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

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Decided on: 08.08.2023

+ BAIL APPLN. 2620/2023

KANWARBIR SINGH

..... Petitioner

Through: Mr. Amit Chadha, Mr. Atin Chadha, Mr. Pankaj Gupta, Ms. Aeshana Singh and Ms. Smriti Shrivastava, Advocates

versus

STATE

..... Respondent

Through: Mr. Sanjeev Bhandari, Additional Standing Counsel with Mr. Kunal Mittal and Mr. Saurabh Tanwar, Advocates and with SI Navdeep, Special Cell.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.(ORAL)

1. The instant application under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking anticipatory bail in case of FIR bearing no. 43/2023, registered at Police Station Special Cell, Delhi for the offences punishable under Sections 18/25/29 of NDPS Act.

2. It is the case of prosecution that on 17.02.2023, on the basis of a secret information, a raid was conducted near MB Road, Sarita Vihar,



Delhi and two accused persons namely Ranbir Singh and Loyangamba Leishang, travelling through a white Brezza car no. AS01DR 9488, were apprehended. Thereafter, proceedings under Section 50 of NDPS Act were completed and 10 Kg opium each was recovered from bags carried by accused Ranbir Singh and Loyangamba Leishangthem. Apart from this, 30 Kg of opium was also recovered from the back seat and secret cavities of the said car. The recovered contraband and car were seized on the spot and consequently, the above said case was registered and during the course of investigation, both accused were arrested in the present case. During the course of investigation, accused persons disclosed that they had procured opium from one Kawal Deep Singh @ Sandhu @ Chotu Sardar, and they were going to supply 30 Kg opium to Jagdeep Singh @ Jaggu. They further disclosed that they had earlier also supplied 21Kg Opium to Jagdeep Singh@ Jaggu on 29.12.2022. During investigation, CDR of accused persons revealed that co-accused Jagdeep Singh @ Jaggu was engaged in illegal narcotics drug trafficking and had received opium from accused Kawal Deep Singh through co-accused Ranbir Singh and Loyangamba. Thereafter co-accused Jagdeep Singh was also arrested from Trantaran, Punjab on 10.05.23. During investigation, co-accused Jagdeep Singh disclosed that he had sold 05 packets (01 kg each) of opium to present applicant/accused Kanwarbir Singh. Thereafter, a raid was conducted at the house of the present applicant/accused on 17.05.2023, but he was not found there. A notice under Section 67 of NDPS Act was served upon the applicant through his father for joining the investigation on 23.05.2023, but the applicant



did not join the investigation. In these circumstances, the present bail application has been filed.

3. Learned counsel for the applicant/accused argues that the applicant is having apprehension that he will be arrested as notice under Section 67 NDPS Act has been given by the Investigating Officer to accused. It is argued that there is no evidence at all against the present accused and nothing was recovered from his house during the raid. It is further stated that the applicant is not part of any conspiracy to sell or receive any drug or psychotropic substance, and there is nothing on record that corroborates the role of the applicant in the alleged offence, hence the provisions of Section 29 of NDPS Act would also not be applicable. It is stated that there is no previous involvement of the applicant and, therefore, anticipatory bail be granted.

4. Learned ASC for the State, while opposing the present application, argues that in this case, total 50 kgs of opium was recovered from the possession of accused Ranbir and Loyangamba and both the accused had disclosed that they had procured the opium from one Kawaldeep Singh and were going to supply 30 kg of opium to Jagdeep Singh and he had disclosed that he had sold 05 packets of opium to the present applicant/accused. It is further argued that CDR analysis reveals the involvement of applicant in conspiracy and his custodial interrogation is required.

5. I have heard arguments addressed by both the sides and perused material on record.

6. The allegations, in a nutshell, against the applicant are that he



had received 05 packets (weighing 01 Kg each) of opium from the co-accused Jagdeep Singh, who used to procure the same from co-accused persons Kawal Deep Singh, Ranbir Singh and Loyangamba.

7. This Court notes that as per prosecution, the intercepted calls between co-accused Jagdeep Singh and Kawal Deep Singh mention the role of the present applicant/accused as receiver of illegal opium. Further, the CDR analysis of present applicant/accused shows that he was in constant touch with co-accused Kawal Deep Singh, and they had conversation in relation to transfer of money for drugs. The custodial interrogation of the present applicant/accused may be required to ascertain details regarding trade of narcotic drugs and psychotropic substances. The investigation in this case is at initial stage and non-bailable warrants have already been issued against the co-accused Kawal Deep Singh on 24.05.2023.

8. As regards Section 29 of NDPS Act, the same provides as under:

“Section 29. Punishment for abetment and criminal conspiracy.

(1) **Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy,** and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions



required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

(emphasis supplied)

9. Thus, under Section 29 of NDPS Act, a person who abets or is a party to conspiracy to commit an offence, whether offence is actually committed or not, will be liable for the offence. At this stage, in addition to the disclosure statement of co-accused Jagdeep Singh, the prosecution has also relied upon Call Detail Records of the accused persons on basis of which strong suspicion arises about likely involvement of the present applicant in the larger conspiracy to commit offences under NDPS Act. However, the applicant will be at liberty to raise contention with respect to Section 29 of NDPS Act before the learned Trial Court at appropriate stage of trial.

10. In view of the above facts and circumstances, this Court is of the view that no case for grant of anticipatory bail is made out at this stage.

11. Accordingly, the present bail application stands dismissed.

12. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression on merits of the case.

13. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 8, 2023/zp