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

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Reserved on: 08.01.2024
Pronounced on: 12.01.2024+ **BAIL APPLN. 1944/2023****PRADEEP KUMAR YADAV**

..... Petitioner

Through: Mr. Kuldeep Yadav, Mr.
Ankur Yadav, Mr. Nitin Singh,
Mr. Shashank Shekhar & Mr.
Apoorva Singh, Advocates.

versus

THE STATE NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC for the
State with Inspector Rakesh
Kumar, Special Cell.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present bail application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of the applicant seeking grant of regular bail in case FIR bearing no. 210/2019, registered at Police Station Special Cell, New Delhi, for the offence punishable under Section 21(c)/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
2. Briefly stated, the facts of the case as per prosecution are that on 19.11.2019, at about 05:00 AM, Police Station Special Cell, New



Delhi was informed by a secret informer that the accused Sanjeev Kumar Singh and the present accused/applicant Pradeep Kumar Yadav, who were residents of Varanasi, Uttar Pradesh, along with one Munni Didi, resident of Manipur, were involved in the business of illegal supply of Heroin in the States of Uttar Pradesh and Delhi, and they were coming to meet one Gurcharan at about 06:30 am at KNK Marg, Sector 11, Rohini Ganda Nala Road, Delhi. It was also informed to the Special Cell that the Heroin was brought from Siliguri, West Bengal. After necessary verification of information and mandatory formalities, a raiding team was formed and the accused persons Sanjeev Kumar Singh and Pradeep Kumar Yadav were intercepted at about 07:00 AM, while getting down from an e-rickshaw, in Sector 11, Rohini. Notice under Section 50 of NDPS Act was served to the accused persons. Upon search of both the accused persons and one bag carried by each of them, 14 kg of Heroin was recovered from their possession. The accused persons had then disclosed that they had obtained Heroin from one Munni Didi of Manipur. The accused persons were then arrested. During the course of investigation, Call Detail Records of the accused persons were analyzed, and their voice samples were also obtained.

3. Learned counsel for the accused/applicant argues that the applicant has been in judicial custody for about four years, even though he has been falsely implicated in the present case and there is no evidence against him. It is submitted that the applicant was picked up from Bihar on 18.11.2019 by the officers of Special Cell and was brought to Delhi and thereafter, fake recovery was implanted by the



police officers to implicate the applicant in the present case. It is further argued that as per the FSL report, 0.8% of Diacetylmorphine (Heroin) was present in sample B, which is alleged to be recovered from applicant herein, which would amount to only 56 grams, out of total powder of 7 kg, which falls in the category of intermediate quantity. It is also stated that it will take some time for conclusion of trial and therefore, no useful purpose will be served by keeping the applicant behind bars and therefore, he be granted regular bail.

4. Learned ASC for the State, on the other hand, argues that the present case is of recovery of commercial quantity of contraband and 7 kg of Heroin was recovered from the possession of applicant herein, on the spot, out of total recovery of 14 kg, and thus, bar under Section 37 of NDPS Act would be applicable in this case. It is argued that the FSL report confirms the recovered substance as Heroin, and that the CDRs of accused persons prove that they were in constant touch with each other and had entered into a conspiracy for supply of drugs. It is further submitted that even if the FSL report mentions that only 0.8% of sample contained Heroin, the entire weight of the recovered substance is to be considered for the purpose of ascertaining total quantity of narcotic drug in this case as per the judgment of Hon'ble Apex Court in case of *Hira Singh v. Union of India* 2020 SCC Online SC 382. Therefore, it is argued that the present bail application be dismissed.

5. This Court has heard arguments addressed by learned counsel for applicant as well as learned ASC for the State, and has gone through the case file.



6. At the outset, this Court notes that the Hon'ble Apex Court in case of *Hira Singh* (*supra*) has held that in case of seizure of mixture of narcotic drugs or psychotropic substances with one or more neutral substances, quantity of neutral substances is not to be excluded and is to be taken into consideration along with actual content by weight of the offending drug while determining the small or commercial quantity of the narcotic drug or psychotropic substance. The relevant portion of the judgment reads as under:

“...12. In view of the above and for the reasons stated above, reference is answered as under:

12.1 The decision of this Court in E. Michael Raj taking the view that in the mixture of narcotics drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law.

12.2 In case of seizure of mixture of narcotic drugs or psychotropic of substances with one or more neutral substances(s), the quantity of neutral substances is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the narcotic drugs or psychotropic substances.”

(Emphasis supplied)

7. Considering the aforesaid decision of the Hon'ble Apex Court, the contention of learned counsel for the applicant that quantity of contraband recovered in this case would be intermediate i.e. between small and commercial quantity, and not commercial, has no merit.



8. As regards the law of Section 37 of NDPS Act, it will be apt to refer to the observations of the Hon'ble Apex Court in case of *Narcotics Control Bureau v. Mohit Aggarwal* 2022 SCC OnLine SC 891, which read as under:

“10. The provisions of Section 37 of the NDPS Act read as follows:

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Criminal Procedure Code, 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 subsection (1) are in addition to the limitations under the Criminal Procedure Code, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail..."



9. In the present case, 7 kg of Heroin was recovered from the possession of the present accused at the spot on 19.11.2019 by the raiding team. One mobile phone, bearing no. xxxxxxxx609 was also recovered from the applicant, which was found registered in his name, and the said mobile phone was being used for drug trafficking purpose. The CDR analysis of the phones of the accused persons including applicant herein reveal that all the accused persons were in frequent touch with each other, which reveals their association and conspiracy with each other. The FSL report in this case clearly opines that the sample taken from the recovered substance was found containing Diacetylmorphine i.e. Heroin, alongwith other substance such as Acetaminophen, Caffeine, Codeine and Morphine. The photocopy of the visiting register of Hotel 'Q' in Darjeeling and entry of names of both the accused persons also reveals that the present applicant along with the co-accused had visited Siliguri, West Bengal on different dates for taking consignment of contraband and had stayed at the same hotel. Co-accused Sanjeet Kumar Singh was also granted interim bail by this Court on medical grounds, however, he had absconded thereafter, and proceedings have been pending against him under the relevant sections of law.

10. In the present case, considering the evidence available on record, it cannot be held that there is no reason to believe that applicant is not guilty of offence, or that there is no likelihood of his absconding or not indulging in the same offence, if released on bail, as there are entries of his multiple visits of stay at Siliguri, West



Bengal for the purpose of obtaining drugs and psychotropic substance.

11. Thus, considering the overall facts and circumstances of the case, the present bail application stands dismissed.

12. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

13. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 12, 2024/ns