



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

% *Date of decision: September 21, 2023*

+ **BAIL APPLN. 1245/2022**

PRAVEEN KHATRI

..... Applicant

Through: Mr. Sanjeev Bhatnagar, Mr. Sounak
S. Das and Ms. Anshul Kumar,
Advocates.

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Ajay Vikram Singh, APP for the
State with SI Vikas, Spl. Staff/East

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The applicant vide the present application implores this Court to exercise its special powers under Section 439 of the Code of Criminal Procedure, 1973 [**CrPC**] read with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [**NDPS Act**] to grant regular bail in FIR No.221/2020 dated 10.07.2020 under Section(s) 20/25/29, NDPS at PS: Madhu Vihar, Delhi.

2. As per FIR, information was received from a confidential informant [**CI**], that the applicant and *one* Imran@Doctor will be handing over a large consignment of *Ganja* from Vishakhapatnam, Andhra Pradesh in Madhu Vihar, Delhi around 12:00 PM on 09.07.2020. The same was communicated to ACP Madhu Vihar, who ordered a raid to intercept the



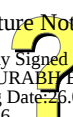


aforesaid consignment.

3. Accordingly, a team was formed and dispatched to the place of occurrence at 11:20 PM which waited for the exchange to happen. At about 12:10 PM, a *Silver Swift Dezire* [DL-01-CR-0648] stopped and the CI informed that out of the two male occupants in the car, the one in Yellow T-shirt is Mr. Praveen Khatri, the applicant herein and the other one in White shirt is Imran@Doctor. SI Ram Niranjana Pathak knocked on the window-glass but since the occupant(s) denied opening the door or lowering the window, ASI Shailesh was constrained to break the driver-side window glass and took the keys.

4. Upon inquiring, the occupant(s) revealed their names to be Mr. Praveen Khatri and Imran. Thereafter, the SI first informed both the occupants about the information received and then served a notice under Section 50, NDPS on both of them. However, as both of them waived their right of being searched by the nearest Gazetted Officer/ Magistrate, the SI, at 12:55 PM, requested, Mr. Vijay Kumar, the concerned ACP, Madhu Vihar, to reach at the place of incidence to supervise the search and seizure of both the accused persons.

5. On reaching the place of occurrence at about 01:25 PM on 10.09.2020, the ACP directed the SI to conduct the search and seizure operations. Though no *ganja* or packet of *ganja* was recovered from the person of the accused, however, upon conducting a search of the car, 3 white plastic *kattas* from the trunk and 2 white plastic *kattas* from the rear seat were recovered. All the said 5 white plastic *kattas* were tied with a twine. Upon opening the said *kattas*, material resembling *ganja* was found





and the *kattas* were thus marked and weighed 'A' (weighing 18 Kgs), 'B' (weighing 17 Kgs), 'C' (weighing 19 Kgs), 'D' (weighing 17 Kgs) and 'E' (weighing 19 Kgs). In all, the 5 *kattas* led to seizure of 90 Kgs of *ganja*.

6. Thereupon, SI Pathak prepared two samples of 1 kg each from all five *kattas* and packeted them in transparent plastic bags, sewed them in white cloth and labelled them 'A-1', 'A-2', 'B-1', 'B-2' and so forth. Not only that, FSL Forms for the samples prepared, were also filled and sealed.

7. Of the various grounds raised by the learned counsel for the applicant in his pleadings, the learned counsel has primarily chosen to argue that since the raid conducted on the intervening night of 09.07.2020 and 10.07.2020 was without authorisation from a Gazetted Officer of the Department, the essential requirement of Section 41(2) of the NDPS Act was not met and the prosecution also failed to comply with the mandatory requirements of Section 42 of the NDPS Act as the '*ground of belief*' was not recorded. In support of his argument, the learned counsel has drawn attention of this Court to *State of Punjab v. Baladev Singh* (1999) 6 SCC 172 (*paragraph 17*).

8. Learned counsel for the applicant also submits that the notice served under Section 50 of the NDPS Act is defective as the word '*nearest*' is missing and the officer who gave the notice did not conduct the personal search. For this, the learned counsel for the applicant places reliance upon *State of Rajasthan vs. Parmanand and Anr.* (2014) 5 SCC 345 (*paragraph 19*).

9. Notice was issued and the Status Report was called for. Nominal Roll was also requisitioned from the concerned jail authorities. As per the



Nominal Roll, the applicant has clean antecedents and has satisfactory jail conduct. Further, he has been in judicial custody since 10.07.2020.

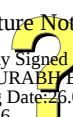
10. Learned APP for the State vehemently opposes the application and submits that the search under Section 41 of the NDPS Act was only after receiving due authorisation from the ACP i.e., a Gazetted Officer. Further, he also submits that the notice under Section 50 of the NDPS Act is in compliance of the statute. A document to that effect bearing the seal of the ACP was also shown to this Court during the course of hearing.

11. The State in its Status Report states that the CDR analysis of the present applicant reveals that the applicant and his associate Imran were very much present in Narsipattam, Andhra Pradesh on 06.07.2020, meaning thereby that both of them were there in the *ganja* producing pockets of Andhra Pradesh. The same also shows that both of them returned to New Delhi only on the date of incident, i.e. on 09.07.2020. Lastly, as per the FSL reports *“on Physical, Microscopic, Chemical & TLC examination, exhibits 'A-1', 'B-1', 'C-1' 'D-1' & 'E-1' were found to be 'Ganja'.”*

12. This Court has heard the learned counsel for the parties and perused the documents on record.

13. Without adverting to the merits of the case, this Court cannot lose sight of the fact that the present is an application for bail and the trial, before the Ld. ASJ-03, Shahdara District, Karkardooma Court, Delhi, is at the stage of prosecution evidence.

14. Keeping the aforesaid in mind, this Court finds that the grounds taken by the applicant can be fairly narrowed down to the compliance of





Sections 41(2) and 42 of the NDPS Act on one hand and Section 50 of the NDPS Act on the other hand.

15. The applicability of Section 41(2) of the NDPS Act requires the authorized officer to take down in writing the commission of any offence punishable under this Act and shall thereafter authorise any officer subordinate to him to search the building/place/conveyance and arrest such person. This Court, upon perusal of the documents on record, finds that DD No.10, dated 09.07.2020 made by SI RN Pathak has been countersigned and stamped by the ACP, thereby complying with the requirements under Section 41(2) of the NDPS Act. Thus, in the opinion of this Court, the ACP was well and truly empowered to proceed further in terms of Section 41(2) of the NDPS Act.

16. Similarly, Section 42 of the NDPS Act mandates that if any officer, “... *...has reason to believe from personal knowledge or information given by any person... ..*” such information must be “... *...taken down in writing... ..*” meaning that such officer, upon receipt of information of the commission of an offence under the Statute is to record his ground(s)/reason(s) of belief in writing and send it to a superior officer within 72 hours. On *prima facie* examination of the documents, including the FIR involved herein, this Court finds that the prosecution has *satisfactorily complied* with the mandate of Section 42 of the NDPS Act. The ‘*ground of belief*’ as required has also been duly recorded. Reliance in this regard is placed upon ***Union of India v. Mohd. Nawaz Khan*** (2021) 10 SCC 100 wherein it has not only been held that though the compliance with the requirements of Sections 42(1) and 42(2) of the NDPS Act in regard to



writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer, however, *in exceptional circumstances involving emergent situations*, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure but also that the compliance of the procedure laid down under Section 42 of the NDPS Act is a question of facts and should be raised in the course of the trial. As per the facts, the situation involved herein, is also one of urgency and expediency and is an exceptional circumstance involving an emergent situation.

17. The applicability of Section 50 of the NDPS Act, which provides for conditions under which search of persons shall be conducted, requires that a duly authorised officer, prior to conducting his search, must “... *...if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer... ..*” or to “... *...the nearest Magistrate*”.

18. As the present application is with respect to grant of bail to the applicant, in the opinion of this Court, any finding as to the compliance of a statutory requirement will be premature as, the same is a matter of trial. The fact that *prima facie* this Court is convinced on the reading of the notices and the FIR that the prosecution has followed the prescribed procedures under Sections 41(2), 42 as well as Section 50 of the NDPS Act, in the opinion of this Court, is sufficient for denying bail to the applicant at this stage.

19. In view thereof, holding that the prescribed procedure have not been followed at this stage, without giving an opportunity to the prosecution to



establish compliance of the mandates set out in the aforesaid provisions of the NDPS Act at the stage of trial, is unwarranted as issuance of the said notices are in itself a question of fact to be raised and determined at the stage of trial. Reliance in this regard is placed upon **Baladev Singh** (supra), wherein the Hon'ble Supreme Court has held as under:

“57. ... (5) That whether or not the safeguards provided in Section 50 have been duly observed would have to be determined by the Court on the basis of evidence led at the trial. Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of Section 50, and particularly the safeguards provided therein were duly complied with, it would not be permissible to cut-short a criminal trial;”

20. A Co-ordinate Bench of this Court in BAIL APPLN. 3248/2021 titled **Naveed Ummer Sheikh vs. Narcotic Control Bureau** in its order dated 23.11.2021 has held that any procedural defects or violation thereof would be a matter of trial.

21. Lastly, the Court cannot forego the fact that the burden always remains on the prosecution to prove the guilt of the accused beyond reasonable doubt and it cannot be ignored that the applicant has yet not come up with any plausible explanation as to the reason for his possession of such large quantities of contraband. Furthermore, there is no dispute qua the presence of the applicant or to the recovery of the contraband from the applicant and to the role of the applicant. Each of the above, individually, and also collectively, has/have a special significance at this stage, when this Court is considering granting bail to the applicant.

22. It is also an undisputed position that evidence is still going on and the prosecution witnesses are yet to be examined before the learned Trial



Court. This Court feels that releasing the applicant on bail at this stage may result in the applicant influencing the witnesses or tampering with evidence, which shall be improper.

23. Seeing the gravity of the offence involved when the applicant has been found in possession of colossally large quantities of *ganja* and further most relevantly, as the applicant is yet to come up with any explanation as to why he was in possession of such large quantities of contraband and/ or as to why he was present both in Narsipattam, Andhra Pradesh and Madhu Vihar, Delhi on the same dates as mentioned in the FIR, in the opinion of this Court, grant of bail to the applicant at this stage will not be appropriate and is not called for. Moreover, the present is not a case of normal course or that of routine. Further, there are too many dots in the form of a trail leading to the search and seizure of the applicant.

24. All the above, as of now and as they stand today, are sufficient for denial of bail to the applicant.

25. Accordingly, the present application seeking grant of regular bail in FIR No.221/2020 dated 10.07.2020 under Section(s) 20/25/29, NDPS at PS. Madhu Vihar, Delhi, is dismissed.

26. Needless to say, observations made on the merits of the matter, if any, are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J

SEPTEMBER 21, 2023/So