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

+ **BAIL APPLN. 3615/2023**

EZIOKWUBUDUN ORJIENE

..... Petitioner

Through: Mr. Mukesh Bhardwaj, Advocate.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for State with
SI Dimpu Gulia, SI Karpur Singh,
P.S. Uttam Nagar, Delhi.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

06.02.2024

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1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) has been filed on behalf of applicant seeking grant of regular bail in case FIR bearing no. 629/2022, registered at Police Station Uttam Nagar, Delhi, for offence punishable under Sections 8/21/25 of Narcotic Drugs and Psychotropic Substances Act, 1985 (*'NDPS Act'*) and Section 14 of Foreigners Act, 1946.

2. Briefly stated, facts of the present case are that the present case was registered on 29.09.2022 by the raiding team of Anti Narcotics Cell, Dwarka district, which was present in Om Vihar, Phase-5, Uttam Nagar, Delhi for the purpose of verifying the illegally residing foreigners. During this time, the present accused/applicant had arrived there on his scooter, from Hastsal village, Uttam Nagar, and was going towards Nawada village, New Delhi.



On seeing the police team, the applicant had tried to flee from the spot but was caught by the team. From the right side pocket of the accused, one polythene filled with some substance was recovered. On enquiry, the accused had disclosed that the substance was heroine. Immediately thereafter, this information was conveyed to the concerned Incharge of Anti Narcotics Cell as well as the ACP, who had then arrived at the spot. Necessary procedures including those under Section 50 of NDPS Act were followed. The recovered substance was seized, and was checked with field testing kit. Thereafter, the present applicant was arrested, and chargesheet was filed after completion of investigation.

3. Learned counsel for the accused/applicant argues that the applicant has been falsely implicated in the present case, and he has been in judicial custody since 29.09.2022. It is stated that the recovery in this case has been planted upon the accused, and there is non-compliance of Section 50 of NDPS Act, which is a valid ground for grant of bail. It is further stated that there is no evidence against the present applicant and since chargesheet already stands filed, the applicant be granted regular bail.

4. Learned APP for State, on the other hand, argues that the accused was apprehended at the spot, and recovery of 290 grams of heroine was affected from him, at the spot itself. It is stated that FSL report has been received which will be filed before the learned Trial Court today, in support of the prosecution's case. It is prayed on behalf of the State that considering the bar under Section 37 of NDPS Act, the present bail application be dismissed.

5. This Court has heard arguments addressed by learned counsel for applicant as well as learned APP for the State, and has perused the material



available on record.

6. In the present case, this Court notes that the applicant herein was apprehended at the spot, on the basis of suspicion as he had tried to run away after seeing the police team, and upon being searched, 290 grams of narcotic substance i.e. heroine was found from his possession. As per records, a notice under Section 50 of NDPS Act was given to the applicant as well as all other procedures were followed as per law.

7. The quantity of narcotic substance recovered from the applicant is commercial quantity, and thus, Section 37 of NDPS Act would be attracted in the present case. As far as the law of Section 37 of NDPS Act is concerned, it will be relevant to take note of the observations of the Hon'ble Apex Court in case of *Narcotics Control Bureau v. Mohit Aggarwal* 2022 SCC OnLine SC 891, which read as under:

“10. The provisions of Section 37 of the NDPS Act read as follows:

"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.



14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail..."

8. In the given facts and circumstances, this Court cannot arrive at a finding that, *prima facie*, the applicant herein is not guilty of commission of offence under the NDPS Act. Furthermore, Section 14 of Foreigners Act has also been invoked against the applicant.

9. Considering the aforesaid facts and circumstances of the case, as well as the fact that trial is yet to start and material witnesses are yet to be examined, no ground for grant of bail is made out.

10. Accordingly, the present application stands dismissed.

11. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on merits of the case.

12. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 6, 2024/hs

Click here to check corrigendum, if any