



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

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Reserved on : 30.11.2023

Pronounced on : 22.12.2023

+ **BAIL APPLN. 1071/2023**

GUDDU KHAN

..... Petitioner

Through: Mr. Kanhaiya Singhal, Mr. M.A.Hashmi, Mr. Ujwal Ghai, Mr. Prasanna, Mr. Ajay Kumar, Mr. Udit Bakshi, Mr. Anmol Chopra and Mr. Teeksh Singhal, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Raghuinder Verma, APP for the State with Insp. Umesh Sati.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in F.I.R. NO. 121/2020 under Section 21 of NDPS Act registered at Police Station Crime Branch.

2. In brief the facts of the case are that on 20.08.2020, a secret information was received that a person, namely, Guddu Khan (Petitioner herein) who lives in the vicinity of Nand Nagri, Delhi and deals in illegal Heroine would come near SDM office, Nand Nagri to deliver the same. Hence, as per the information, a trap was laid in the intervening night of 20-



21.08.2020 near SDM office, opposite of Bus Stand No. 212 Nand Nagri, Delhi. At about 12:20 AM, while the petitioner was handing over one packet of Heroine to Aafaq Khan, on the signal of the informer, the petitioner and Aafaq both were apprehended. The said recovered contraband was weighed on electronic weight machine and it was found to be 300 gram of heroine. In this regard a case vide FIR No. 121/2020 under Section 21 of NDPS Act was got registered.

3. During investigation, the petitioner disclosed that he had procured the recovered heroine from one Raju who used to meet him occasionally near Nand Nagri/sunder Nagri, Delhi and used to hand over the same to his brother Aafaq for keeping it at some safe place. The chargesheet against accused persons Guddu Khan and Aafaq Khan has been filed and the petitioner is in judicial custody since 21.08.2020.

4. I have heard the learned counsel for the petitioner, learned APP for the State, perused the status report filed by the State and also, perused the records of this case.

5. Learned counsel for the petitioner submitted that the petitioner is an Auto driver with clean antecedents and has been falsely implicated in this case. He submitted that the source of procuring the alleged contraband is completely missing, except that the name of one Raju has been mentioned, from whom allegedly the petitioner used to purchase the alleged contraband and there is also no evidence on record to show that to whom the petitioner or co-accused sold the contraband. He further submitted that the alleged recovery is totally planted and the falsity of the allegations is evident from the fact that the alleged place of occurrence is a very busy place, however,



there is no independent witness to the effect of alleged recovery of contraband from the petitioner as well as to the effect of his arrest from the alleged place of occurrence and the witnesses are police officials. He further submitted that the police officials have neither taken the CCTV footage of the nearby places nor they have taken the CDR of the petitioner on record. He further submitted that the prosecution has cited 12 prosecution witnesses in the list of witnesses, however, till date only part examination-in-chief of PW-1 has been recorded, despite the fact that the charges were framed way back in 2021. Lastly, he submitted that the petitioner is in judicial custody since 21.08.2020 and no purpose will be served by keeping him in judicial custody.

6. In support of his contentions, learned counsel for the petitioner has relied upon the following judgments:-

- *Sunil vs. State of NCT of Delhi (Bail Appln. 495/2022)*
- *Anita vs. State (Bail Appln. 1538/2022)*
- *Sachala Nayak vs. State (3351/2021)*
- *Tarsem Singh vs. State of Punjab (CRM- M No.55431/2021)*
- *Sukhdev Singh vs. State of Punjab (CRM-M No. 53872/2021)*
- *Sufiya vs. State of Chhatisgarh (MCRC No. 5548/2022)*
- *Anita @ Kallo vs. State (Bail Appln. 957/2023)*
- *Mohd. Muslim vs. State (2023 SCC Online 352)*
- *Suraj vs. State (2023 SCC Online Del 5323)*
- *Kasif vs. NCB (Bail Appln. 253/2023)*

7. On the contrary, learned APP for the State has vehemently opposed



the bail application and has argued on the lines of the status report. He submitted that the petitioner was apprehended on the spot while handing over the packet of contraband to co-accused Aafaq Khan and the contraband recovered from the petitioner is of commercial quantity i.e., 300 gram of heroine. Learned APP for the State submitted that there is embargo under section 37 NDPS Act as there is recovery of commercial quantity of contraband. He further submitted that the case is pending trial and is at the stage of prosecution evidence and if the petitioner is released on bail at this stage, there is strong likelihood of him absconding.

8. As far as the judgments relied upon by the Ld. Counsel for the petitioner are concerned, there is no dispute with regard to the proposition of law laid down in the said judgments, however, with due regard, the same are not applicable to the facts of the present case as in the case at hand the petitioner has been caught in the act on the spot with the recovered contraband i.e., 300 gram of heroine which is of commercial quantity and the same clearly shows the petitioner's complicity in the crime and therefore, there are no reasonable grounds for believing that the petitioner is not guilty of the offence.

9. In the present case, 300 gram of heroine has been recovered from the petitioner which is of commercial quantity and thus, embargo of Section 37 of the NDPS Act is applicable.

10. The scheme of Section 37 NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative



part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

11. The expression "*reasonable grounds*" means something more than *prima facie* grounds. It contemplates substantially probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

12. As far as the contention of the counsel for the petitioner that the police officials have neither taken the CCTV footage of the nearby places nor they have taken the CDR of the petitioner on record does not cut much ice as in the instant case after receiving the secret information, a trap was laid by the police officials in the intervening night of 20-21.08.2020 near SDM office, opposite of Bus Stand No. 212 Nand Nagri, Delhi and at about 12:20 AM, the petitioner was caught red handed while handing over one packet of Heroine to co-accused Aafaq Khan.

13. Therefore, looking into the entire circumstances of the present case and the fact that the quantity of contraband recovered from the petitioner in this case is of commercial quantity i.e., 300 gram of heroine, the petitioner alongwith co-accused Aafaq Khan have been apprehended on the spot by the



police officials while the petitioner was handing over the packet of contraband to Aafaq Khan, moreover, considering the period of incarceration as the petitioner has undergone nearly three years two months which is not even near to half of the minimum sentence of ten years, no ground for bail is made out. That being the case, the limitations prescribed for the grant of bail under Section 37 NDPS Act are also not satisfied and thus, no benefit can be given to him at this stage. The bail application along with pending application is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

DECEMBER 22, 2023/ib