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

+ **BAIL APPLN. 3840/2023**

GULAB RAI @ CHETAN

..... Petitioner

Through: **Mr. Kundan Kumar, Advocate**

versus

STATE (NCT OF DELHI)

..... Respondent

Through: **Ms. Richa Dhawan, APP for State
with SI Neeraj, ANTF, P.S. Crime Branch.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

19.01.2024

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1. This application has been filed under Section 439 Cr.P.C. for grant of regular bail, on behalf of the Petitioner, namely, Gulab Rai @ Chetan s/o Sh. Raghuveer Singh in FIR No.129/2023 dated 27.05.2023 registered under Sections 21/25 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S. Crime Branch.

2. As per the case of the prosecution, on 26.05.2023, SI Vikasdeep was present at Bhagwan Chitragupta Chowk, Sector-29 Rohini, Delhi for collection of information about drug traffickers. At about 06:25 p.m., secret information was received that one Chetan, resident of Sultanpuri, Delhi, aged about 26 years, was indulging in supply of heroin in Delhi and on that day, he would come at T-point Bawana Road, Sector-29, Rohini, Delhi between 07:30 p.m. to 08:00 p.m. to supply heroin in huge quantity to some unknown person, on his white colour motorcycle and if raid was conducted, he could be caught red handed with heroin. After due satisfaction, SI



Vikasdeep conveyed the secret information to Inspector Rakesh Duhan, who further telephonically informed to Sh. Naresh Kumar, ACP/AGS, Crime Branch, Delhi and SI Vikasdeep was directed to take necessary action, as per secret information. The secret information was lodged in CCTNS by Insp. Rakesh Duhan. Copy of the said DD entry was forwarded to senior officer for compliance of Section 42 of NDPS Act. Acting upon the secret information, a raiding team led by SI Vikasdeep was constituted and trap was laid at the place of information. Some passersby were requested to join the raiding team, who, however, declined to do so. At the instance of secret informer, Petitioner along with one Jawa White colour motorcycle bearing No.DL-8S-DC-9009 was apprehended. Notice under Section 50 NDPS Act was served upon him. He was apprised about his legal rights and was explained about the meaning of Gazetted Officer or Magistrate but he refused to be searched before any nearest Gazetted Officer or Magistrate. Thereafter, search of his clothes was conducted by SI Vikasdeep and a white polythene containing muddy coloured powdery substance was recovered from the right-side pocket of his lower. The same was checked and 100 grams of heroin was recovered. The contraband was converted into a parcel and sealed with the seal of S.S. and same was taken into police possession through seizure memo along with his motorcycle. Thereafter, house search of the Petitioner was also conducted but no contraband was recovered from his house. Hence, nil recovery memo of house search was prepared. 100 grams heroin (intermediate quantity) was deposited in the Malkhana of P.S. Crime Branch after compliance with Section 55 of NDPS Act. All mandatory provisions of NDPS Act have been complied with.



3. Learned counsel for the Petitioner urges that from the chronology of events and also the admitted case in the status report, it is clear that first information was received by HC Amit, who transferred the said information to SI Vikasdeep, who in turn, transferred the same to Insp. Rakesh Duhan. Insp. Rakesh Duhan transferred the secret information to ACP Naresh Kumar and finally, it was Insp. Rakesh Duhan who had reduced the said information into writing and not HC Amit, who was the recipient of the first information. This procedure, according to the learned counsel for the Petitioner, is non-compliant with the provisions of Section 42 of NDPS Act since the statutory requirement of the said Section is that the person who first receives information must reduce the same into writing and this obligation cannot be delegated. Learned counsel relies on the judgment of the Supreme Court in ***Directorate of Revenue and Another v. Mohammed Nisar Holia*, (2008) 2 SCC 370** and of the High Court of Bombay in ***Rajaram Kadu v. State of Maharashtra, BAIL APPLN. 2108/2016 dated 13.06.2017***, to make good his submissions.

4. Learned APP for the State submits that the allegations are serious as the status report indicates and it is incorrect for the Petitioner to argue that provisions of Section 42 of NDPS Act have been violated.

5. I have heard learned counsel for the Petitioner and the learned APP for the State.

6. The undisputed facts are that while the first information was received by HC Amit but it was only Insp. Rakesh Duhan who had reduced the information into writing, which is contrary to the provisions of Section 42 of NDPS Act and the binding dictum of the Supreme Court in ***Mohammed Nisar Holia (supra)***. It has been held in the said case by the Supreme Court



that an officer who first receives information is bound to reduce the same in writing and not the person who hears about it. Relevant observations of the Supreme Court are as follows:-

“19. In the instant case, the statutory requirements had not been complied with as the person who had received the first information did not reduce the same in writing. An officer who received such information was bound to reduce the same in writing and not for the person who hears thereabout.”

7. In ***Sarija Banu and Another v. State through inspector of police, 2004 SCC OnLine SC 264***, the Supreme Court observed that compliance with Section 42 of NDPS Act is mandatory and this is a relevant fact which should have engaged the attention of the Court below while considering the bail application. Following the said judgment, the Bombay High Court in ***Rajaram Kadu (supra)***, observed as under:-

“9. I have perused the FIR and other documents which form part of the charge sheet and which have been annexed with the application. As far as submission with regard to the discrepancy in the C.A.Report and de-sealing of the articles is concerned, I am of the opinion that the said issue will be the matter of evidence and can be raised during the course of trial. As far as non compliance with Section 42 of the Act is concerned, it can be seen that the information was received by Police Naik Bhagwat Saudane. The FIR does not indicate that he had reduced the information into writing or provided any copy of the information to his superior officer. The statement of API Divekar also does not indicate that he had reduced the information into writing or forwarded the same to his superior officer. However, the prosecution is relying upon the entries made by Senior P.I.Sable of Ulhasnagar in the station diary to show the compliance of Section 42. That cannot be considered to be the compliance of Section 42 of NDPS Act. The point which is canvassed by learned counsel for Applicant is that the person who had received the information had not forwarded it to the superior officer and there is nothing on record to indicate that any such information was forwarded in writing. It is, therefore, rightly contended that there is non compliance of Section 42(2) of NDPS Act. As observed by the Apex Court in the case of Sarija Banu (supra), the issue with regard to non compliance of Section 42 of NDPS Act can be considered at the stage of bail. I have also perused the decisions of this Court relied upon



by learned advocate for Applicant wherein this Court had granted bail for non compliance of Section 42 of NDPS Act.”

8. In view of the aforementioned judgments, this Court agrees with the counsel for the Petitioner that provisions of Section 42 of NDPS Act have been followed more in violation than in compliance. Admittedly HC Amit, was the recipient of first information but the secret information was reduced in writing by Insp. Rakesh on a mere hearsay. While the prosecution tends to rely on the entry lodged in CCTNS by Insp. Rakesh, to show compliance of Section 42 of NDPS Act, in my view, this cannot be considered as an action compliant with the mandate of the said provision inasmuch as this does not controvert the contention of the Petitioner that the first recipient of the information reduced the same in writing.

9. In light of the aforesaid circumstances, the application is allowed and Petitioner is directed to be released on regular bail, subject to his furnishing a personal bond in the sum of Rs.25,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court and further subject to the following conditions:-

- i. Petitioner will not leave the country without prior permission of this Court and would surrender his passport, if any;
- ii. He shall provide 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 same 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;
 - 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.
10. Application stands disposed of.
11. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

JANUARY 19, 2024/kks/shivam