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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 03rd February, 2023

Pronounced on: 10th February, 2023

+ BAIL APPLN. 4245/2021

CHAND MEHRA

..... Petitioner

Through: Mr. A.K. Tripathi, Mr. Abhishek Rawat,
Advocates.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Aman Usman, APP for the State with
S.I. Kaushik Ghosh, P.S. Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') has been filed on behalf of the applicant seeking regular bail in case FIR No. 164/2020, registered at P.S. Crime Branch, for offences under sections 20, 25 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') pending before the Court of Sh. Ajay Kumar Jain, learned Additional Sessions Judge/Special Judge (NDPS), New Delhi District, Patiala House Court, Delhi.

2. Briefly stated, the case of the prosecution relevant for adjudication of the present application is as under:

- i. On 30.10.2020, on receipt of secret information, SI Udai Veer intercepted two vehicles bearing registration no. OD10Q5768 and DL4CAE1815 at

Signature Not Verified

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By: ANITA B. ANIL APPLN. 4245/2021
Signing Date: 10.02.2023
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Basant Gaon, near Balmiki Mandir, Samshan Ghat, Delhi. It is further alleged that four persons namely Onkar Singh Gill @ Ricky, Tajender Singh, Paramjeet Singh and Panchu Goyal Debnath were apprehended. It is the case of the prosecution that during the search of vehicle bearing registration no. DL 4CAE 1815, 40 kg of *ganja* was recovered and on the search of vehicle bearing registration no. OD 10Q 5768, 100.100 kg of *ganja* was recovered. Thus, the total recovery in the present case was around 140 kg of *ganja*. Further, it is the case of the prosecution that the present applicant is the registered owner of vehicle bearing registration no. DL4CAE1815, from which 40 kg of *ganja* was recovered.

- ii. It is alleged that the said vehicle was given by the applicant to accused Onkar Singh Gill @ Ricky, who is the relative (brother-in-law) of the former. It is the case of the prosecution that the applicant had given the car to Onkar Singh Gill @ Ricky with knowledge and intention that the car will be used for transportation of *ganja* and he also took commission of Rs. 10,000/- for the getting the car registered in his name.
 - iii. It is further alleged that as per the documents seized, co-accused Paramjeet Singh is the witness in purchasing the aforesaid vehicle by the applicant and therefore the same proves that he had knowledge that the car would be used in the transportation of the said contraband.
3. After completion of the investigation, chargesheet against the accused persons has been filed, including the present applicant, under section 20, 25 and 29 of the NDPS Act.
4. As per the status report dated 09.03.2022, authored by Assistant Commissioner of Police, SR/Crime Branch, New Delhi, the present application for bail is opposed on the following grounds:

“A. The petitioner is part of the syndicate dealing in supply of illegal contraband and knowingly has participated in the commission of the heinous crime.

B. The petitioner being owner has provided his car bearing NO.DL-4CAE-1815 for procuring and supply of illegal contraband.

C. The co-accused namely Paramjeet is an attesting witness on the car purchasing document by the petitioner and he is the brother of another co-accused Omkar Singh Gill, who is the Jija of the petitioner and all of them knowingly and intently have committed the present crime.

D. The total recovery is of 100.100 kgs of Ganja and out of the said quantity, 40 kgs of Ganja was recovered from the Car owned by the petitioner.

E. The petitioner along with other accused persons have been charge-sheeted for the offences punishable under sections 20/25/29 of the NDPS Act.

F. The recovery being commercial in nature, the bar under Section 37 of the NDPS Act would have a strong bearing in the present case.

G. The provisions of the NDPS Act have been duly complied with in the present case.

H. The mobile numbers mentioned in delivery receipt of car Toyota Corola Regd. NO DL 4CAE 1815 used in transportation of Ganja are related to accused Paramjeet Singh and applicant accused Chand Mehra and both are constant touch with each other in the month of October.

I. The petitioner may tamper with evidence and may abscond if granted any relief.”

5. Learned counsel appearing on behalf of the applicant submits that no recovery has been effected from the latter and he has been arrayed as an accused in the chargesheet only on the basis of the disclosure statement. It is further submitted that there is no other evidence to link the present applicant with the alleged recovery except for him being the registered owner of the vehicle from where the recovery was effected. It is further submitted that before his arrest, the applicant/accused was called several times by the Crime Branch and he joined the investigation regularly. It is further submitted that the investigation in the present case is complete and the chargesheet has been filed and no useful purpose would be served by keeping the present applicant in the judicial custody.

6. It is also urged by the learned counsel for the applicant that the applicant is a heart patient who has undergone heart surgery and has two stents inserted in his heart. It is further submitted that he has a wife and two minor children, aged

about 8 years and 11 years and he is the sole bread-earner of his family. It is stated that the applicant used to used to sell chicken on a vending cart in front of Keshopur Mandi, New Delhi.

7. *Per contra*, learned APP for the State submits that the applicant was the registered owner of the vehicle and he had the requisite knowledge that the said vehicle was being used for the transportation of contraband alleged to have been recovered. He submits that as per the Call Detail Record ('CDR'), the present applicant was in touch with the co-accused, Paramjeet Singh and he further submits that the present case relates to recovery of commercial quantity and therefore, the rigours of Section 37 of the NDPS Act would be applicable. It is further stated that from the facts and circumstances of the case, the twin conditions mentioned in Section 37 of the NDPS Act are not fulfilled and therefore the present application should be dismissed. On a pointed query from this Court, the learned APP on instructions from the Investigating Officer, states that the call between the applicant and co-accused Paramjeet Singh was made on 03.10.2020.

8. Heard learned counsel appearing on behalf of the parties.

9. At this stage, it is relevant to refer to Section 37 of the NDPS Act, which reads as under:

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

10. The Hon'ble Supreme Court of India, in *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798, while explaining the term "reasonable ground" in context of Section 37(1)(b)(ii), observed as under:

"6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

7. The expression used in Section 37 (1)(b) (ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

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11. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

11. Admittedly no recovery has been effected from the applicant. The recovery has been effected from the car, which is stated to be registered in the name of the present applicant, which was in possession of the other co-accused persons, including Onkar Singh Gill, who is his relative. The evidence to link the present applicant with the alleged recovery is the disclosure statement made by the co-accused, as well as by the applicant himself. Another incriminating circumstance as stated by the State is CDR reflecting call between the present applicant and co-accused Paramjeet Singh. It is pertinent to note that there is no

transcript of any conversation pertaining to the said call and furthermore, the said call was stated to be made on 03.10.2020 and the alleged recovery is stated to be effected on 30.10.2020. Apart from these two circumstances, there is no other evidence on record at this stage to demonstrate that the vehicle was being used for transportation of said contraband with the knowledge and connivance of the present applicant. Admittedly, the disclosure statement of the present applicant and other co-accused persons are inadmissible as per Section 25 of the Indian Evidence Act, 1872.

12. In view of the above, the applicant has established a probable cause justifying recording of satisfaction of this Court under Section 37 of the NDPS Act and since there is no previous involvement of the applicant in any case under the NDPS Act, the twin conditions of Section 37 of the NDPS Act stands satisfied. The present applicant is in judicial custody since 10.03.2021, chargesheet in the present case has already been filed, applicant is not required for any further investigation.

13. In view of the foregoing, the application is allowed and the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 50,000/- alongwith one surety of like amount to the satisfaction of the learned trial Court/link Court, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at House No. 271-A, First Floor, Om Vihar, Uttam Nagar, New Delhi-110059. The applicant is directed to reside at the same address. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer.
- ii. The applicant shall report to the office of STARS-1/Crime Branch, twice in a week, i.e., on every Wednesday and Friday at 10.30 AM and the STARS-1/Crime Branch is directed to release him by 11.00 AM after recording his presence and completion of all the necessary formalities.
- iii. The applicant shall not leave the NCT of Delhi without the prior permission of the trial Court.

iv. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

vi. In case it is established that the applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.

14. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.

15. The application stands disposed of along with all the pending application(s), if any.

16. Let a copy of this order be communicated to the concerned Jail Superintendent.

**AMIT SHARMA
JUDGE**

FEBRUARY 10th, 2023/bsr