



(VIA VIDEO-CONFERENCING)

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

Reserved on : 06.01.2022

Pronounced on : 11.02.2022

%

+ BAIL APPLN. 3321/2020

KULDEEP SHARMA

..... Petitioner

Through: Mr. Raghav Mahajan, Advocate.

versus

THE STATE GOVT. OF NCT OF DELHI

.... Respondent

Through: Ms. Rajni Gupta, APP for the State

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 37 of NDPS Act read with Section 439 Cr.P.C. seeking regular bail in case FIR No. 104/2019 under Section 20/29 of the NDPS Act registered at P.S. Crime Branch, (Central) Delhi.



2. Briefly stated, the facts of the case are that on 22.04.2019, SI Vikrant Singh received an information about two persons namely Kuldeep Sharma (petitioner herein) & Sonu Pandit, who used to supply Charas, would come in car No. HP 58 B 5006, to supply Charas to someone near Majnu Ka Tila, Outer Ring Road, Opposite Water Works Colony Delhi. The said information was reduced into writing vide DD No. 15 dated 22.04.2019 and a trap was laid near Majnu Ka Tila, Outer Ring Road, Opposite Water Works Colony Delhi.

3. At about 07:10 p.m. two persons namely Moti Lal @ Sonu Pandit S/o Thori Lal and present petitioner Kuldeep Sharma S/o Gopal Krishan were apprehended. Notice U/s 50 of the NDPS Act were served to them separately and their legal rights were explained to them. After their refusal, they were cursorily searched in the presence of ACP/STARS-II, Crime Branch and total 1.2 Kg. Charas was recovered from the possession of petitioner Kuldeep Sharma.

4. Accordingly, present FIR No. 104/2019 U/s 20/29 NDPS Act was registered at PS Crime Branch and said accused persons were interrogated and arrested in the present case and vehicle Gypsy No. HP 58 B 5006 was seized alongwith the documents.

5. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report and the records of this case carefully.



6. It is submitted by the Ld. counsel for the petitioner that the respondent has not followed the due procedure for taking the samples. He further submitted that as per the prosecution two samples of 25 grams each were taken out which were given Mark “A” and “B” and the remaining material was put together and was given Mark “C” and it is not clear as to from which pieces allegedly recovered from the petitioner the samples were taken. He further submitted that out of two drawn samples only sample “A” was sent for testing to FSL and the samples were not withdrawn from each of the pieces recovered and he further argued that the recovery was not such huge because of which the entire recovered charas could not be sent to FSL for testing and there is a clear cut violation of standing order No. 1/89 dated 13.06.1989 issued by the Department of Revenue, Ministry of Finance.

7. It is further submitted by the Ld. counsel for the petitioner that the arrest memo prepared by the IO is in contravention of Section 41 B of the Cr.P.C. as it does not bear any signature of either the relative of the petitioner or any respectable person of the society. He further submitted that the procedure prescribed U/s 42 of the NDPS Act has not been followed and the notice U/s 50 was made after contraband was alleged to have been recovered from the accused and he was forced to write his statement. He further submitted that no serious efforts were made to join the public witnesses despite having more than two hours at their disposal. He further submitted that there are



discrepancies in the testimonies of the witnesses and the benefit should go to the petitioner. He further submitted that the petitioner has clean past antecedents.

8. Ld. counsel for the petitioner has relied upon the following judgments:

- (a) Gaunter Edwin Kircher Vs. State of Goa, Secretariat 1993 AIR 1456 .
- (b) Javed A. Bhat Vs. Union of India 2007 Cri.LJ 3145.
- (c) Judgment dated 13.03.2020, passed by this Court in CrI. Appeal No. 1027/2015 titled as Amani Fidel Chris Vs. Narcotics Control Bureau.
- (d) Judgment dated 2nd July, 2012 passed by this Court in CrI. Appeal No. 909/2005 titled as Basant Rai Vs. State.
- (e) Judgment dated 28.05.2015 passed by this Court in CrI. Appeal No. 1113/2011 titled as Edward Khimani Kamau Vs. The Narcotics Control Bureau.
- (f) Ghewar Ram Vs. State of Rajasthan RLW 2008(1) Raj 801.

9. On the other hand, Ld. APP for the State has argued on the lines of the Status Report. She submitted that during the course of investigation CDR of the mobile phones of the accused persons were



obtained and it was found that each accused person was in contact with one and another on their mobile phones prior to and on the date of the incident. She further submitted that the recovered contraband as per the report of FSL was found to be Charas. She further submitted that the charges have been framed against the petitioner and the prosecution evidence is underway and no challenge was laid against the charge. It is further submitted by the Ld. APP that the petitioner alongwith co-accused was arrested on 22.04.2019 and 1.2 Kgs. of Charas was recovered which is a commercial quantity and the petitioner is likely to commit the same offence, if he is released on bail.

10. As far as the judgments relied upon by the Ld. counsel for the petitioner are concerned, they are distinguishable on facts and circumstances and it is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts and circumstances of each case. The ratio of one case cannot be applied mechanically to other case without considering their factual situation and circumstances because a slight difference in the facts or additional facts makes a lot of difference in precedential value of a decision and the judgments relied upon by the Ld. counsel for the petitioner are after the completion of the trial and not at the stage of bail.



11. As far as the contention of the Ld. counsel for the petitioner that the respondent has not followed the due procedure for taking the samples and out of two drawn samples only sample “A” was sent for testing to FSL and the samples were not withdrawn from each of the pieces recovered and recovery was not such huge because of which the entire recovered charas could not be sent to FSL for testing and there is a clear cut violation of standing order No. 1/89 dated 13.06.1989 issued by the Department of Revenue, Ministry of Finance and the other contentions that the arrest memo prepared by the IO is in contravention of Section 41 B of the Cr.P.C.; procedure prescribed U/s 42 of the NDPS Act has not been followed and the notice U/s 50 was made after contraband was alleged to have been recovered from the accused and he was forced to write his statement are concerned, all these contentions are liable to be rejected as they relate to violation of the procedural aspects which can only be looked into during the course of trial and cannot be deeply analyzed at the stage of bail. Moreover, in the instant case the recovery is effected in the presence of gazette officer and sampling was also conducted in the presence of the said officer and as per the case of the prosecution the recovery is not from the personal search of the petitioner but from the bag which was in his possession.

12. It was also contended by the Ld. counsel for the petitioner that no serious efforts were made to join the public witnesses and there are



discrepancies in the testimonies of the witnesses and the benefit should go to the petitioner. These issues cannot be decided at the stage of bail as it would require deep analysis of the testimonies of the prosecution witnesses which cannot be done at this stage as it might prejudice the case of either of the parties.

13. The present case is a case of commercial quantity and the rigors of Section 37 NDPS Act are applicable. Section 37 of the NDPS Act regulates the grant of bail in cases involving offences under the NDPS Act. Section 37 reads as follows:

“(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.

(emphasis supplied)



14. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are :

- (i) The Prosecutor must be given an opportunity to oppose the application for bail; and
- (ii) There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

15. The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-judge Bench of **Supreme Court** in *Union of India Vs. Shiv Shanker Kesari (2007) 7 SCC 798* held that:

"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

"7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in



which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.”

(See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532]

[...]

10. The word “reasonable” signifies “in accordance with reason”. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315]

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”

(emphasis supplied)

16. Based on the above, the test which is required to be applied while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit an offence while on bail. Given the seriousness of the offence punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

17. For the reasons noted hereinabove, the application lacks merit and the same is, therefore, dismissed.



18. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

FEBRUARY 11, 2022

Sumant

