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

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Order pronounced on 26.05.2022

+ BAIL APPLN. 2719/2020 & CRL.M. (BAIL) 96/2021

ANWAR@ KUTUB

..... Petitioner

Through: Ms. Dolly Sharma, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Meenakshi Chauhan, APP.

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

1. This is an application for grant of bail moved by the petitioner, Anwar *alias* Kutub, who is an accused in FIR No. 380/2017, registered at PS Special Staff, Badarpur, Delhi, under Section 20/25 of the NDPS Act.

1.1 As per the petitioner, the case of the prosecution is that the petitioner was arrested by Police on 06.11.2017 on the allegation that the petitioner was found running away from a cot lying in a field and he was apprehended by Police at a distance of about 20-25 paces away from the cot. The arrest of the present petitioner was made on the basis of a false disclosure statement extracted from co-accused Rajesh Kumar, in which he had stated that the yellow-coloured bag, which was found lying under the cot, had been delivered to the petitioner about 3-4 days back and the said bag was delivered at the behest of one Dinesh Pal, who was living in the neighbourhood of co-accused Rajesh. The said Dinesh Pal is not even an accused in the present case.

1.2 As per the petitioner, he has been falsely implicated in this case due to enmity with the Police. In the evidence recorded so far nothing has been



stated against the petitioner. No contraband was recovered from his possession or at his instance. No public person has deposed against the petitioner; he is not the owner of the field where the cot was lying and moreover, he was not owner of the said cot, where the alleged bag was kept. There is no legally admissible document on record suggesting that the yellow-coloured plastic bag recovered at the instance and identified by co-accused, Rajesh, was ever given by the co-accused to the petitioner.

1.3 The trial is vitiated due to non-compliance of mandatory provisions of Sections 42/50 NDPS Act. The co-accused Bilkis Begum, Hafiza and Vinod Kumar are already on bail in spite of the fact that the commercial quantity of *ganja* was recovered from their possession.

1.4 It has been submitted that the petitioner is entitled to acquittal as mandatory provisions prescribed under Sections 50/42 of the NDPS Act have been violated. The petitioner submits that his wife is suffering from serious ailment and she requires specialised treatment and there is nobody at home to look after her. He has 4 minor school going children.

1.5 The learned Trial Court has dismissed his bail application on 27.08.2020. The conduct of the petitioner throughout detention is exemplary. The petitioner has never misused the liberty granted to him during interim bail and he undertakes to abide by all terms and conditions to be imposed by this Court.

2. On behalf of the State, it has been submitted that in case of Hafiza and Bilkis Begum, the prosecution witnesses regarding recovery have not supported the case of the prosecution, so they were enlarged on bail.

2.1 As far as the present petitioner is concerned, the prosecution witnesses are yet to be examined. They are all Police officials. In case of the co-accused Vinod, only intermediate quantity of the contraband was



recovered. The petitioner had jumped the interim bail and there are other cases pending against him.

2.2 The co-accused Rajesh has identified the present petitioner as a person to whom he had supplied 50 kg of *ganja*, 3-4 days ago and he also identified one yellow-coloured plastic bag kept under the cot, over which the present petitioner was found sitting and Rajesh stated that this is the same bag in which he had supplied *ganja* to the present petitioner.

2.3 Notice under Section 50 NDPS Act was served upon the petitioner, who stated that he did not want to be searched before a Gazetted Officer or a Magistrate. From the yellow-coloured plastic bag, 23.400 kg *ganja* was recovered. So, as far as the ownership of the farm land from where the present petitioner was arrested, the same is owned by one Mr. Gurditta Singh, who had given the said land to one Mr. Hardwari Lal, son of Mukandi Lal, to look after the said land. Mr. Hardwari Lal confirmed that he is cultivating vegetables in the said land and one Mohd. Anwar *alias* Kutub used to sell *ganja* in the area adjoining Yamuna Khaddar, Jaitpur Delhi and he was arrested from his farm with *ganja*.

2.4 It has been submitted that commercial quantity of *ganja* was recovered from Mohd. Anwar *alias* Kutub, who is a habitual offender and has been involved in 14 criminal cases. So, on this basis, the bail application is being pressed.

3. I have heard the arguments. The contention of the petitioner that the mandatory provisions of Section 50/42 NDPS Act were violated at the time of his arrest, the said fact will be considered by the learned Trial Court at the time of final disposal of the case but apparently, at this stage, the stand of the prosecution carries weight that the petitioner was given a notice under Section 50 NDPS Act and he refused to get himself searched in the presence



of a Gazetted Officer or a Magistrate. The petitioner cannot claim parity with other co-accused as Bilkis Begum and Hafiza have been granted bail because the recovery witnesses have not supported the case of the prosecution.

3.1 In case of Vinod, only intermediate quantity of *ganja* was recovered. The defence of the petitioner that he is neither the owner of the field nor of the cot on which he was alleged to be sitting, or owned by him or the yellow-plastic bag containing the contraband was not recovered at his instance, rather at the pointing out of the co-accused Rajesh, will be considered during trial by the concerned Court but at this stage, *prima facie* it is established that the contraband was recovered from his possession, i.e., from under the cot on which the petitioner was sitting.

3.2 Keeping in view the above facts, especially that commercial quantity of *ganja* was recovered from the present petitioner and the recording of evidence is still in progress, this Court is not inclined to release the present petitioner on bail at this stage, the bail application is dismissed.

4. It is made clear that nothing stated here shall affect the merits of the case. It will be decided on the basis of the evidence produced before the Court by the prosecution and the present petitioner.

5. Let copy of this order be sent to the learned Trial Court for information.

TALWANT SINGH, J

MAY 26, 2022

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Click here to check corrigendum, if any