



2024:DHC:1709



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: February 09, 2024

Pronounced on: March 01, 2024

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BAIL APPLN. 2396/2023

SAGAR

..... Applicant

Through: Mr. U.A. Khan, Mr. Tushar Upadhyaya and Mr. Manish Kumar, Advocates

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Ajay Vikram Singh, APP for the State with SI Abdul Barkat, Crime Branch/ANTF.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The applicant, vide the present application under Section 439 of the Code of Criminal Procedure, 1973¹, seeks regular bail in FIR No.189/2022 dated 30.08.2022 registered under Sections 21/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985² at Police Station Crime Branch, Delhi.

2. As per FIR, on 30.08.2022, Inspector Harivansh Singh directed a team to investigate drug trafficking in Delhi NCR. The raiding team, led by ASI Ravinder Kumar while stationed at Pole Star Public School, Mangolpuri, received intelligence regarding the involvement of a bootlegger named Sagar, the applicant, in heroin distribution, specifically of a planned delivery near Gate no. 2 of Keshav Apartment, Rohini, Delhi by him.

¹ Hereinafter referred to as 'the Code'.

² Hereinafter referred to as 'NDPS Act'.



3. ASI Ravinder communicated this information to the Inspector, who after obtaining requisite permission from Mr. Anil Sharma, Assistant Commissioner of Police³/ Anti Narcotic Task Force⁴, directed the ASI to proceed in accordance with law. Meanwhile, in compliance of Section 42 of the NDPS Act, the same was recorded on the CCTNS. Sensing the urgency of the situation, a raid was organized to intercept the applicant's illicit activities at the specified location.

4. On the fateful day, the informer identified a person on a cherry coloured *scooty* as the applicant, whereafter, the ASI approached the applicant and introduced himself and the raiding team, as also shared the intelligence received and informed him about his right under Section 50 of the NDPS Act and also offered him to search the persons on the raiding team and vehicles used by them, to which the applicant refused.

5. Upon searching the applicant, a black-coloured polythene bag was recovered from the right pocket of his bottom wear. Inside which, a transparent polythene bag containing a light-pink coloured powder was found. On testing in the field-testing kit, it was found to be *heroin* weighing 300 grams, including transparent polythene bag. The recovered contraband was carefully documented, packaged, sealed as evidence and labelled as Parcel A by ASI Ravinder Kumar. However, no contraband were recovered on search of the *scooty* of the applicant. This led to the registration of the present FIR.

6. Of the various grounds raised by the learned counsel for the applicant, the learned counsel has primarily submitted that since the police acted with *malafide* by implicating the applicant in a frivolous criminal case and his

³ Hereinafter referred to as 'Asst. CP'.

⁴ Hereinafter referred to as 'ANTF'.



continued incarceration after arrest is *ultra vires* of his fundamental rights enshrined in Part III of The Constitution of India. He further submitted that the applicant was nabbed from Mangolpuri, Delhi and taken to Narcotic Cell Crime Branch, Delhi, where he was forced to sign on a blank paper. Moreover, contrary to the FIR, as no personal search or proceeding was conducted at the spot the same is in blatant violation of the statutory mandate of the NDPS Act.

7. Learned counsel highlighted the violation of Section 42 of the NDPS Act by the respondents in light of the fact that the raiding team was constituted on the directions of Mr. Anil Sharma, Asst. CP in the ANTF, who was not a gazetted officer on the date of proceedings and was merely holding the functional rank of Asst. CP in the capacity of an Inspector. He, thereafter, drew attention to the letter dated 06.07.2022 of the Office of the Commissioner of Police, Delhi⁵, whereby Mr. Anil Sharma was only assigned the functional rank of the Asst. CP, and was yet to be notified in the Official Gazette. To further buttress his argument, he also drew attention to the Circular No. 02/2023 dated 10.01.2023 issued by the CP, Delhi whereby a clarification was issued that the officers holding non-substantive ranks i.e. functional, look after, special grade ranks, cannot discharge duties bestowed, by statutes, to officers of particular rank. He, *ergo*, submitted that the raid and the recovery therefrom is bad in law and cannot stand the test of trial.

8. Learned counsel then submitted that in light of the judgement of Supreme Court in *State of Punjab vs. Balbir Singh*⁶ and *Gurjant Singh alias Janta vs. State of Punjab*,⁷ the provision of Section 42 of the NDPS

⁵ Hereinafter referred to as 'CP, Delhi'

⁶ (1994) 3 SCC 299.

⁷ (2014) 13 SCC 603.



Act is mandatory in nature and any recovery, like the present one from the applicant herein, effectuated in violation of Section 42 of the NDPS Act is invalid in the eyes of law and thus vitiated.

9. Learned counsel then went on to submit that notice served upon the applicant under Section 50 of the NDPS Act is in the teeth of the pith and substance of the provision and the contraband recovered holds no evidentiary value as the same is tainted in the eyes of law. In this regard, he placed reliance upon *Mohd. Jabir v. State (NCT of Delhi)*⁸.

10. Learned counsel underscoring the Field Officers' Handbook issued by the Narcotics Control Bureau⁹, submitted that the recovery is in contravention of the guidelines as there were no independent witness at the time of raid; and as no recovery proceeding was arranged; and also as there was no videography thereof. Therefore, as per him, the raid and the recovery thereupon, are *prima facie* false, bogus and concocted with the sole intention of implicating the applicant in a false criminal case. In this regard, he placed reliance upon the verdict of the Supreme Court in *Arif Khan alias Agha Khan vs. State of Uttarakhand*¹⁰ and also upon *Sumit Rai alias Subodh Rai vs. State (NCT of Delhi)*¹¹ and *Sikodh Mahto vs. State*¹² wherein Co-ordinate benches of this Court have relied and reiterated opinion of the Supreme Court in *Arif Khan* (supra).

11. Learned counsel lastly placed reliance upon *Maninder Singh vs. National investigation Agency*¹³ and *Arif Khan* (supra) to submit that though there are multiple FIRs against the applicant, mainly under the Delhi

⁸ 2023 SCC OnLine Del 1827.

⁹ Hereinafter referred to as 'NCB Handbook'.

¹⁰ (2018) 18 SCC 380.

¹¹ 2019 SCC OnLine Del 9364.

¹² 2019 SCC OnLine Del 8897.

¹³ 2022 SCC OnLine P&H 3307.



Excise Act, there have been no convictions, and the same in itself cannot suffice to deny regular bail to the applicant.

12. Learned APP for the State, on the other hand, opposed the grant of bail in light of heinousness of the offence and severity of punishment upon conviction. He submitted that the accused was interrogated and his personal search was conducted by SI Arvind, who found Rs.10,500/- and one mobile phone having SIM card of mobile number +91-8826636454, which were seized and seizure memos prepared for each of them. Subsequently on 02.09.2022, proceedings in compliance of Section 52A of the NDPS Act were conducted in the presence of a Metropolitan Magistrate.

13. Learned APP further submitted that the primary objection of the accused in terms of non-compliance of Section 42 of the NDPS Act, is premature as it can only be raised/ questioned at the stage of trial but not at the stage of regular bail. In this regard, placing reliance upon *Vijaysinh Chandubha Jadeja vs. State of Gujarat*,¹⁴ *Hardeep Singh vs. State*¹⁵ and *Johri vs. State*,¹⁶ he submitted that compliance of Section 42 of the NDPS Act is purely discretionary in nature and can only be adjudicated after the stage of trial.

14. Relying upon *Johri* (supra), learned APP also submitted that compliance of the statutory mandate of Section 50 of the NDPS Act is a matter of trial, and the fact that the applicant was found at the spot and a recovery of a commercial quantity of 300 grams heroin was made from him, were sufficient for the embargo of Section 37 of the NDPS Act to come into play which forbade the grant of regular bail. In this regard, he placed reliance upon *Hardeep Singh* (supra).

¹⁴ (2011) 1 SCC 609.

¹⁵ 2022 SCC OnLine Del 3861.

¹⁶ 2021 SCC OnLine Del 5328.



15. Lastly, learned APP submitted that the applicant has a chequered history as there are 26 more FIRs registered against him.

16. I have heard the learned counsel for the applicant and the learned APP for the State and perused the documents, including the Status Report, on record, as also the judgements relied upon by the counsel(s).

17. Going by the contentions raised by the learned counsel for the applicant and the opposition thereto by the learned APP for the State, I am called upon to, predominantly, adjudicate as to, *firstly*, whether an Officer holding the functionary rank of Asst. CP is empowered under Section 42 of the NDPS Act to authorise an officer subordinate to him to arrest such person or search such building, conveyance or place, *secondly*, whether the notice served upon the applicant under Section 50 of the NDPS Act is in compliance of the statutory mandates and, *thirdly*, whether the raiding team followed the Guidelines of the NCB Handbook while making the recovery of the said contraband.

18. Since, for adjudicating whether an Officer under Section 42 of the NDPS Act holding the functionary rank of Asst. CP is empowered under Section 41(2) of the NDPS Act to authorise an officer subordinate to him to arrest such person or search such building, conveyance or place, relevant extract of both Section 41(2) and Section 42 of the NDPS Act are reproduced as under:-

“41. Power to issue warrant and authorisation.-

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself arrest such a person or search a building, conveyance or place.”



“42. Power of entry, search, seizure and arrest without warrant or authorisation.-

(1) ... or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place”

(emphasis supplied)

19. There is no dispute that as per trite law, for giving a correct meaning to a word/ phrase/ term used/ contained in a Section of an Act, it has to be literally interpreted and is to be read as it is. Applying the said principle, on a bare reading of the term “... ..*Officer of Gazetted Rank*... ..” used in Section 42 of the NDPS Act as it is, it transpires, rather it is apparent that the legislative intent was not that such an Officer, actually, requires a Notification to be published in an Official Gazette rather such an Officer only needs to be holding the rank of a “... ..*Gazetted Officer*... ..” upon due delegation through proper channel for discharging of duties as such.

This is so, as the term “... ..*Gazetted Officer*... ..”, in contradiction, is specifically used in Section 50 of the NDPS Act and not in Section 42 of the NDPS Act.

20. To summarize in a nutshell, since an Officer who is an “... ..*Officer of Gazetted Rank*... ..” under Section 42 of the NDPS Act need not, actually, be a “... ..*Gazetted Officer*... ..” in the literal sense and further, since in view of the aforesaid discussions and reasonings therewith an “... ..*Officer of Gazetted Rank*... ..” under Section 42 of the NDPS Act is



different from a “... ..*Gazetted Officer*... ..”, such an Officer being an “... ..*Officer of Gazetted Rank*... ..” under Section 42 of the NDPS Act cannot be precluded from discharging his duties once duly delegated through the proper channel.

21. Holding otherwise would mean carving out a new distinction against the very tents of the prescribed Statute, i.e. the NDPS Act.

22. Thus, I am unable to agree with the contention of the learned counsel for the applicant that such an “... ..*Officer of Gazetted Rank*... ..” under Section 42 of the NDPS Act has to be a “... ..*Gazetted Officer*... ..”. Even otherwise, Section 42 of the NDPS Act envisages wide amplitude and gives sufficient powers to such an “... ..*Officer of Gazetted Rank*... ..”.

23. In view thereof, as under the present factual circumstances Mr. Anil Sharma was assigned the functional rank of Asst. CP vide order dated 06.07.2022, he was an “... ..*Officer of Gazetted Rank*... ..” under Section 42 of the NDPS Act for all practical purposes and thus the said Mr. Anil Sharma was duly empowered to issue an authorization in terms of Section 41(2) of the NDPS Act.

24. Qua the contentions of the learned counsel for the applicant regarding whether the notice served upon the applicant under Section 50 of the NDPS Act is in compliance of the statutory mandates and whether the raiding team followed the guidelines in the NCB Handbook while making the recovery of the said contraband, in my opinion both of them are subject matter of adjudication which can be deliberated only after trial, especially since the prosecution has been given a fare chance to prove his case beyond reasonable doubts. In my opinion, granting regular bail to the applicant at this stage will be pre-mature and is likely to hamper or may influence the trial.



25. Surely, doing so will be against the very basic tenets of law qua granting regular bail to an accused like the applicant herein as is held by a recent judgment dated 23.11.2021 passed by a Co-ordinate Bench of this Court in BAIL APPLN. 3248/2021 titled **Naveed Ummer Sheikh vs. Narcotic Control Bureau**, wherein it was held as under:-

“11. ... The entire procedural defect in this regard would be tested when the evidence is led in this case and this is not the stage where any opinion can be given in favour or against the manner in drawing the samples. The recovered quantity is a commercial quantity hence bar of section 37 applies. In these circumstances, no ground for bail is made out.”

26. In any event, the recovered quantity of the contraband is a commercial quantity, and hence the bar under Section 37 of the NDPS Act is applicable, which, in the aforesaid circumstances in my opinion, once again, sufficient for rejection of the present application at this stage. I find able support from the recent judgment passed in **Narcotics Control Bureau vs. Mohit Agarwal**¹⁷, wherein the Hon’ble Supreme Court has held as under:

“18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”

27. I also find able support from another very recent judgment passed in **State by The Inspector of Police vs. B. Ramu**¹⁸, wherein the Hon’ble Supreme Court has once again after reading into the provision of Section 37 of the NDPS Act specifically observed as under:-

¹⁷ 2022 SCC OnLine SC 891

¹⁸ 2024 INSC 114



“9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.”

28. Significantly, since no reasonable cause is made/ can be deduced qua either the presence of the applicant or the definite role assigned to him at this stage as also the recovery of commercial quantity of the contraband from him cannot be denied, in the light of those facts the impropriety and ambiguity of the notice under Section 50 of the NDPS Act is insignificant, especially, at this stage, whence I am dealing with the grant of regular bail to the applicant.

29. It is noteworthy that while dealing with grant of bail, especially regular bail relating to the NDPS Act, I have also to bear in mind that as per the parliamentary debates the NDPS Act was primarily enacted for tackling the drugs menace which was mainly targeting innocent people, including youngsters, which would have a cascading effects on, not only the present generations, but also on the future generations to follow as also that the legislative intent enumerated in the objects and reasons of the NDPS Act is “.... to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances...”.

30. Lastly, I also have to bear in mind the chequered history of the applicant, which, as per the Nominal Roll requisitioned from the concerned Jail Authorities and the SCRB report is showing that there are as many as 26 more FIRs pending trial. This certainly plays a major role since I have to counter balance the individual rights and interests of the applicant against the rights and interests of the society at large.



31. In the wake of the aforesaid discussion and reasonings therefor, all the factors hereinabove are themselves sufficient for this Court to deny bail to the applicant at this stage. I, thus, feel there is no need for me to dwell upon the various judgements cited by the learned counsel for the applicant as, according to me, they are of hardly any relevance.

32. Accordingly, considering the factual matrix and circumstances enumerated hereinabove as well as the legal position as it stands, the present application is dismissed.

33. Needless to say, any observations made on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J.

MARCH 01, 2024/rr