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

+ **BAIL APPLN. 3010/2023**

CHAND MIYAN

..... Petitioner

Through: Mr. Faraz Nabi, Mohd. Nabi, Mohd. Nadeem, Ms. Razia and Mr. Gyasuddin Ansari, Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for the State with SI Nasir Hussain, PS: AATS/SED.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

31.01.2024

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1. This application has been filed on behalf of the Applicant Chand Miyan S/o Shri Firasat Mian under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular 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. Charge Sheet has been filed in which 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 with narcotics drugs. 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 the ganja from their known source namely, Chandan r/o Town Nirsa, Distt Dhanbad, Jharkhand and used to supply 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 Shaw, present Applicant was apprehended with one carry bag and on search of his bag, a polythene containing 1.2 kg of ganja was recovered, as also Mobile Phone bearing Sim No. 9625865161 which he used to contact co-accused Kanhaiya Kumar Shaw 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. Charge Sheet has been filed against all the accused and the case before the Trial Court is at the stage of framing of charge. On 09.11.2023, sealed samples were sent to



FSL, Rohini and the result is awaited.

4. Learned counsel for the Applicant contends that the Applicant is innocent and has been falsely implicated. Assuming without admitting that 1.2 kg ganja was recovered from the Applicant, the same is only an intermediate quantity and does not attract the rigours of Section 37 of NDPS Act. Charge Sheet has been filed and investigation is complete. The alleged ganja has been seized and the sample has been sent to FSL for examination and therefore, no custodial interrogation is required. Applicant has clean antecedents and this position is not controverted by the State and therefore, there is no reason why the Applicant should continue to suffer incarceration. Reliance is placed by the learned counsel 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 and in each of these cases bail was granted to the Applicants therein.

5. Learned APP opposes the bail application on the ground that the Applicant was arrested on a disclosure statement made by the co-accused and there is a recovery of the contraband from the Applicant. It is also stated that the allegations are corroborated by the CDR details which indicate a connection between the Applicant and the co-accused.

6. Heard learned counsels for the parties.

7. Indisputably, the present case involves an alleged recovery of 1.2 kg ganja from the Applicant which is an intermediate quantity. Even if for the



sake of argument, the quantity recovered from the co-accused and the Applicant is combined, it still continues to be an intermediate quantity. Investigation is complete and Charge Sheet has been filed and the matter is at the stage of framing of charges before the Trial Court. It is not the case of the prosecution that custodial interrogation of the Applicant is required or that there are criminal antecedents of the Applicant. Trial is not likely to conclude in the near future and continued incarceration of the Applicant will not serve any useful purpose. 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. 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 this cannot be the sole basis to deny bail, particularly, in the absence of corroborative evidence. In these circumstances, this Court considers it fit to grant bail to the Applicant.

8. For all the foregoing reasons, this application is allowed and Applicant is directed to be released on furnishing a personal bond in the sum of Rs.30,000/- with one surety of the like amount to the satisfaction of the learned Trial court and subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court and would surrender his passport, if any;
- ii. He shall furnish his permanent address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in the residential address;
- iii. He shall provide his mobile number to the IO concerned and shall keep the mobile in working condition at all times and the



number shall not be changed without prior intimation to the IO and the Court;

- iv. He shall not indulge in any criminal activity or communicate with or come in contact with the witnesses and/or any other person associated with the present case and/or intimidate them;
 - v. He shall report to concerned IO once a month; and
 - vi. He shall appear on every date of hearing before the Trial Court unless exemption is sought and granted by the Court on any given date.
9. Nothing stated in this order shall tantamount to expression of opinion on merits of the case.
10. Application is allowed and disposed of.
11. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

JANUARY 31, 2024/shivam