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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 305/2024

ALI HUSSAIN IN JC

.....Petitioner

Through: Mr. Ravi Nayak, Advocate.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for the State with Mr. Deepak Biswas, Mr. Rohit Kumar, Mr. Pratap Singh, Mr. Hemant Singh and Mr. Vineet Kumar, Advocates with SI Ankur Yadav, P.S.: Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

21.08.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks grant of regular bail in case FIR No. 0116/2021 dated 03.07.2021 registered under sections 20/25 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS') at P.S.: Crime Branch, Delhi. Consequent upon completion of investigation, the offence under section 29 of NDPS Act has also been added against the petitioner *vide* chargesheet dated 27.12.2021.

2. Notice on this bail petition was issued on 31.01.2024; whereupon Status Reports dated 'nil' and 14.08.2024 have been filed on behalf of the State.



3. Nominal Roll dated 06.02.2024 has also been received from the Jail Superintendent.
4. The essence of the allegation against the petitioner is that about 179.10 kg of *ganja* was recovered during a search and seizure operation, which is a commercial quantity of the said contraband; and the petitioner was the driver of the truck from which contraband is alleged to have been recovered from the back of the truck.
5. Mr. Ravi Nayak, learned counsel appearing for the petitioner submits, that his main argument insofar as the present bail petition is concerned, is that even going by the record of the matter, the sampling of the allegedly recovered contraband in the matter was not done in accordance with section 52A (2) of the NDPS Act as read with Standing Order No. 1/88 dated 15.03.1988 issued by Narcotics Control Bureau, Ministry of Home Affairs, Government of India.
6. Mr. Nayak draws attention of this court to order dated 08.07.2021 which summarises the proceedings conducted before the learned Magistrate on an application under section 52A of the NDPS Act, for drawing samples of the alleged contraband recovered.
7. Counsel submits that a perusal of the said order will show, that it is the admitted case of the prosecution, that the case property *viz.* the contraband allegedly recovered, was contained in *07 white plastic bags* marked as Serial Nos. 1 to 7 and that each of the 07 plastic bags contained *05 bundles* of, what the prosecution claims, was *ganja*. It is pointed-out that as recorded in order dated 08.07.2021, only *two samples of 200 grams* were drawn from *each* of the 07 plastic bags; these were photographed; and were then put into zip-lock polythene



bags and further placed in yellow envelopes and marked as serial No. 1A and 1B.

8. Mr. Nayak submits that, as recorded in order dated 08.07.2021, this procedure was repeated for each of the 07 plastic bags; and therefore, it is the admitted position, that from each of the 07 plastic bags containing 05 bundles each, *only 02 samples were drawn from the 05 bundles*, and the samples drawn were marked 1A and 1B upto 7A and 7B.
9. It is argued, that it is therefore clear, that samples were *not drawn from each of the 05 bundles* allegedly found in each of the 07 plastic bags.
10. In this context, Mr. Nayak draws attention to clause 1.7 (a) to (e) of Standing Order 1/88 dated 15.03.1988, to submit, that the procedure followed for sampling of the alleged contraband was not in compliance of the said clause, inasmuch as the said clause requires that a sample ought to have been drawn from *each* of the 05 bundles found in each of the 07 plastic bags allegedly recovered, which was admittedly not done. Mr. Nayak has taken the court through detailed provisions of clause 1.7 (a) to (e) to support his argument.
11. To further support his submission, Mr. Nayak has cited order dated 20.03.2024 made by a Co-ordinate Bench in BAIL APPLN. No.2334/2023 titled ***Aas Mohammad vs. State Govt. of NCT of Delhi***, to submit that in the said case, relying upon an earlier decision of another Co-ordinate Bench in order dated 26.04.2023 titled ***Sachin Kumar vs. State (Govt. of NCT of Delhi)*** in BAIL APPLN. No. 557/2023, it has been held that where samples are not drawn from



each bundle contained in *each bag (katta)*, such sampling was not in accordance with the prescribed mode; and that therefore the rigours of section 37 of NDPS Act would not be attracted in such case; and the accused in that case was held entitled to bail.

12. Mr. Nayak has also placed reliance on the decision of a third Co-ordinate Bench in BAIL APPLN. No. 3233/2022 titled ***Laxman Thakur vs. State (Govt. of NCT of Delhi)*** to submit, that the said decision also lays down the same principle.
13. Counsel also points-out, that as reflected in the nominal roll, the petitioner has been in judicial custody since 06.07.2021 and has accordingly spent more than 02 years and 07 months in judicial custody as of that date. Furthermore although, the nominal roll reflects that 03 other cases pending against him, that however has not been supported by the status reports filed by the State before this court.
14. On the other hand, opposing the grant of bail, Mr. Pant, learned APP appearing for the State argues, that the intent and purpose of section 52A(2) of the NDPS Act is to ensure the credibility of the seizure made by describing that the inventorisation and sampling of the contraband seized must be done in the presence of a Magistrate and must be certified by the Magistrate.
15. Learned APP submits that admittedly in the present case, a detailed order dated 08.07.2021 was recorded by the learned Magistrate on the application filed by the prosecution under section 52A of the NDPS Act, which sets-out in detail the procedure followed for sampling. It is submitted, that the order authoritatively records that 02 samples of



200 grams each were drawn from each of the 07 plastic bags containing 05 bundles each. Mr. Pant submits that there is no mandate in law, nor even in Standing Order 1/88 dated 15.03.1988, requiring that a sample must be drawn from *each of the 05 bundles* that were found in each of the 07 plastic bags.

16. Mr. Pant argues, that there was substantial compliance with clause 1.7 of Standing Order 1/88 dated 15.03.1988 and therefore the sampling of the contraband recovered was done in the prescribed mode and is therefore legal.
17. In the opinion of this court, on the basis of the material presently on record, it is neither possible nor desirable, to express a view as to the validity or otherwise of the sampling procedure followed for the contraband alleged to have been recovered in the present case. This court is of the view, that that aspect would require detailed appreciation of evidence, which can only be done in the course of the trial.
18. However, that being said, in view of the judgments of Co-ordinate Benches cited on behalf of the petitioner, it also cannot be said that the sampling procedure followed in the present case is in line with what has been enunciated in those judgments.
19. That apart, the nominal roll in the present case shows that the petitioner has been in custody since 06.07.2021 and has therefore spent about 02 years and 07 months in custody; that his overall jail conduct has been 'satisfactory'; and that the petitioner is not implicated in any other criminal case.



20. Upon being queried, learned APP also informs the court as of date, only 01 out of 32 prosecution witnesses have deposed in the matter; and evidently therefore, the trial is unlikely to be completed any time soon.
21. Upon an overall conspectus of the facts and circumstances of the case, this court is persuaded to admit the petitioner - **Ali Hussain s/o Satbir** - to *regular bail* pending trial, subject to the following conditions :
 - 21.1. The petitioner shall furnish a personal bond in the sum of Rs. 25,000/- (Rupees Twenty-five Thousand Only) with 02 sureties in the like amount, of whom at least 01 should be from a family member, to the satisfaction of the learned Trial Court;
 - 21.2. The petitioner shall furnish to the Investigating Officer ('I.O.') a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
 - 21.3. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;
 - 21.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial;



- 21.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing about such change.
22. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
23. A copy of this order be sent to the concerned Jail Superintendent *forthwith*.
24. The petition stands disposed-of.
25. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 21, 2024/ak