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

+ **BAIL APPLN. 3260/2023**

RAJESH@RAJA@SANTOSH

..... Petitioner

Through: Ms. Dolly Sharma, Advocate.

versus

STATE

..... Respondent

Through: Mr. Mukesh Kumar, APP for the
State with SI Vikas Pawar & SI
Vinod, P.S. Mahendra Park.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

20.02.2024

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1. The present application under Section 439 read with Section 482 of the CrPC seeks regular bail in case FIR No. 494/2020 under Sections 20/29 of the NDPS Act registered at PS Mahendra Park.
2. The case of the prosecution, as per the status report dated 17.01.2024 authored by Inspector Lokesh Kumar Sharma, SHO, PS Mahendra Park, is as under:

“1. The briefly stated facts of the case are that on 25-08-2020, PCR call vide DD No. 20A was received at PS- Mahendra Park regarding some illegal articles loaded in a vehicle, the said PCR call was entrusted to ASI Jagbir Singh, who along with Ct. Parveen No.2499/NW immediately reached the spot i.e. shed No. 7 & 9 corner, Fruit Mandi Azadpur, Delhi, where the complainant Pradeep Sharma S/o- Lt Sh. Brij Bihari R/o- B-84, Punjabi Basti, Baljeet Nagar Delhi met and told that he is constable in Delhi Civil Defense and presently he is posted at Fruit Mandi Azadpur, Delhi



under APMC. During his duty hours, he noticed one truck Tata Eicher- 1109, Registration No. MH-46AR-5558 parked near shed No. 7 & 9 Fruit mandi Azadpur, Delhi which was open from back side and many plastic bags were lying inside the truck, which aroused doubt as fruits are always packed in wooden boxes and vegetables are generally packed either in jute bag or in plastic bag. So, he intercepted Pappu Paswan (helper) & Dharmender Kumar Mahto (driver of the truck) and asked them to show the built memo of the items lying in the truck but they refused to show any documents to him. Thereafter, he made a PCR call following which Ct Praveen 2499/NW entered the truck and upon checking, noticed that some of plastic bags are filled with some thick substance between the bags of Soyabean, which were then thoroughly checked by ASI Jagbir Singh and CT Parveen 2499/NW and on touching/smelling the said substance appeared to be like contraband Ganja. After checking, 393 Kg. Ganja in 12 plastic bags hiding behind 55 Bag of Soyabean was recovered from Truck No. MH-46-AR-5558 in Azad Pur, Fruit Mandi, Delhi. Accordingly, the instant case was registered and investigation was taken up.”

3. It is further the case of the prosecution that during the course of investigation, Dharmender Kumar Mahto (driver of the truck) and Pappu Paswan (helper) disclosed that they were involved in the commission of the alleged offence at the instance of one Rakesh Shah @ Rahul. They further disclosed that co-accused Upender Singh was also involved, who was at the time in Vishakhapatnam, Andhra Pradesh. It is the case of the prosecution that during the interrogation of co-accused Pappu Paswan, it was revealed that at the time the contraband was loaded in the truck, the applicant was also present at Vishakhapatnam. During further investigation, the regional manager of the company that owned the truck was interrogated. He disclosed that the concerned truck was stationed at Vishakhapatnam, in the custody of Dharmender Singh (driver). It was there only that he was lured by Rakesh @ Rahul to deliver contraband from Vishakhapatnam to Delhi,



concealed in a supply of soyabean. For the said purpose, he purchased 50 bags of soybean from M/s Balaji Enterprises and Versa Traders Auto Nagar. It is further the case of the prosecution that one Abhay Pandey was examined and he stated that the aforesaid M/s Balaji enterprises and Versa Traders were registered in his mother's name. He further disclosed that on 17.08.2020, Rakesh @ Rahul had come to his shop alongwith Upender Singh, Pappu, Dharmender Paswan, Prasad and Raja (the applicant) to purchase soybean. Co-accused Upender Singh was arrested on 06.09.2020 and disclosed that he was lured to get involved in the commission of the alleged offence by Rakesh Shah @ Rahul.

4. On 23.11.2020, information was received that the applicant had been arrested in case FIR No. 522/2020 registered at PS Subhash Place. Thereafter, the applicant was formally arrested in the present case on 28.11.2020.

5. Learned counsel for the applicant submits that the latter has not been named in the FIR and no recovery has been effected from him. It is submitted that the applicant has been arrested only on the basis of the disclosure statement made by co-accused Pappu Paswan and the statement of Abhay Pandey, who stated that when *soyabean badi* was purchased from him by co-accused Upender Singh, Rakesh @ Rahul, Dharmender Paswan, Prasad and the applicant were also present alongwith him.

6. It is submitted that the investigation in the present case is complete, the chargesheet stands filed and the trial is ongoing. It is submitted that the applicant has been in custody for more than 03 years, since 24.11.2020. It is further submitted that the applicant has been released on interim bail on multiple occasions and he duly surrendered upon expiry of the same,



without misusing the liberty granted to him.

7. *Per contra*, learned APP for the State submits that the present case involves the recovery of commercial quantity of contraband. It is submitted that the role of the applicant has categorically come on record by way of the statement made by Abhay Pandey (PW-1). It is submitted that the statement of the said Abhay Pandey (PW-1) has been recorded before the learned Trial Court, wherein he has identified the applicant as one of the persons who had come to his shop alongwith co-accused persons to buy soybean. It is submitted that the contraband was recovered from co-accused persons alongwith soyabean and the applicant has been stated to be present at the time of the purchase of the said soybean. It is further submitted that thereafter, on the disclosure statement of co-accused Pappu Paswan, the applicant was arrested. Learned APP further submits that the applicant is involved in other cases and is likely to misuse the liberty, if he is released on bail.

8. Heard learned counsel for the parties and perused the record.

9. A bare perusal of the FIR reflects that the applicant has not been named therein. No recovery has been effected from the applicant or at his instance. The evidence with regard to the applicant's involvement with the recovery is through the disclosure statement of co-accused Pappu Paswan. Apart from the applicant's presence at the time of loading of the truck with soyabean at Vishakhapatnam sought to be proved by the statement of Abhay Pandey, no other material, apart from the said disclosure of co-accused Pappu Paswan, has been brought on record by the prosecution to connect the applicant with the recovery.

10. The investigation in the present case is complete, the chargesheet



stands filed and the trial is ongoing. Nominal roll dated 05.02.2024 reflects that the applicant has been in custody for 03 years 01 month and 04 days. The nominal roll further reflects that in the cases pending against the applicant, he is on bail. It is further reflected that the applicant was released on interim bail and surrendered. Nothing has been placed on record to demonstrate that the applicant misused the liberty granted to him.

11. In the totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount subject to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

12. The application is allowed and disposed of accordingly.

13. Pending applications, if any, also stand disposed of.

14. Needless to state that nothing stated hereinabove is an opinion on the merits of the case.



15. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
16. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

FEBRUARY 20, 2024/nk