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

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Reserved on: 17.10.2023
Pronounced on: 31.10.2023

+ **BAIL APPLN. 2939/2023**

RANJAN BISWAS

..... Petitioner

Through: Mr. Yasuf, Advocate
(appeared through VC).

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Arun Kumar,
Anti Narcotics Squad.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present bail application has been filed under Section 439 of Code of Criminal Procedure, 1973 ('Cr.P.C.') on behalf of the accused seeking regular bail in FIR bearing no. 155/2023 registered at Police Station Govindpuri, New Delhi under Sections 20/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS').

2. Brief facts of the case are that FIR in the present case was registered on a complaint filed on 06.03.2023 and upon receipt of certain information regarding the present applicant/accused being in



possession of *charas* was received. Upon receipt of this information, the information was shared with ACP, Kalkaji who had directed the Investigating Officer to conduct a raid. Accordingly, the Investigating Officer had constituted a raiding team, and a trap was laid near Guru Ravidas Marg, Govind Puri, New Delhi, and at about 10:45 AM, the present accused applicant was apprehended. Thereafter, a Notice under Section 50 of NDPS Act was served upon the applicant /accused and he had given his reply/ refusal to the notice under Section 50 of NDPS Act in Hindi. The raiding team conducted a search and upon a search, 582 grams of *charas* was recovered from his capry/short *nikkar* that he was wearing. The recovered psychotropic substance was kept in a plastic transparent box and was sealed. It was taken into possession and rukka under Section 20/61/85 of NDPS Act was prepared. Copy of the seizure memo and sealed exhibits were sent to Police Station Govindpuri for compliance of Section 55 of NDPS Act, and FIR No. 155/2023 was registered under Sections 20/61/85 of NDPS Act. During investigation, the present applicant had disclosed that he had purchased the psychotropic substance from one Pathan @ Naved. Police custody remand of the present applicant was obtained. The co-accused Pathan @ Naved was apprehended and was interrogated. He was arrested under Section 29 of NDPS Act. During investigation Pathan @ Naved had also disclosed that contraband was purchased from one Babu and Mustakim, who are residents of Saharanpur, U.P. and thereafter he had sold it to the present accused applicant. He had also disclosed that rest of the psychotropic substance was kept at his



home. 150 grams of *charas* was recovered from his house at his instance which was also seized and sealed. The charge sheet in the present case before the learned Trial Court and the case is listed for arguments on charge.

3. Learned counsel for the accused has stated that in this case, there is clear violation of Section 50 of NDPS Act as there was delay in moving application under Section 52-A of NDPS Act by the Investigating Officer before the Court of the Magistrate. It is also stated that unjustified delay of about 11 days between the recovery and application under Section 52-A of NDPS Act proves that the alleged recovery was planted and that the psychotropic substance was in the custody of the police. It is also stated that there are discrepancies in the search and seizure memo prepared by the police and that there is no public witness in this case. Therefore, the entire proceedings are vitiated, entitling the accused to bail. It is also stated that there is no bar under Section 37 of NDPS Act since the alleged recovered is of intermediate quantify.

4. Learned APP for the State, on the other hand, has stated that the accused was caught red handed and the psychotropic substance was recovered from his possession, and that any discrepancy in the seizure memo or the contentions raised regarding notice under Section 50 & 52-A of NDPS Act are a matter of trial. It is stated that it was at the instance of the present accused/applicant that the co-accused had been arrested and further *charas* was recovered from the co-accused also. Learned APP has also argued that call details record between the present accused and the co-accused proves their nexus



and that the case is still at the initial stage of hearing arguments on charge and material witnesses are yet to be examined. It is also stated that bank transactions in this case also pointed out towards guilt of the accused. Learned APP also stated that the accused has been in judicial custody of about six months whereas the punishment in this case, if convicted, is up to ten years.

5. This Court has heard arguments addressed by the learned counsel for the applicant and learned APP for the State, and has perused material on record.

6. This Court is of the opinion that in this case, the contention of the learned counsel for applicant regarding discrepancies in the seizure memo as well as irregularities regarding compliance of Section 50 of NDPS Act reflected by delay in moving application under Section 52-A of NDPS Act, cannot be a ground for grant of bail to the accused since he has been found in possession of intermediate quantity of *charas*. Further, in the present case, as regards the contention regarding notice under Section 50 of NDPS Act being typed prior to the incident and thereby making it doubtful is concerned, this Court notes that as has been rightly also noticed by the learned Trial Court, the *rukka* categorically mentions that laptop and printer were carried by the team to the spot and notice under Section 50 of NDPS Act was typed at the spot itself.

7. This Court notes that on the instance of accused Ranjan Biswas, co-accused Pathan@Naved was arrested. A perusal of CDR analysis of accused persons Ranjan Biswas and Naved@Pathan reveal that they are connected with each other, and in addition to this



as per the bank account details, several money transaction are found between the co-accused persons. The call detail records as well as the bank transactions between the present accused and the co-accused could not be explained on the part of present accused.

8. Considering the overall facts and circumstances of the case, and that the intermediate quantity of psychotropic substance was recovered from the present applicant, and co-accused was arrested on the instance of the present applicant, no ground for bail is made out at this stage.

9. Accordingly, the present bail application is dismissed.

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

11. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 31, 2023/kd