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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1615/2024**

LAKSHAY JAIN

.....Applicant

Through: Mr. Rajiv Rahga, Adv.

versus

STATE NCT OF DELHI & ANR.Respondents

Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Rohit Kr. Saini, ANTF,
Crime Branch.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
22.10.2024

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CRL.M.(BAIL) 1657/2024

1. The present application is filed seeking regular bail in FIR No. 205/2023 dated 22.08.2023, registered at Police Station Crime Branch for offences under Sections 20/22/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').
2. Chargesheet in the present case has been filed under Sections 20/29 of the NDPS Act.
3. It is alleged that on 22.08.2023, on the basis of a secret information, accused – Sahil was apprehended and 1200 grams of Charas, 200 grams of MDMA, 2580 grams of Ganja was recovered. It is alleged that thereafter on the instance of the accused – Sahil, 52 grams of MDMA was recovered from his flat.
4. Accused – Sahil and accused – Tanay Khatri disclosed that

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one Anand Singh @ Andy organised party events, and facilitated the supply/delivery of contraband among peddlers and suppliers. Accused Anand Singh @ Andy was thereafter arrested on 01.10.2023. During investigation, accused Anand Singh @ Andy disclosed that he procured contraband from the applicant and used to deliver it to the accused – Sahil, Tanay Khatri and others. It is the case of the prosecution that the accused – Anand Singh @ Andy disclosed that the payment of the contraband was made in the account of Vardhman Export, whose proprietor allegedly is the applicant. It is the case of the prosecution that during investigation, accused – Sahil also disclosed about Vardhman Export, and that accused – Sahil also used to deposit payments in the account of Vardhman Export in lieu of payments regarding purchase of drugs through his accounts. The applicant was thereafter arrested from Goa on 09.10.2023.

5. It is the case of the prosecution that 329.7 grams of cannabis was recovered at the instance of the applicant.

6. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He submits that even assuming and not admitting that certain recovery has been made at the instance of the applicant, the same is the subject matter of trial, and cannot be looked into at this stage. He submits that the recovery effectuated from the applicant is not of commercial quantity, and consequently the rigours of Section 37 of the NDPS Act is not applicable.

7. He submits that the applicant has been in custody for more than one year, and prays that the applicant be enlarged on bail. He further submits that in respect of the other NDPS case pending against the applicant, the applicant has already been



enlarged on bail. He further submits that the co-accused Gaurav Tokas, Anand Singh @Andy, Tanay Khatri have already been enlarged on bail by this Court, and prays that the applicant be also admitted on bail on the ground of parity.

8. *Per contra*, the learned Additional Public Prosecutor for the State vehemently opposes the grant of any relief to the applicant. He submits that the applicant has previously been involved in offences under the NDPS Act on two occasions. He submits that the applicant, on an earlier occasion, was arrested by DRI, Mumbai in Hyderabad.

9. He submits that from the tracking id found in the mobile phone of the applicant, 112+112+105.7 grams of high quality cannabis was recovered. He submits that the applicant does not have clean antecedents, and has a total of five previous involvement including two previous involvements for offences under the NDPS Act.

10. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

11. At the same time, it is also relevant to note that the total quantity of recovered contraband in the present case is commercial in nature, and the applicant is charged under Section



29 of the NDPS Act. Consequently, the rigours of Section 37 of the NDPS Act would be applicable in the present case.

12. It is trite that when the accusation is with regard to the recovery of commercial quantity of contraband, the Act further prescribes the conditions as stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads 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 27-A 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 oppose 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.”

13. In the present case, it is the case of the prosecution that from the mobile phone of the applicant that was recovered during the personal search of the applicant, three tracking ids were found. Upon tracking the ids, two parcels were seized at FPO, Delhi on 20.10.2023 and 22.10.2023 from which 112 grams of Cannabis on both the occasions were recovered. Upon tracking the third id, another parcel was seized at FPO Mumbai on 28.10.2023 from which 105.7 grams of cannabis was recovered.

14. The recovery of a large quantity of the contraband was effected from the accused Sahil. During the course of



investigation, on the basis of the disclosure statements, it transpired that the contraband used to be procured from the applicant.

15. It is trite law that the disclosure statement of the accused is not admissible in evidence in the absence of any corroborative material (Ref: *Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1*). In the present case, at this stage, it has been pointed out that some financial transactions between the co-accused and the applicant have been found, wherein certain amounts have been transferred in the applicant's account. The statement, therefore, at this stage, cannot be said to be totally unreliable or without any corroborative evidence.

16. It is contended on behalf of the applicant that the recovery from him was of an intermediate quantity and, hence the bar of Section 37 of the NDPS Act is not applicable. The argument is fallacious.

17. Though, the recovery at the instance of the applicant is of approximately 300 grams of Cannabis, which may in itself be an intermediate quantity, however, it cannot be ignored that the applicant has been charged for offence under Section 29 of the NDPS Act. The allegation against the applicant is not only the recovery of 300 grams of Cannabis but also of the supply of large quantity of the contraband to the co-accused persons.

18. The Court while considering the application for grant of bail and applying the provisions of Section 37 of the NDPS Act also has to consider whether a reasonable ground exists to believe that the accused is not likely to commit the offence, if released on bail, and that the accused has not committed the offence. The material on record and the allegations against the



applicant do not appear to be without any merits. *Prima facie*, the evidence points towards the involvement of the applicant in possessing and also supplying the contraband.

19. The applicant also does not have clean antecedents. It is pointed out that two FIRs on an earlier occasion were registered under the NDPS Act against the applicant.

20. Thus, a reasonable ground to believe that the accused, if released on bail, is not likely to commit the offence, does not exist in the case of the applicant.

21. The applicant also is not entitled to claim bail on the ground of parity with the other co-accused persons who have been enlarged on bail. The co-accused persons were admitted on bail noting that no recovery was effected from those co-accused persons and they were implicated essentially on the disclosure statement of co-accused Sahil, who was apprehended with the large quantity of the contraband.

22. This Court, thus, is not inclined to enlarge the applicant on bail at this stage.

23. The present bail application is accordingly dismissed.

AMIT MAHAJAN, J

OCTOBER 22, 2024