



2023:DHC:9312



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

Reserved on : 07.12.2023

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Pronounced on : 22.12.2023

+ **BAIL APPLN. 2501/2023**

RAJENDRA KUMAR NAYAK

..... Petitioner

Through: Mr. Sharukh Ejaz, Ms. Disha Bajaj
and Ms. Harnek Kaur, Advocates.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Monu Chauhan, PS Crime
Branch.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 270/2022 under Sections 20/25/29 of NDPS Act registered at Police Station Crime Branch.

2. In brief the facts of the case are that secret information was received that three persons, namely, Noor Mohammad, Ujjwal and Laxmi were coming to Delhi from Andhra Pradesh in Innova Car bearing No. AP-35-H-3939, carrying Ganja. On the basis of the said



information, the car was apprehended and all the three persons disclosed their identities as Noor Mohammad, Ujjwal and Laxmi. On searching the car, 5 plastic bags were recovered which were marked as A, B, C, D & E and weighed 10 Kg, 8 Kg 200 gms, 22Kg, 22Kg and 10 Kg, respectively and the total recovery from the car is 72 Kg 200 gms of *ganja*. During investigation, house of co-accused Azad@ Rakal was searched and 22kg 600 gms of *ganja* was recovered. In this regard, case FIR No. 270/2022, dated 20/11/2022 under sections 20/25/29 NDPS Act was registered at PS- Crime Branch and all the three accused were arrested. In the disclosure statement of the accused, it came out that the car in which they were travelling was provided to them by the petitioner and was also in the name of the present petitioner, namely, Rajendra Kumar Nayak. Thereafter, the present petitioner was arrested from Odisha on 01.04.2023 and he disclosed that he purchased and provided the car on the directions of another co-accused namely Devender Pandey. The name of the petitioner was then added to the present FIR.

3. I have heard the arguments of the learned counsel for the petitioner, learned APP for the state and have also perused the records of this case.

4. It is submitted by the learned counsel for the petitioner that the petitioner has only been arrested on the basis of disclosure statements of the co-accused and there is no incriminating evidence against the



petitioner on record. It is further submitted that the applicant is the owner of the car in question only on papers and he did not have any actual possession or control over the car. It is further submitted that the petitioner only allowed the car to be purchased in his name by the co-accused in lieu of some money, but the actual possession and usage of the car has always been in control of the other co-accused. It is further submitted that according to the CDR report filed by the Police, it has been found that there was no regular contact between the petitioner and the other co-accused. It is further submitted that the GPS installed in the vehicle in question is also in the name of the co-accused, namely, Devender Pandey. It is further submitted that no recovery has been effected at the instance of the petitioner and the sections which have been invoked against the petitioner are 20, 25 and 29 of NDPS Act in which “knowledge” is an essential ingredient of Section 25 of the NDPS Act, however, there is nothing on record to show that the petitioner herein was aware about the location or the usage of the car at any point of time. It is further submitted that the rigors of section 37 NDPS are not applicable in the present case. Lastly, it is submitted that the Petitioner has clean past antecedents and has been falsely implicated in the present case and therefore, no purpose will be served by keeping the Petitioner in judicial custody.

5. On the other hand, learned APP for the State has argued on the lines of the status report and it is submitted that the car was bought and



provided to the co-accused persons by the petitioner. It is further submitted that a deal was made by the petitioner with other co-accused that Rs 30,000/- shall be paid to him on every delivery of *Ganja* in which his car would be used. It is further submitted that as the petitioner was not found at his given address in Andhra Pradesh, NBWs were issued against him and after raids were conducted, it was found that the permanent address of the petitioner is in Odisha, thus, fresh NBWs were issued against him, however, he was found absconding from there as well. It is further submitted that on being arrested, the petitioner disclosed that the car was purchased by him on directions given to him by the co-accused, namely, Devender. It is further submitted that since commercial quantity of the contraband is involved, the rigors of section 37 NDPS are applicable in this case. It is further submitted that a total of 94 kg 995 gms of ganja has been recovered in the present case, which indicates that this is a huge conspiracy to supply ganja in different parts of the Delhi-NCR region, thus the same needs to be unearthed and therefore the bail application of the petitioner is strongly opposed.

6. In my opinion, no person would agree to an expensive item, like a car, to be bought in his name and then not know its whereabouts and keep its possession with someone else for such a long period of time, and this contention of the counsel for the petitioner has no force in it. Police officials went to the address of the petitioner at two different places, however he was found to be absconding from both the places



and therefore, NBWs were issued against him, which shows the intention of the petitioner to evade arrest.

7. The quantity recovered in the present case is 94 kg 995 gms of ganja, which is a commercial quantity, of which the petitioner is a part as he has supplied the vehicle in question which was used in transporting the contraband i.e. 94 Kg 995 gms of *ganja*, which falls within the category of commercial quantity and therefore, the rigors of section 37 NDPS Act are applicable.

8. Therefore, looking into the facts and circumstances of the present case, submissions made by the learned APP, seriousness of the offence committed and period of incarceration, I am of the view that no ground for bail is made out. The present bail application is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

DECEMBER 22 , 2023/ib