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

% *Date of decision: 5th September, 2023*

+ BAIL APPLN. 1133/2022 and CRL.M.A. 9482/2023 (additional grounds)

GINKALA MEDDILETY Petitioner
Through: Mr. Karan Verma, Mr. Nayan Maggo
and Ms. Sushma Sharma, Advocates.

versus

THE STATE Respondent
Through: Mr. Ritesh Kumar Bahri, APP for
State.
SI Avdhesh Dixit, PS Crime Branch.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. By way of the present application, the applicant seeks bail in FIR No.145/2020 dated 24th September, 2020, under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), registered at Police Station Crime Branch, Delhi.
2. On 24th September, 2020, based on secret information received, a truck carrying 275 kilograms of Ganja was apprehended by the police and recovery of the aforesaid Ganja was taken into police possession through a seizure memo. Thereafter, the present FIR was registered with the Crime Branch.
3. Counsel appearing on behalf of the applicant submits that in the

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present case, the Crime Branch has not adopted the procedure for taking samples as mandated in the Standing Order 1/88 dated 15th March, 1988 (hereinafter 'Standing Order'), issued by the Narcotics Control Bureau (NCB), in as much as out of the 55 packets of Ganja seized, the investigating agency has mixed the quantities contained in 5 packets into 1, thereby converting a total of 55 packets into a total of 11 packets. He further submits that the seizure was not made in the presence of the applicant.

4. Reliance in this regard has been placed by the applicant on the judgments passed by the Coordinate Benches of this Court in ***Laxman Thakur v. State (Govt. of NCT of Delhi)***, (2022) SCC OnLine Del 4427 and ***Amina v. State NCT of Delhi***, (2023) SCC OnLine Del 3491.

5. *Per contra*, the learned APP appearing on behalf of the State submits that the aforesaid Standing Order is in the nature of guidelines and is not binding in nature. He has further drawn attention of the Court to the transcript of conversation between the applicant and the co-accused persons namely, Sheikh Sadak Hussain and Shaik Suban, from where it appears that the applicant has been guiding and instructing the said accused persons.

6. I have heard the counsels for the parties.

7. At the outset, the relevant extracts of the Standing Order are set out below:

“2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witness (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.”

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2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

8. The Supreme Court in ***Union of India v. Bal Mukund & Ors.***, (2009) 12 SCC 161 has held that the requirements of the Standing Order 1/88 are mandatory in law. Relevant paragraph is set out below:

*“36. There is another aspect in the matter which cannot be lost sight of. Standing Instruction 1/88, which has been issued under the Act, lays down the procedure for taking samples. The High Court has noticed that PW 7 had taken samples of 25 gm each from all five bags and then mixed them and sent to the laboratory. There is nothing to show that adequate quantity from each bag had been taken. **It was a requirement in law.**”*

9. The Coordinate Bench in ***Laxman Thakur*** (supra) has held that in terms of the Standing Order 1/88, transferring of content of all packets into one and then drawing of samples from the mixture is not permitted.

10. The Coordinate Bench in ***Amina*** (supra) after analyzing various judgments of the Supreme Court and this Court has held as under:

“27. From a careful assessment of the decisions cited above and the perusal of the Standing Orders, this Court is of the considered opinion that the Standing Orders have to serve a certain purpose having been issued by the Narcotics Control Bureau, Government of India and cannot be rendered optional for compliance to the investigating agencies. The procedures prescribed in the said orders are based upon a certain logic which ought to be respected, or else it would be a worthless piece of paper. Notwithstanding that Courts in the decisions

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cited above have accepted it as a mandatory directive [refer to Noor Aga (supra), Bal Mukund (supra), Basant Rai (supra) Santini Simone (supra) and finally Amani Fidel (supra)], even the Hon'ble Supreme Court while taking a view that Section 52 & Section 57 NDPS were directory in Gurbax Singh (supra) said that “the IO cannot totally ignore these provisions”. Even Balbir Singh (supra) states that non-compliance does not render the trial initiate “the officers, however, cannot totally ignore these provisions”. Therefore, in this Court's view, the Standing Orders ought to be respected by the investigating agencies and non-compliance of those Standing Orders may naturally invoke a reasonable doubt relating to the process of sampling which is the most critical procedure to be carried out in order to ascertain the nature of the substance and its quantity. In fact, the Field Officers Handbook issued by the Narcotics Control Bureau for Drug Law Enforcement also reiterates these procedures prescribed under the Standing Orders.”

(emphasis supplied)

11. The legal position that emerges from the aforementioned judicial precedents is that the requirements of the aforesaid Standing Order have to be followed while taking samples.
12. In the present case, instructions in the Standing Order have not been followed by the investigating authority as the samples have been taken after mixing of the contents of various packets into one, which is in violation of the aforesaid Standing Order.
13. The learned APP submits that even if quantity of 5 kilograms is taken in each of the 11 packets, the total quantity would be 25 kilograms, which would be more than the commercial quantity. Even if that be so, it cannot be conclusively said that all the packets contained equal quantities of 5 kilograms each.

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14. In view of the faulty sampling process, prejudice has been caused to the applicant. Therefore, in my considered view, the rigours of Section 37 of the NDPS Act would not apply in the facts and circumstances of the present case.

15. The applicant has been in custody since 10th October, 2020 for almost a period of 3 years. His conduct in jail has been satisfactory and he has not been involved in any other offence.

16. Considering the facts noted above and taking into account that the trial is likely to take some time, the applicant cannot be kept under incarceration for an indefinite period of time. Therefore, this Court considers it fit to grant bail to the applicant.

17. For the forgoing reasons, the application is allowed, and the applicant is directed to be released on furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount subject to the satisfaction of the Trial Court and further subject to the following conditions:

- i. The applicant shall not leave the country without the prior permission of the Court.
- ii. The applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
- iii. The applicant shall join investigation as and when called by the IO concerned.
- iv. The applicant shall provide his latest/fresh mobile numbers to the IO concerned, which shall be kept in working condition at all times and shall not switch off or change the mobile number(s) without prior intimation to the IO concerned. The petitioner shall keep his live location on at all times.

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- v. The applicant shall provide his permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in his residential address.
- vi. The applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses or tamper with the evidence of the case.
18. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.
19. Accordingly, the application along with all pending applications stands disposed of.

AMIT BANSAL, J.

SEPTEMBER 5, 2023

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