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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1282/2024 & CRL.M.A. 11171/2024

VISHNU KUMAR CHAURASIA

..... Petitioner

Through: Ms. Shalini and Mr. Ganesh Kumar,
Advocates.

versus

STATE GOVT.OF NCT OF DELHI & ANR.

..... Respondents

Through: Ms. Richa Dhawan, APP for State
with SI Shubham Chaudhary, PS: AATS, South
East District.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

27.05.2024

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1. This application has been filed on behalf of the applicant under Section 438 Cr.P.C. read with Section 482 Cr.P.C. seeking anticipatory bail in FIR No. 380/2023 dated 21.06.2023 under Sections 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') registered at PS: Okhla Industrial Area ('OIA'). Charge Sheet has been filed wherein Section 29 of NDPS Act was added.

2. The case of the prosecution is that on 21.06.2023, ASI Inderjeet received secret information that two Ganja suppliers will pass through Maa Anandmayee Marg, OIA to supply large quantities of Ganja in Sangam Vihar area and if raid was conducted, they might be apprehended. Information was shared with senior officers and a DD entry No. 59A dated 21.06.2023 was lodged under Section 42 of NDPS Act at PS: OIA. On



directions of senior officers, raiding party was formed and the team reached near MCD School, Indra Kalyan Vihar, Maa Anandmayee Marg, Okhla Industrial Area Phase- I, Delhi. At around 05:40 PM, two persons were seen coming from Crowne Plaza side with a bag and going towards bus stop near the MCD School and both were identified by the secret informer. Both persons namely, Bicky Singh, aged 27 years and Kanhaiya Kumar, aged 38 years were apprehended with one carry bag and search was conducted as per procedure under Section 50 of NDPS Act. On search of the bag, 5.110 kg Ganja was recovered from their possession. Ganja was seized in one white plastic katta and sealed with the seal of IJS and taken in police possession through seizure memo. Pulinda was produced before Insp. Sukhbir Malik, SHO/OIA who further sealed the parcel with the seal of SM in compliance of Section 55 of NDPS Act. Present FIR was registered and both the persons were arrested and interrogated. During interrogation, both disclosed that they used to purchase Ganja from their known source namely, Chandan R/o Town Nirsa, Distt Dhanbad, Jharkhand and supplied to Chand, Suman and Shiva in Delhi.

3. It is stated in the status report that during PC remand, at the instance of accused Kanhaiya Kumar, Chand was apprehended with one carry bag and on search of his bag, a polythene containing 1.200 kg of Ganja was recovered along with a mobile phone bearing Sim No. XXXXXXXXX61 through which he contacted co-accused Kanhaiya Kumar for purchasing the ganja. Ganja was seized in one white plastic katta and sealed with the seal of R.S. and taken in police possession vide seizure memo.

4. During further course of investigation, raid was conducted at Nirsa Dhanbad and at the instance of accused Kanhaiya Kumar, co-accused



Chandan Yadav S/o Lt Mishri Yadav was arrested and at the instance of Chandan Yadav, his mobile phone bearing Sim Nos. 7004504894 and 7857095680, which he used for contacting Kanhaiya Kumar and Bicky Singh was recovered from his house along with cash received from Kanhaiya Kumar for delivery of Ganja to Bicky Singh. During interrogation, Chandan Yadav disclosed that he purchased Ganja from his known source namely, Vishnu Kumar Chourasiya (applicant herein) and supplied to Kanhaiya Kumar and Bicky Singh. He also disclosed the mobile number of the applicant and at his instance raid was conducted at the residence of applicant but nothing incriminating was found. Thereafter notice under Section 67 of the NDPS Act was served on the father of the applicant, but the applicant did not join investigation and the concerned Court issued NBWs and initiated proceedings under Section 82 Cr.P.C. On completion of investigation, charge sheet has been filed before the Court. FSL Report of the seized samples has been received and samples are found positive for Ganja.

5. Insofar as the applicant is concerned, it is stated in the Status Report that after getting interim protection from this Court vide order dated 22.04.2024, applicant joined investigation and during interrogation, revealed that he is known to Chandan Yadav for the past 5 years, as they are neighbours in the village. He denied all allegations relating to smuggling of Ganja. With respect to the bank transactions between him and Chandan Yadav, applicant stated that he had lent Rs.80,000/- to Chandan Yadav on 5% interest in August, 2022 through UPI, which is linked to his SBI Bank A/c No xxxxxxxx844. The amount was returned by Chandan Yadav along with the interest in June, 2023, on different dates. He produced a verified



and notarised copy of agreement executed between him and Chandan Yadav pertaining to the loan transaction. During the course of investigation the account statement of applicant was analysed and the transaction was found to be in connection with the money borrowed by Chandan for which agreement was executed between them. Updated status report is handed over in Court and taken on record in which it is stated the applicant is cooperating in the investigation.

6. Learned counsel for the applicant states that there is no recovery against applicant and he has been arrested on a mere disclosure statement of the co-accused, which is inadmissible under Section 67 of the NDPS Act. Moreover, the alleged recovery from the co-accused persons is of intermediate quantity i.e. 5.110 kg from one accused and 1.200 kg from the other and for both these reasons rigours of Section 37 of NDPS Act will not apply in the present case. Reliance is placed on the judgments of the Co-ordinate Benches of this Court in *Mohd Ali Nawaz v. State, Bail Appln. No. 1305/2023*, decided on 17.08.2023; *Gajender Bahadur v. State of Govt of Delhi, Bail Appln. 3655/2022*, decided on 31.01.2023 and *Anita v. State (NCT of Delhi), 2023 SCC OnLine Del 4178*, for the proposition that where the recovery is of an intermediate quantity, rigours of Section 37 of NDPS Act would not apply.

7. It is also argued that co-accused Chand Miyan has been granted regular bail by this Court in Bail Application No. 3010/2024 vide order dated 31.01.2024. Other co-accused have also been granted regular bail by the Trial Court. Bank transactions have been verified and the stand of the applicant is vindicated that the money received by the applicant was on account of re-payment of loan taken by Chandan Yadav. Charge sheet has



been filed and investigation stands concluded and no purpose will be achieved in taking the applicant in custody at this stage.

8. Learned APP opposes the bail application on the ground that the applicant was arrested on a disclosure statement made by the co-accused. It is also stated that the allegations are serious and stand corroborated by the CDR details which indicate a connection between the applicant and the co-accused.

9. Heard learned counsels for the applicant and learned APP for the State.

10. Investigation is complete and Charge Sheet has been filed. It is not the case of the prosecution that custodial interrogation of the applicant is required. This Court in *Gajender Bahadur (supra)*; *Anita (supra)* and *Mohd Ali Nawaz (supra)*, on similar grounds released the Applicants as the quantities involved were intermediate and no custodial interrogation was required. In the present case, admittedly, there is no recovery of the contraband from the applicant and the rigours of Section 37 stand relaxed. In *Phundreimayum Yas Khan v. State (GNCT of Delhi)*, 2023 SCC OnLine Del 135, this Court has held that where there is no recovery from or at the instance of the Applicant and there is no other material to link the Applicant to the recovery of commercial quantity from the co-accused, rigours of Section 37 of NDPS Act would stand relaxed.

11. Insofar as the CDR details are concerned, it has been consistently held that the probative value of the call details can only be tested during trial and cannot be used to deny bail, particularly, in the absence of corroborative evidence and/or recovery. [Ref.: *Deepak Nagiya v. State (NCT of Delhi)*, 2023 SCC OnLine Del 564]. There are disclosure statements of the co-



accused against the applicant but the law on this aspect stands crystallized. In *State (By NCB) Bengaluru v. Pallulabid Ahmad Arimutta and Another*, (2022) 12 SCC 633, the Supreme Court held that, in view of the earlier judgment of the Supreme Court in *Tofan Singh v. State of T.N.*, (2021) 4 SCC 1, disclosure statements recorded under Section 67 of the NDPS Act are inadmissible. To the same effect is an order of this Court in *Babli v. State NCT of Delhi, Bail Appln. 3258/2023, decided on 03.11.2023*, where the Court has held that a mere disclosure statement of a co-accused or an accused under Section 67 of NDPS Act cannot be called in to lend assurance to other evidence and fortify the case of the prosecution, as it would be an infringement of fundamental rights of an accused under Articles 14, 20(3) and 21 of the Constitution of India. Moreover, one co-accused has been enlarged on regular bail by this Court and two have been granted regular bails by the Trial Court.

12. Considering the aforesaid facts this Court is of the view that the applicant has made out a case for grant of pre-arrest bail and accordingly, interim order dated 20.04.2024 is made absolute and it is directed that in the event of arrest, the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs. 30,000/- with two sureties of the like amount to the satisfaction of the Trial Court and further subject to following conditions:

- i. Applicant shall not leave the country without prior permission of the Trial Court;
- ii. He shall furnish his mobile number to the IO and keep the same active at all times and shall not change the



mobile number without prior intimation to the IO and the Trial Court;

- iii. He shall appear before the Trial Court on the dates of hearing and/or for any further investigation, as and when directed by the IO;
- iv. He shall not, directly or indirectly, indulge in any illegal activity or make any inducement, threat or promise to any person associated with the case; and
- v. He shall furnish his current residential address to the IO and intimate any change in the same to the IO and the Trial Court by way of affidavit.

13. Bail application stands disposed of in the aforesaid terms, making it clear that this Court has not expressed any opinion on the merits of the case.

14. Pending application also stands disposed of.

JYOTI SINGH, J

MAY 27, 2024/shivam