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

+ **BAIL APPLN. 3819/2023**

ANIL @ NANHE

.....Petitioner

Through: Mr.Faraz Maqbool, Advocate
(DHCLSC) with Ms.Sana Juneja and
Ms.Vismita Diwan, Advocates

versus

THE STATE (GOVT OF NCT) OF DELHI & ANR...Respondents

Through: Mr.Yudhvir Singh Chauhan, APP for
State with Insp. Gulshan Yadav and
ASI Rajinder, AGS, Crime Branch.
Mr.Sameer Rohatgi, Mr.Sanjeev
Sahay and Mr.Kartikey Singh,
Advocates for complainant.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

12.07.2024

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1. An application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for grant of regular bail in FIR No. 105/2019 under Sections 20/29 Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, referred to as '*NDPS Act*') registered at PS: Crime Branch, Delhi.

2. In brief, as per the case of the prosecution, on 22.04.2019, at about 4:00 pm, secret information was received that two persons namely Anil and Sanjay, would procure Ganja from Pushta No.3, New Usmanpur, Delhi and supply the same to some other persons. After completing necessary legal formalities, a raiding team was constituted and at about 7:20 PM, on pointing out of secret informer, Anil @ Nanhe (petitioner) and Sanjay Ram



were apprehended. Petitioner Anil @ Nanhe was in possession of 25 Kg 600 gms of Ganja carried in a bag while Sanjay Ram was in possession of 06 Kg 280 gms of Ganja. Two sets of representative samples of 25 gms each were drawn and further accused were formally arrested.

3. Learned counsel for the petitioner submits that during the course of examination of the witnesses, the Ganja allegedly seized by the Investigating Agency from the petitioner was produced and it was found that the Ganja recovered from petitioner Anil @ Nanhe weighed only 18 Kg 870 gms which is an intermediate quantity. He further urges that no reasonable explanation has come up on record to justify the discrepancy in the weight of Ganja and cast doubt on the recovery proceedings. It is also pointed out that petitioner has clean past antecedents and has been in custody for a period of five years. The co-accused is stated to be already on bail.

Reliance is further placed on *Sarvothaman Guban v. Narcotics Control Bureau*, 2023 SCC OnLine Del 5643; *Kadir v. State*, 2023 SCC OnLine Del 6146; *Sunil Shishupal Nayak v. The State of Maharashtra*, Bail Application No.1450/2023, decided on 23.10.2023; *Sanjay Prasad v. State*, 2015 SCC OnLine Del 14082; *Rajesh Jagdamba Avasthi v. State*, 2006 1 SCC (CrL.) 150; *Priyaranjan Sharma v. State of NCT of Delhi*, Bail Application No.3649, decided on 16.08.2023; *Amina v. State of NCT Delhi*, Bail Application No.3805/2022 decided on 02.06.2023; *Amani Fidel Chris v. Narcotics Control Bureau*, 2020 SCC OnLine Del 2080; *Kashif v. Narcotics Control Bureau*, 2023 SCC OnLine Del 2881; *Yusuf v. State*, 2023 SCC OnLine SC 1328; *Union of India v. Mohanlal*, 2016 3 SCC 379; *Simarjit Singh v. State of Punjab*, CrL.A. No.1443/2023, decided on 09.05.2023; *Supreme Court Legal Aid Committee (Representing*



Undertrial Prisoners v. Union of India (1994) Supp. 4 SCR 386 & (1994) 6 SCC; *Jitendra Jain v. NCB*, SLP (CrI.) 8900/2022, decided on 16.12.2022; *Badsha SK v. State of W.B.*, SLP 9715/2023, decided on 13.09.2023; *Rajesh Kumar v. State*, Bail Application No.2198/2023, decided on 11.10.2023 and *Kapil Alias Vicky v. State of NCT of Delhi*, Bail Application No.608/2023, decided on 20.04.2023.

4. On the other hand, learned APP for the State opposes the application for bail and submits that since charges have been framed under the commercial quantity, the difference in amount of recovery from 25.600 Kg to 18.870 Kg, can be looked into during the course of trial and the same has been duly dealt with by learned ASJ in the impugned order.

5. At the outset, it may be observed that the rigors of Section 37 of NDPS Act would not be applicable if recovered contraband weighed 18 Kg 870 gms, which falls in intermediate quantity, as admitted by learned APP for State. The alleged recovery was made by the concerned IO in the presence of the raiding team members and the contraband was never produced before the Magistrate or any other authority for purpose of weighing or collection of samples in terms of Section 52A of NDPS Act. The burden lies on prosecution to explain the major discrepancy in the weight of the recovered contraband, since it impacts the credibility of the proceedings. No convincing explanation has been shown to justify the discrepancy or infer that samples were tampered in *malkhana*. Admittedly, petitioner has no past criminal antecedents and there is no possibility of influencing the witnesses as most of the witnesses are official witnesses.

6. Considering the totality of the facts and circumstances, petitioner is admitted to bail on furnishing a personal bond in the sum of Rs. 50,000/-



(Rupees Fifty Thousand only) with one surety in the like amount to the satisfaction of the learned trial court and subject to following conditions:

- (i) Petitioner shall share his mobile number with the Investigating Officer (IO) / SHO concerned on release.
- (ii) In case of change of address, petitioner shall intimate/communicate his fresh address to the learned Trial Court as well as the IO / SHO concerned.

Application is accordingly disposed of.

A copy of this order be forwarded to the learned Trial Court and Superintendent Jail for information and compliance.

ANOOP KUMAR MENDIRATTA, J

JULY 12, 2024/v