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

+ **BAIL APPLN. 929/2024**

KAMLAVATI @ JYOTI

..... Petitioner

Through: Mr. Dhananjay Singh Sehrawat and
Ms. Sonia Rana, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Richa Dhawan, APP with SI
Rajendra Meena, Anti Narcotics Squad, West
District, New Delhi, for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

09.05.2024

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1. This application has been filed by the applicant Kamlavati @ Jyoti W/o Sh. Harinder Rai under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular bail in case FIR No. 247/2023 dated 18.05.2023 registered under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at PS: Khyala.
2. Status Report has been filed on behalf of the State.
3. The case of the prosecution as emerging from a reading of the FIR and the Status Report is as follows:

"1. On 17.05.2023, HC Manjeet No. 1374/W was present at the office of Narcotics Squad West District. A secret informer came to him and informed that one person namely Anil Jha, who smuggles ganja from Gowahati to Delhi would deliver a consignment of Ganja to one Bithai Rai near Gaon wala Chowk, Raghubir Nagar, Delhi. Consequently, after complying with the provisions of section 42 NDPS Act, a team was constituted and a trap was laid near place of information. However, the informer met one of his contacts there and confirmed that Anil Jha has already met with Bithai Rai and both of them went to rented house of



Bithai Rai i.e. M-131, First Floor, Raghubir Nagar, New Delhi. A raid was conducted at the above-mentioned house where two persons namely Bithai Rai S/o Ramakbal Rai R/o Vill Mirampur, PS Raghapur, District Vaishali, Bihar Age-65 Years and Anil Jha S/o Kishori Jha R/o Vill Chandpur, PS Raghapur, District Vaishali, Bihar Age-28 years were found present in the house. After complying with the provisions of section 50 NDPS Act personal searches of both the persons was conducted in which no contraband was recovered. Further, during search where two bags kept in the room were checked in which total 61.356 Kgs Ganja was recovered. The recovered contraband was seized and the present case has been registered and investigation of the case was marked to the undersigned.

2. During course of investigation accused/applicant Bithai Rai S/o Ramakbal Rai R/o Vill Mirampur, PS Raghapur, District Vaishali, Bihar Age-65 Years and co-accused 2. Anil Jha S/o Kishori Jha R/o Vill Chandpur, PS Raghapur, District Vaishali, Bihar Age-28 years were arrested on 18/05/2023 in the above cited case and Bithai Ray disclosed that his son Sanjay alongwith 4-5 person always purchased the Ganja from Assam and then Bithai Rai used to sell that Ganja in Delhi with the help of accused person Jagdev Rai R/o Disst-Vaishali, Bihar.

3. During the course of further investigation sampling of drugs had been obtained in the court of Ld. Duty MM Tis Hazari court. And samples of drugs have been deposited in FSL Rohini. And the result of same has come positive.

4. During the course of investigation Co-accused namely Jagdev was arrested on 12/1/2024 and during his interrogation he revealed that he gave 8 packed of Ganja to a lady namely Kamlawati @ Jyoti on 11/1/2024 and those packets would be at her jhuggi which is located at railway line Mayapuri. As per the disclosure of accused Jagdev Rai another accused person namely Kamlawati was arrested with the total recovery of 15.774 Kg Ganja on the instance of accused Jagdev.

5. During the course of further investigation another sampling of drugs had been obtained in the court of Ld. Duty MM Tis Hazari court. And samples of drugs have been deposited in FSL Rohini. And the result of same has also come positive.

6. One another co-accused namely Sanjay S/o Bithai has already declared PO by the Session court. The chargesheets of the above case has already filed before the session court. The next date of hearing in the above case is fixed for charge on 07/05/2024."

4. Learned counsel for the applicant states that the applicant is innocent and has been falsely implicated in the present case. Applicant is a woman



aged 51 years and sold vegetables for livelihood. She has clean antecedents. Assuming without admitting that 15.774 Kgs. of Ganja was recovered from the applicant as alleged, the same is only an intermediate quantity and does not attract the rigors of Section 37 of the NDPS Act. Charge sheet has been filed and investigation is complete and hence custody of the applicant is not required. Charges have not been framed as yet and conclusion of trial is likely to take a long time. Reliance is placed on an order of the Supreme Court in *Puranmal Jat v. State of Rajasthan, 2023 SCC OnLine 1418*, as well as orders of the Co-ordinate Benches of this Court in: (a) *Anita v. State (NCT of Delhi), Bail Appln. 1538/2022*, decided on 20.07.2022; (b) *Sunil v. The State of NCT of Delhi, Bail Appln. 495/2022*, decided on 28.07.2022; (c) *Gajender Bahadur v. The State Govt of NCT of Delhi, Bail Appln. 3655/2022*, decided on 31.01.2023; (d) *Ansar Ahmed v. State (NCT of Delhi), 2023:DHC:2579*; (e) *Mohd. Farman v. State Govt of NCT of Delhi, 2023:DHC:6402*; *Tula Ram Singh v. State Govt of NCT of Delhi, Bail Appln. 3777/2023*, decided on 20.03.2024, where Courts have granted bails to the applicants therein on the ground that quantity of the contraband allegedly recovered was intermediate and the rigors of Section 37 of the NDPS Act will be inapplicable.

5. Learned APP appearing on behalf of the State contends that the allegations against the applicant are serious as the menace of contraband drugs is plaguing the society, especially the younger generation. Relying on the Status Report, it is urged that co-accused Jagdev was arrested on 12.01.2024 and during his interrogation he revealed that he had given 8 packets of Ganja to the applicant on 11.01.2024, which could be recovered from her jhuggi. At the instance of the co-accused Jagdev, applicant was



arrested and a total recovery of 15.774 Kgs. Ganja was made from her house. It is also stated that one of the accused Sanjay, who is the son of co-accused Bithai, is absconding and has been declared a Proclaimed Offender by the Trial Court on 16.04.2024.

6. Heard counsel for the applicant and learned APP for the State.

7. A perusal of the Status Report shows that even as per the case of the prosecution, the total quantity of Ganja recovered from the applicant is 15.774 Kgs., which is an intermediate quantity. In the judgments aforementioned, it was held that where the quantity of contraband allegedly recovered is of an intermediate quantity, the rigors of Section 37 NDPS Act would not apply. Applying this yardstick to the present case, the applicant is not required to meet the threshold of the twin conditions stipulated in Section 37. Investigation is complete and Charge Sheet has been filed. It is an uncontroverted position that the antecedents of the applicant are clean.

8. Learned APP has strenuously relied on the disclosure statement of the co-accused Jagdev, at whose instance the applicant was arrested and recovery made from her house. The disclosure statement made by a co-accused under Section 67 of the NDPS Act is inadmissible in law without corroboration and cannot be taken as a sole factor to deny bail, as held by the Supreme Court in *Toofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, and this Court in *Md. Irshad v. State (GNCTD of Delhi)*, 2022 SCC OnLine Del 1317 and *Amit Ranjan v. Narcotics Control Bureau, Delhi*, 2022 SCC Online Del 1532.

9. Without adverting to the merits and commenting thereon and in view of the overall facts and circumstances, it is directed that the applicant shall be released on bail upon her furnishing a personal bond in the sum of



Rs.50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court and further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. She shall provide her mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
- iii. She shall furnish her permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in her residential address;
- iv. She shall appear before the Trial Court as and when the matter is taken up; and
- v. She shall not indulge in any criminal activity or contact any witness and/or any other person associated with the present case.

10. It is made clear that nothing stated in this order shall tantamount to expression of an opinion on merits of the case.

11. Application stands disposed of.

12. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

MAY 9, 2024

B.S. Rohella