



2024:DHC:10012



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

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**RESERVED ON -26.11.2024
PRONOUNCED ON - 23.12.2024**+ **BAIL APPLN. 674/2024****BITHAI RAI**

.....Petitioner

Through: **Mr.Ankaj Giri, Advocate**

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: **Mr.Mukesh Kumar, APP for the State****CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA,J.:**

1. Present petition has been filed seeking grant of regular bail in case FIR 247/2023 u/s 20/29 NDPS Act registered at Khyala
2. Briefly stated the case of the prosecution is that on 17.05.2023 HC Manjeet was present at the office of Narcotics Squad West District where received confidential information about an individual named Anil Jha, allegedly involved in smuggling ganja from Guwahati to Delhi. The information indicated that Anil Jha would deliver a consignment of ganja to the petitioner near Gaon Wala Chowk,



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Raghubir Nagar, Delhi. After complying with Section 42 of the NDPS Act, HC Manjeet constituted a raid team and a trap was laid near place of information. However, later the informer met one of his contacts there and confirmed that Anil Jha had already met the petitioner, and both had proceeded to the petitioner's rented residence at M-131, First Floor, Raghubir Nagar, New Delhi. Pursuant to this, a raid was conducted at the said residence, where the petitioner, Bithai Rai, and Anil Jha were found. Following compliance with Section 50 of the NDPS Act, personal searches of both individuals were conducted, but no contraband was recovered. During the search of the premises, two bags containing a total of 61.356 kg of ganja were found. The contraband was seized, and samples were collected as per the prescribed procedure. The recovered substance, identified as a commercial quantity of ganja, was sent to the FSL for analysis. Based on the findings, the case was registered, and a charge sheet was filed after the investigation.

3. Learned counsel for the petitioner submits that the petitioner is 67 years of age and has been in custody since 17.05.2023. He submits that the case suffers from procedural irregularities as even the rukka prepared indicates that the alleged incident occurred on 17.05.2023 at 7:30 p.m., which is after the sunset time of 7:06 p.m. Learned Counsel submits that it is evident that the police entered into the petitioner's residence and conducted subsequent proceedings after sunset which is in violation of the provisions of Section 42 of the NDPS Act. Further, it is submitted that the raiding party failed to comply with the mandatory procedures under the second proviso to Section 42(1) and 42(2) of the



NDPS Act, as well as Section 100(4) of the Cr.P.C. Learned counsel submits that since the chargesheet has been filed and the trial is likely to take, the petitioner may be admitted to bail. In support of this contention, reliance is placed on the judgments in *State of Punjab v. Balbir Singh* (1994) 2 SCR; *Sarija Banu (A) Janarthani @ Janani & Others v. State through Inspector of Police* (2004) 12 SCC 266; [*Sarvothaman Guhan @ Sarvo vs. NCB*, Bail Application No. 2879/2022, and *State of Rajasthan vs. Jag Raj Singh @ Hansa*, Criminal Appeal No. 1233/2006.

4. Learned APP submits that the contraband recovered in the present case is of commercial quantity and therefore besides the conditions under Section 439 Cr.P.C., the bar under Section 37 NDPS Act is also attracted. Learned APP further submits that compliance with Sections 42 and 50 of the NDPS Act is a matter to be examined during the trial and cannot be adjudicated at this stage. It has also been submitted that simply based on the age of the petitioner, he cannot be given the benefit of being admitted to bail.

Section 37 of NDPS Act provides 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 [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.]

5. The bare perusal of Section 37 of NDPS Act makes it clear that by virtue of non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 there are statutory restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. The expression “reasonable grounds” has come up for discussion in the judgment of ***Collector of Customs, New Delhi v. Ahmadalieva Nodiraa*** (2004) 3 SCC 549, wherein it was *inter alia* held as under:

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to



justify satisfaction that the accused is not guilty of the alleged offence.”

6. Similarly, the Apex Court while explaining the term ‘reasonable ground’ used in Section 37 of the NDPS Act in ***Union of India vs. Shiv Shanker Kesari*** (2007) 7 SCC 798, *inter alia* held as under:

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.

8. The word “reasonable” has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word “reasonable”.

“7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.”

See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532]

[...]

10. The word “reasonable” signifies “in accordance with reason”. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of



Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315]

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.” (emphasis supplied)

7. Further, recently, In ***State of Kerala and others vs. Rajesh and others*** (2020) 12 SCC 122, it was *inter alia* held as under:

“20. The expression ”reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

8. Thus, the bare perusal of the aforesaid judgments would make it clear that in order to have ‘reasonable grounds’ for admitting the accused to bail, there must be credible and plausible grounds for the court to believe that the accused is not guilty of the alleged offence. Besides this, there is an additional condition that the accused is unlikely to



commit any offence while on bail. The aforementioned conditions have been put in place by the legislature in its wisdom to curb the menace of drug trafficking in the country. The Constitutional Courts have time and again held that these conditions must be complied with in their true spirit.

9. The issue of non-compliance with the procedural requirements under Section 42 of the NDPS Act at the stage of bail was also considered by the Apex Court in ***Union of India vs. Nawaz Khan***, Criminal Appeal No. 1043 of 2021 (Arising out of SLP (Crl) No. 1771 of 2021). In this case, the reliance was placed upon ***Karnail Singh vs. State of Haryana*** (2009) 8 SCC 539 wherein it was *inter alia* held that though the writing down of information on the receipt of it should normally precede the search and seizure by the officer, however, in exceptional circumstances that warrant immediate and expedient action, the information shall be written down later along with the reason for the delay. In *Karnail Singh* (supra), it was further *inter alia* held as under:

35. [...] (c) *In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.*

(d) *While total non-compliance with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any*



delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001.”

10. Previously also in Khet ***Singh vs. Union of India*** (2002) 4 SCC 380, the Apex court *inter alia* held that it is true that the search and seizure of contraband articles is a serious aspect in the matter of investigation related to offences under the NDPS Act and even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused. It is a settled proposition that the court at the stage of bail is not required to meticulously appreciate the evidence. The court at this stage is only required to take a prima facie view. The meticulous examination of evidence at this stage may held up prejudice in either of the parties.
11. Furthermore, The coordinate bench of this court also in ***Gurjeet Singh***



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vs. State of NCT of Delhi Bail Appln. 2209/2022 vide order dated 07.09.2022 *inter alia* held that the affect of non-compliance, if any, of any mandatory provision by the Investigating Officer, any irregularity or illegality committed at the time of making of the seizure memo, etc.is also essentially a matter of trial and cannot be looked into in detail at this stage for grant of bail unless there is any glaring irregularity which will make the seizure itself illegal.

12. Perusal of the rukka indicates that the first secret information was received at 6.10 p.m. p.m. and as per information the contraband was to be supplied to petitioner between 6.45 p.m. to 7 p.m. at near Gaon Wala Chowk, Raghbir Nagar, Delhi. The proceedings started immediately thereafter. Rukka also confirms that the raiding party was informed on reaching the spot as initially told by informer, that the petitioner has already been given two bags and he has gone to his rented room.
13. In the present case admittedly the proceedings had commenced on the receipt of the information. The raiding party on reaching the place was informed that Anil Jha had already been given two bags to the petitioner. Upon this raiding party proceeded to M-131, First Floor, Raghbir Nagar, Delhi from where the alleged recovery of contraband was effected. Insp.Anuj Yadav in his status report dated 06.04.2024 has specifically stated that initially there was no information about the address of Bithai Rai. The recovery was effected only after the raiding party reached there upon receiving further information from the secret informer at the spot. As per Insp. Anuj Yadav for making the effective raid/recovery and due to lack of time the search warrant could not be



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obtained. This proposition cannot be outrightly dismissed at this stage.

14. In light of the above discussion, the Court finds that there is prima facie evidence connecting the petitioner to the recovery of commercial quantities of contraband. The alleged procedural lapses do not vitiate the proceedings at this stage and are matters to be examined during trial. Given the applicability of the stringent provisions under Section 37 of the NDPS Act, the petitioner has failed to meet the mandatory twin conditions required for the grant of bail. Accordingly, the bail application is dismissed.

DINESH KUMAR SHARMA, J

DECEMBER 23, 2024

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