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

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Order pronounced on: 22.04.2022

+ BAIL APPLN. 4429/2021

VINOD RATHORE

..... Petitioner

Through: Mr. Vikas Padora & Mr. Dipanshu
Chugh, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Neelam Sharma, APP for State
with SI S.B. Sharan, Crime Branch,
Delhi.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.

1. This is an application for regular bail moved by the petitioner, who is facing trial under Section 20(b)(ii)(c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS') in FIR No. 187/2018, PS Crime Branch Delhi.
2. The FIR was registered on 21.07.2018 and charge-sheet was filed on 27.09.2018. First supplementary charge-sheet was filed on 22.10.2018. Charges under Section 29 NDPS were framed against all three accused persons and charge under Sections u/s 20(b)(ii)(C) of NDPS Act was framed against the Petitioner; charge u/s 20(b)(ii)(A) of NDPS Act was framed against Anmol Yadav @ Honey and charge under Section 25 of the NDPS Act was also framed against the accused Harmeet Singh @ Hunny. The petitioner is stated to be in J.C. since, 21.07.2018; except for the period of interim bail on two occasions.
3. The case of the prosecution is that on the basis of secret information SI Ram Kishan registered DD No. 18 at 5:15 PM on 20.07.2018. A raiding team

was formed. On the way, IO stopped the car and requested 5-6 persons to join the investigation but no one agreed; on reaching the spot one Honda Civic car was found parked bearing registration No. DL2FHV0070, which was recognised by the secret informer, who also identified the present petitioner as well as the co-accused Anmol, who was standing near the car. The petitioner took out a black colour bag from the car and handed over the same to Anmol, who held the same on his left shoulder at the same time, the present petitioner also left with another bag holding it in his left hand. Both the accused persons were apprehended.

3.1 They were informed about their rights and given notice under Section 50 of the NDPS Act; they denied to avail the opportunity to get themselves searched in the presence of Gazetted Officer/Magistrate and they further disclosed that they have *Charas* with them. SI Ram Kishan further requested 5-7 persons present there but they refused to join the investigation. The black colour bag in possession of the present petitioner was searched, from which one big packet and one small packet were recovered, having black colour sticky material, which had a foul smell. On checking the said material, it was found to be *Charas*. The total weight was 1100 gms; out of which 4 sample packets of 25 gms each were prepared and FSL form was filled. All the packets were taken in the Police custody and marked as Mark 1A, 1B, 1C and 1D. Remaining *Charas* was sealed in black colour bag and the same was marked as Mark 1E.

3.2 Thereafter search of accused Anmol @ Honey was conducted and the small packet was containing black sticky material having foul smell, which was found to be *Charas*. The weight was found out to be 100 gms; two samples were drawn of 25 gms each and similar process was conducted as

was done in the case of present petitioner.

3.3 On receipt of Tehrir, FIR No. 187/2018 was registered. The case property was handed over to Malkhana. Investigation was handed over to ASI Murlidhar/IO. Special Arrest Report under Section 57 NDPS Act was prepared and sent to the Crime Branch. Both the accused disclosed that they had taken delivery of *Charas* from Harmeet Singh @ Hunny, who was caught from Seelampur Gol Chakkar on 23.07.2018 at 09:05 AM.

3.4. The Call Detail Records (CDRs) disclosed that there were several calls amongst the accused persons; the mobile phones of all the accused were seized and sent to FSL. The car was also seized. The co-accused Jagga, who, as per the statement of Harmeet Singh, was supplying him *Charas*, was not found and he had been declared a proclaimed offender (P.O.). Accused were charge-sheeted and thereafter charges were framed.

4. The main ground on which the bail has been sought by the present petitioner are that there was a tampering with the seized contraband because as per the seizure memo four samples were drawn of 25 grams each whereas the sample Ex. 1-A found containing only 24.50 grams material while Ex.1-C was found of having weight of 25.31 gms when they were weighted in FSL. So, it has been submitted that the Crime Branch has tampered with the seized contraband and purposely mixed *Charas* in the said samples to get favourable result from FSL. There has been tampering and fabrication in the personal search memo and car seizure memo as car keys have not been shown as have been found in the personal search of the present accused whereas the car seizure memo shows that the keys were taken from the present petitioner. The third ground is of parity with other co-accused, who are stated to be already released on bail.

4.1. Certain miscellaneous grounds like petitioner is in custody for last more than three years; trial will take long time; only two witnesses have been examined out of twenty witnesses; there is no public witness who have deposed against the petitioner so there is no possibility of influencing the witnesses; seized quantity is slightly higher than the commercial quantity of 1000 grams, hence the rigors of section 37 NDPS Act can be applied more leniently; the source of *Charas* could not be traced by the Crime Branch meaning thereby *Charas* was planted on the accused; recovery is doubtful as no public witness has joined the investigation; petitioner is a young boy of 28 years and there is no other previous involvement and during two occasions when petitioner was granted interim bail, he never misused the said liberty.

5. Notice was issued, status report has been filed.

5.1 After reiterating the chain of incident as mentioned above regarding arrest on secret information, raid and apprehending of the accused persons, registration of FIR and filing of the charge-sheet, it has been mentioned that the mobile phones recovered from the possession of the accused persons were sent to FSL and the report has been received. The phone recovered from co-accused Harmeet Singh contains 32,702 images, in which there are some pictures of the three accused together and in some pictures contraband/charas can also be seen. Around 17395 WhatsApp voice chats were also retrieved and in many of such chats of the three accused persons and others were talking about the drugs and their business relations. The mobile recovered from the present petitioner was also provided by the co-accused Harmeet Singh to facilitate delivery of *Charas*.

5.2 The result from FSL after technical analysis of substance recovered confirmed that it is *charas*. As far as the ground in the bail application is

concerned, in opposition it has been submitted that there is no reason to falsely implicate the petitioner in this case as there is sufficient evidence on record to link the present petitioner with the offence. The *Charas* is an organic product and contain moisture, with the passage of time, the weight reduces as the moisture reduces in the contraband. There is no evidence of tampering with the contraband and the allegations are false.

5.3 It is further submitted that there is no rule or procedure to send the entire recovered material to FSL. According to Standing Instruction No. 1/88 dated 15.03.1988 of Narcotics Control Bureau, two representative samples should be drawn from recovered contraband. One sample should be sent to FSL and another should be kept in safe custody. Car keys are mentioned in seizure memo of car, hence not mentioned in Personal Search Memo. It has been admitted that there is no previous involvement. The disclosure statement of the present petitioner shows that Harmeet Singh had supplied the recovered *Charas* to him. The petitioner was using car provided by Harmeet Singh for transporting the contraband. Although, the request was made by the IO to the public witnesses to join the investigation but none agreed. In view of the above facts and circumstances, it has been prayed that the application be dismissed.

6. I have heard arguments. Learned counsel for the petitioner submits that if the contraband had moisture, then the entire quantity would have been evaporated by now. Since, Section 29 of NDPS was invoked against all the accused persons, so the rigors of section 37 NDPS Act should have been there in the case of other accused also but they were granted bail and the petitioner is in custody for the last three and half years. There is no other case and the WhatsApp chats have no evidentiary value. These submissions were made

apart from the grounds taken in the bail application.

6.1 On the other hand, learned APP has submitted that commercial quantity of 1.1 Kilograms was recovered from the present petitioner, the *charas* being an extract of natural product, some quantity may have evaporated. Petitioner cannot claim parity with the other accused as from accused Harmeet Singh nothing was recovered and from other co-accused only 100 grams of *Charas* was recovered. The case of the present petitioner has to face bar of Section 37 of the NDPS Act. Till date three witnesses have been examined and efforts are being made by the prosecution to expedite the trial.

7. After hearing both the parties, it is clear that the allegations regarding tampering with the seized contraband and slight variation in the weight from 25 grams to 24.50 grams in case of sample 1-A and of 25.31 grams in sample 1-C is of nominal variance which might have been caused by the change in moisture level in the sample or the weighing scale having same inaccuracy. The chain of custody has not been doubted by the petitioner at this stage. There is no ground to believe that minor differences of milligrams in the samples sent for examination to the FSL will lead to a conclusion that the Crime Branch has tampered with the contraband. It is not a convincing factor at the stage of grant of bail; however, the petitioner is at liberty to challenge the chain of custody and to cross-examine the IO as well as FSL officials regarding this minor change in the quantity of the samples sent by crime branch to FSL. As far as the remaining two samples are concerned, as detailed in the status report, they were to be kept safe, being sample numbers 1-B and 1-D as per the Standing Instructions issued by the NCB.

8. As far as the second ground regarding tampering/fabrication raised regarding the personal search memo and car seizure memo is concerned, the

submissions of the learned counsel for the petitioner is that the car keys are stated to be found alongwith car whereas the car seizure memo shows that these keys were taken from the present petitioner. Since, the car keys have been listed in the seizure memo of the car, the same cannot be called as tampered/fabricated, at this stage. Again, the petitioner is at liberty to cross-examine the IO to this effect at the time of his evidence. As far as the parity with the accused Harmeet and Anmol Yadav is concerned, nothing was recovered from Harmeet Singh @ Hunny and the quantity recovered from Anmol Yadav is only 100 grms of *Charas*, whereas from the present petitioner commercial quantity of 1100 grams was recovered. Hence bar of Section 37 of NDPS Act will be applicable. Section 37 of the NDPS Act reads as under:-

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 2[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. In view of the provisions of Section 37 of the NDPS Act, the conditions mentioned therein have to be satisfied. At this stage, this Court has no reasonable ground to believe that the petitioner is not guilty or he is not likely to commit any such offence, if he is released on bail. The petitioner cannot claim any parity with other accused or a mitigating factor of being in custody for three years and four months. Only three witnesses having been examined till date itself cannot be the ground for grant of bail in a case where commercial quantity of *Charas* was recovered from the present petitioner as the minimum punishment for the offence under Section 20(b)(ii)(C) is being not less than 10 years, which may extend to 20 years along with the fine of not less than 1 lakh, which may extend up to 2 lakhs. The State has to prove its case and there being no public witness can not be the only ground to release the petitioner on bail. The NDPS Act does not call for any leniency to be shown where the quantity was of slightly higher than the commercial quantity. The source of *Charas* was traced to another co-accused Jagga, who has been declared P.O. It is true that there is no previous involvement of the petitioner and he is a young boy of 28 years and he has not violated the conditions while being on interim bail on two times but these factors themselves cannot be a ground for grant of bail to the present petitioner. The bail application is without any merit and same is hereby dismissed.

TALWANT SINGH, J

APRIL 22, 2022/mr

Click here to check corrigendum, if any