CRR 3838/2018, Punjab and Haryana High Court.
- (ii) '*Abhishek Kumar Yadav v. State of UP*' Criminal Revision 1221/2019, Allahabad High Court.
- (iii) '*Sunil v. State of MP*' Criminal Revision 853/2021.

8.6 On behalf of the State, it was argued that there is no change in circumstances. It was held that the judgements relied upon by the learned counsel for the accused/applicant are not applicable to the case in hand as these are distinguishable on facts. The allegations are serious in nature, it is not a case of individual liability and the bar under Section 37 of the NDPS Act is applicable, so this bail application of the applicant/accused was again dismissed.

9. Learned counsel for the petitioner has failed to point out any change in the circumstance after the dismissal of his two bail applications before learned Special Judge. Section 29 of the NDPS Act has been invoked in the present case. There is no explanation regarding the presence of the present petitioner at Hyderabad at the time when the psychotropic substance 'Ganja' was loaded in the truck as he is not a native of Hyderabad but he is a native of Bihar. The call detail records show that he was in constant touch with the other accused during the relevant period, so in my view, the requirement of Section 29 of the NDPS Act are fulfilled, which is reproduced hereunder:

“Punishment for abetment and criminal conspiracy.

(1) Whoever abets, or is a party to a criminal conspiracy to



commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in Section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this Section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

10. The petitioner cannot claim his individual liability on the ground that he was implicated only on the basis of disclosure statement made by the co-accused. There are other evidences implicating him. He also cannot claim innocence only on the ground that nothing was recovered from his possession. The allegations are quite serious. The bar of Section 37 of the NDPS Act is fully applicable and no explanation has to come as to how he will come out of the said bar, especially, in view of the fact that Section 29 of the NDPS Act has been invoked against him.

11. The case is at the initial stage. The charge sheet stands filed and the matter is listed on 03.11.2022. Prima facie, the role of the present petitioner appears to be more serious than the role of the other two co-accused, who have been arrested as they are merely carriers of the consignment of ‘Ganja’



which they transported at the instance of the present petitioner, who appears to be master-mind of the entire operation.

12. Keeping all these facts in view, I am not inclined to grant bail to the present petitioner at this stage. The bail application is accordingly dismissed.

13. Needless to state that anything mentioned hereinabove will not affect the merits of the trial pending before the learned Special Judge (NDPS).

**TALWANT SINGH, J**

**SEPTEMBER 21, 2022/pa**

*Click here to check corrigendum, if any*