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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1984/2024**

DIPAK DAS

.....Petitioner

Through: Ms. Suman Saharan, Mr. Pawan
Kumar and Ms. Meghna Mehla,
Advocates.

versus

**STATE OF NCT DELHI PS SAKET THROUGH
SHO**

.....Respondent

Through: Mr. Aashneet Singh, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

09.08.2024

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1. By way of present bail application, the petitioner/applicant seeks regular bail in FIR No. 440/2022 registered under Sections 20/25 of the NDPS ACT, at P.S. Saket, Delhi.
2. Learned counsel for the applicant submits that the chargesheet has been filed and the applicant is in custody since 05.12.2022. She further submits that the police agency picked up the applicant earlier on 04.12.2022, and then apprehended and arrested him again on the same night along with the contraband substance which raises some serious questions as to the legitimacy of the said arrest. In support of this contention, the learned counsel relies on DD No. 3, DD No. 5 and DD No. 8. It is stressed that DD No. 9A, on the basis of which FIR came to be registered, was never provided to the applicant despite several requests and application made by



the applicant, which further undermines the credibility of the prosecution's case as well as the fact that SI Yogesh, who was a member of the raiding party, has also not been cited as a witness. It is also stated that there is illegality and inordinate delay in the collection of samples and in this regard, reference has been made to the Standing Order No. 1/88.

3. Additionally, it is contended that in CCTV footage, obtained from a camera maintained by PWD, it is clearly seen that at about 1:20 pm, two police officials are taking away the accused on a scooty and that the applicant is empty handed and no packet or any bag is seen in the footage which shows that the recovery was later planted. Moreover, it is stressed that none of the seized articles bear the signatures of the ACP. Therefore, it is stated that the applicant has been falsely implicated in the present case. Lastly, it is submitted that the applicant is not involved in any other case.

3. Learned APP for the state, on the other hand, has vehemently opposed the bail application. He states that as disclosed by the co-accused/*Rahul* that he used to purchase *ganja* from the applicant and on the day of the incident, while they were going to supply *ganja* to one customer, they were apprehended. A total of 56.5 kgs of *ganja* was recovered from the applicant and the co-accused/*Rahul*, out of which 28.1 kg was recovered at the instance of the present applicant. Further, on the basis of disclosure by the present applicant a raid was conducted on DDA land and another 46.48 kgs of *ganja* was recovered. He further contends that since the applicant is involved in the case of commercial quantity, therefore, embargo under Section 37 of the NDPS Act shall be applicable.

It is stated that non-compliance to Section 52A cannot be the sole ground to grant bail as the said provision is just directory in nature. In this



regard, reliance is placed on decision of Coordinate Bench in the case of Quentin Decon v. Customs reported as **(2023) SCC OnLine Del 3329**. Lastly, it is stated that the chargesheet has been filed and out of 17 witnesses, 3 have been examined.

4. I have heard the learned counsels of the parties and perused the material placed on record as well as the police file containing DD 9A, which has been handed over by the learned APP in court.

5. A reading of the FIR would show that on 04.12.2022, the Special Staff, New Delhi received one secret information at around 7:30 PM. Thereafter, a raiding party was constituted and at around 10:15 PM in the night they reached Najd Dhaulapeer Masjid. At around 11:00 PM, at the instance of one secret informer, raiding team suspected one purple and black coloured scooty bearing No. DL4SDN4446. The said scooty was stopped and they apprehended the applicant along with co-accused/*Rahul* with 56.5kgs of *ganja*. Subsequently, after compliance of Section 50 NDPS Act the applicant/accused alongwith co-accused were arrested.

6. The prime contention raised by learned counsel of the applicant is that the applicant has been implicated falsely in the present case as the police failed to justify their own story of arrest of the applicant.

7. In cases involving commercial quantity, rigors of Section 37 of the NDPS Act have to be met. The Section 37 states as under:—

“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.]”

8. The Supreme Court in State of Kerala v. Rajesh reported as **(2020) 12 SCC 122**, has elucidated the limitations prevailing on the exercise of power to grant bail in cases registered under the NDPS Act and further, that the twin conditions under Section 37 of the Act need to be satisfied before granting bail to a person accused of offence thereunder-

“19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.



20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

9. In the present case, it is claimed by the applicant that he was apprehended in the earlier part of the day and was let go off and thereafter again, on the same day he was arrested. Merely because he was apprehended twice on the same day, is no reason to disbelieve that the applicant was falsely implicated as he was still unable to justify the huge recoveries made at his instance. The fact remains that present applicant was a pillion rider and 56.5kgs of *ganja* was recovered from the possession of applicant and the co-accused. Further, after the arrest, the applicant led the police to a spot in a DDA land from where another 46.48 kgs of *ganja* was recovered, totalling it to 100kgs between the two of them, which is a substantial commercial quantity. It is thus apparent that in view of Section 37 of the NDPS Act, enlargement of any person on bail is subject to the satisfaction of the twin conditions noted in *Rajesh (Supra)*.



10. Considering that 28.1 kgs *ganja* was recovered from the present applicant at the time of the apprehension and thereafter 46.48 kgs at his instance from a DDA land which is significantly above the commercial quantity. The applicant is also being accused of involvement in the recovery of *ganja* from co-accused, with the aid of Section 29 of the NDPS Act, the rigors of Section 37 NDPS Act would be applicable which he has not been able to overcome. Moreover, the trial is progressing and the 3 witnesses already stand examined. In view thereof, the present bail application is meritless and dismissed.

11. The bail application is disposed of in the above terms.

12. Copy of the order be uploaded on the website forthwith.

13. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

MANOJ KUMAR OHRI, J

AUGUST 9, 2024/ga