



2024:DHC:6618



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

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Date of decision: 27th August, 2024

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BAIL APPLN. 1069/2024

DEEN MOHAMMAD ALIAS BHOLA

.....Petitioner

Through: Mr. Rahul Sharma, Mr. Gyan Ranjan Kashyap, Mr. Aashutosh Ahuja, Mr. Kshitij Goel & Mr. Deepak Ghai, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Richa Dhawan, APP for State. S.I. Ravi Shankar, PS AATS.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Petition under Section 439 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) has been filed on behalf of the petitioner Deen Mohammad @ Bhola seeking bail in FIR No. 02/2021 registered under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act, 1985"*) at Police Station I.P. Estate, Delhi.
2. The allegations made against the petitioner are that on 04.01.2021, a raiding team was constituted on receipt of secret information received in the Office of AATS, Central District, Kamla Market, Delhi which was recorded *vide* DD No. 04 dated 04.01.2021. At about 12:30 P.M., the petitioner came there from the side of Rajghat Service Road and was carrying blue/white

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colour bag in this right hand and also had a wine colour bag on his shoulder. Another person Shahrukh Khan, came there after five minutes and started talking to petitioner who handed over a wine colour bag to him; both the petitioner and Shahrukh Khan were apprehended.

3. On search of the petitioner and Shahrukh Khan, Cannabis/Marijuana were recovered from them. A Notice under Section 50 of NDPS Act, 1985 was separately served upon both the accused persons who were apprehended. During the search of the the blue/white colour bag of which the Petitioner was found in possession, eleven packets of Cannabis/Marijuana (Leaf) were recovered. The total weight of the Cannabis recovered from the petitioner while weighting on the electronic weighing machine, was found to be 22 kgs.

4. During the search of co-accused Shahrukh Khan, three packs of the Cannabis/Marijuana (Leaf) were recovered from his wine coloured bag. The total weight of the Cannabis recovered from Shahrukh Khan was found to be 6 kgs.

5. The samples of Cannabis/Marijuana (Leaf) so recovered from the petitioner and Shahrukh Khan were taken and sent to FSL. On completion of the investigations, the Chargesheet dated 22.03.2021 and the Supplementary Chargesheet dated 12.07.2021 have been filed before the learned Trial Court.

6. It is submitted on behalf of the petitioner that there are 13 prosecution witnesses out of whom the testimony of only 6 prosecution witnesses has been recorded till date. The trial is likely to take long Hence, the petitioner is entitled to bail.

7. The petitioner has placed reliance on the judgments in Tareena vs.



State NCT of Delhi, decided *vide* BAIL APPLN. 314/2022 by this Court, Sandeep @ Chiku vs. State NCT of Delhi, decided *vide* BAIL APPLN. 3016/2023 by this Court, Gurpreet Singh vs. State of NCT of Delhi, decided *vide* BAIL APPLN. 857/2023 by this Court, Ram Bharose vs. State (Govt. of NCT of Delhi), decided *vide* BAIL APPL. 1623/2022 by this Court, Ahmed Hassan Muhammed vs. The Customs, decided *vide* BAIL APPLN. 3076/2022 by this Court, Basant Rai vs. State, decided *vide* CRL. APPEAL No. 909/2005 by this Court, Amani Fidel Chris vs. Narcotics Control Bureau, 2020 SCC OnLine Del 2080, Laxman Thakur vs. State, (2022) OnLine Del 4427, Edward Khimani Kamau vs. The Narcotics Control Bureau, decided *vide* CRL.A. 113/2011 by this Court, Gopal Das vs. NCB, decided *vide* BAIL APPLN. 3491/2020 by this Court, Om Prakash vs. State of U.P., decided *vide* BAIL APPLN. 9660/2021 by this Court, Noor Aga vs. State of Punjab & Anr., decided *vide* CRL.A. 1034/2008 by this Court, Gangadhar @ Gangaram vs. The State of Madhya Pradesh, decided *vide* CRL.A. 504/2020 by this Court, Ram Prakash vs. State, decided *vide* CRL.A. 1363/2014 by this Court and Mamta vs. State, decided *vide* BAIL APPLN. 2270/2021 by this Court.

8. The petitioner undertakes to remain bound by the terms that may be imposed and undertakes to appear in the Court regularly. The petitioner also submits that there is no likelihood of tampering with the prosecution witnesses or fleeing from the justice.

9. Therefore, the prayer is made for grant of regular bail.

10. **The hard copy of the Status Report filed on behalf of the State** has been handed over in the Court today, wherein it is stated that the petitioner is not a permanent resident of Delhi. There is every likelihood of his indulging



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in the same crime in case he is admitted to bail. It is further submitted that the petitioner may also evade the process of law and commit further crime.

11. Therefore, the present Bail petition has been strongly opposed.

12. **Submissions heard.**

13. The bail has essentially been sought on the ground of non-compliance of Section 52A of the NDPS Act, 1985 and delay in concluding the Trial.

14. It is submitted that the samples were taken from all the 11 packets and then sent to FSL which is in contravention of Section 52A of the NDPS Act, 1985 and also of the Standing Order 1/89 dated 13.06.1989 issued by the Department of Revenue, Ministry of Finance, Government of India which provides *that where more than one packet/container is seized from the accused, it is advisable to draw one sample (in duplicate) from each of such packages/containers. However, where the packages/containers seized together are identical in size and weight, bearing identical marking and the content of each packets gives identical result on colour testing by Drug Identification Kit, conclusively indicated that the packages/containers are identical in all respect, the packages/containers may be bunched together in lots of 10 packages/containers (in case of Ganja and Hashish lots of 40 packages/containers) and for each such lots of packages/containers, one sample (in duplicate) may be drawn. While drawing the samples from a particular lot, it must be ensured that representative samples in equal quantity are taken from a package/container of that lot and mixed together to make composite whole from which the samples are drawn for that lot.*

15. In Betty Rame vs. Narcotics Control Bureau, (2023 SCC OnLine Del 3279), the Co-ordinate Bench of this Court had observed *that the lack of compliance of these provisions necessarily import the element of "doubt"*,



moreover, a “reasonable doubt”. This, therefore, will segway into the issue of proving guilt, considering that the guilt of any accused has to be proved beyond reasonable doubt. Therefore, it would not be enough to contend this issue of non-compliance which was to be considered at the time of trial and not at the stage of grant of bail. Such non-compliance of the procedure provides reasonable ground for acquittal of an accused and thus, a fortiori at the stage of granting bail, it would be more important to consider this possibility, even if it is just a possibility.

16. While much emphasis is made on the fact that no strict compliance of the procedure detailed in Section 52A of the NDPS Act, 1985 read with Standing Order 1/89 dated 13.06.1989 has been issued by the Department of Revenue, Ministry of Finance, Government of India, but as has been observed in the case of Cannabis/Marijuana, upto 40 packets may be clubbed together. Here in the preset case, the packets were 11 and their clubbing may not be considered as contravention of S.52A of NDPS Act read with the Standing Order 1/89 dated 13.06.1989 for the purpose of taking sample. This ground as agitated by the petitioner, is not tenable.

17. The amount of Ganja/Marijuana recovered from the petitioner was in commercial quantity.

18. The other ground raised on behalf of the petitioner is the delay in concluding the trial. The petitioner is in judicial custody from 04.01.2021 and out of 13 prosecution witnesses, the testimony of 6 witnesses has been recorded so far, in the more than three and a half year.

19. In Mohd. Muslim vs. State (NCT of Delhi), Special Leave Petition (Criminal) No. 915/2023, the Supreme Court held that undue delay in trial can be a ground for grant of bail under the NDPS Act, 1985 despite Section



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37 of the Act putting heavy limitations on the grant of bail.

20. Considering the totality of the circumstances as narrated above and also that the trial may take a long time to conclude, the petitioner is admitted to regular bail upon his furnishing a personal bond in the sum of Rs. 50,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions: -

- a) Petitioner shall not leave Delhi/NCR without prior permission of the Court;
- b) Petitioner shall appear before the Court as and when the matter is taken up for hearing;
- c) Petitioner shall provide his mobile number and also the mobile number of their wife/surety to the IO concerned, both of which shall be kept in working condition at all times and they shall not change the mobile numbers without prior intimation to the Investigating Officer concerned;
- d) Petitioner shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;
- e) Petitioner shall remain 100 meters away from the complainant;
- f) Petitioner shall not leave the country without prior permission of the learned Trial Court and shall surrender their passport, if any, before the learned Trial Court;
- g) Petitioner shall not try to contact, threaten or influence any of the witnesses of this case; and
- h) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

21. The Registry is further directed to communicate this Order to the



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learned Trial Court and as well as to the concerned Jail Superintendent.

22. Accordingly, the present petition is disposed of.

23. The Registry is also directed to take the Status Report filed on behalf of the State on record.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 27, 2024
S.Sharma

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SHARMA

Signing Date: 29.08.2024
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