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

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Date of decision: 13th September, 2024

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BAIL APPLN. 2749/2024**HARI RAM**

.....Petitioner

Through: Mr. Satyam Thareja & Ms. Harshita,
Advocates.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Richa Dhawan, APP for State.
S.I. Satyanarayan, PS Badarpur,
Delhi.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. This second Bail Petition under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking grant of regular bail in *FIR No. 146/2023* registered under Section 29 read with Section 20(B)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act, 1985"*) at Police Station Badarpur, Delhi.

2. **Briefly stated that** on 19.04.2023, on the basis of secret information at about 02:30 P.M., the petitioner/Hari Ram who was riding a Honda Scooty with one lady Raveena who was a pillion rider, were apprehended. On the search of the petitioner, 4.015 kg of Ganja was recovered from the petitioner from his black colour backpack. The search of black colour backpack which the lady was carrying, led to the recovery of 23.465 kg of



Ganja.

3. The petitioner and the said lady refused to be searched under Section 50 of NDPS Act, 1985 before the Magistrate/Gazetted Officer. The CDRs of all the accused persons were analyzed, but the identity of supplier i.e., Sumit, could not be revealed who is still absconding. After the investigations, the Chargesheet got filed and the case is pending trial.
4. The petitioner has submitted that he is a law abiding citizen who has clean antecedents and he belongs to a respectable family with deep roots in the society.
5. The petitioner had moved a *Regular Bail Application bearing NO. 4613/2023* before the Trial Court which was dismissed by the learned Trial Court *vide* Order dated 05.02.2024.
6. The petitioner has sought the regular bail on the grounds that he is in judicial custody from 19.04.2023. The investigations in the present FIR are complete and the Chargesheet has also been filed before the Trial Court.
7. It is pleaded that there is alleged recovery of only **4.015 kg Ganja** from his carry bag and he is not in any manner connected with recovery of 23.465 kg Ganja from the pillion rider Raveena, and thus, Section 29 of NDPS Act, 1985 which provides for punishment for abetment and criminal conspiracy, is not applicable.
8. The facts as narrated in the Chargesheet do not in any manner connect the petitioner with the co-accused, Raveena. There was no transaction between him and the co-accused, Raveena, except that they were travelling together. Thus, the provisions of Section 29 of NDPS Act, 1985 cannot be invoked.
9. The CDRs of mobile phone of the petitioner though taken by the



Investigating Agency, have not been placed on record. A reference has been made to Awadhesh Yadav vs. State of NCT, BAIL APPLN. 1692/2023 decided by this Court is not applicable to the present facts as there were as many as 430 calls between the accused persons connecting them and thereby justifying invocation of Section 29 of NDPS Act, 1985.

10. In the present case, despite the CDRs having been obtained, the same have not been placed on record nor has it been alleged that there were regular phone calls exchanged between the petitioner and the co-accused.

11. The petitioner has placed reliance on the decision in Raju Diwakar @ Pappu vs. The State, decided vide BAIL APPLN. 44/2020, wherein a reference was made to Vickey Kaur vs. State of Punjab, decided by Punjab and Haryana High Court, wherein it was held that the quantity of contraband carried out by both the accused persons cannot be added up to bring the same within the meaning of commercial quantity and Section 29 of NDPS Act, 199885 would not be attracted. The observations were based on the decision in Amar Singh Ramji Bhai Barot vs. State of Gujarat, (2005) 7 SCC 550.

12. Furthermore, in Tofan Singh vs. State of Tamil Nadu, 2020 AIR (SC) 5592, the Apex Court held that the co-accused cannot be convicted upon the disclosure statements of the accused. Any confession made under the compulsion to any person whether or not, the Police Officer would attract Article 20(3) of the Constitution of India and any confession made under compulsion is not admissible in law in terms of Section 24 of the Indian Evidence Act.

13. It is further submitted that the petitioner was released on interim bail vide Order dated 07.05.2024 and the same was extended on 18.05.2024 on



the ground of ill health of the petitioner from which he is still suffering. Despite that, the petitioner surrendered himself before the Jail Authority well in time and had never misused his liberty.

14. The petitioner has old parents and he is the sole bread-earner of the family and the custody is resulting in hardship for the family which has no independent source of income. Further detention of the petitioner would not serve any purpose as the investigations are complete. The petitioner is ready to abide by any terms that may be imposed while granting regular bail.

15. Therefore, the petitioner has sought regular bail in the present FIR.

16. **The Status Report** has been filed on behalf of the State, wherein the present petition is opposed on the ground of gravity of the offence. It is submitted that it is a clear case of recovery of about 28 kgs of Ganja and the same comes within the Section 29 of the NDPS Act, 1985 against the petitioner as well as co-accused, Raveena as they were travelling together on the Honda Scooty. The FSL has disclosed that the contraband in both the backpacks was *Ganja* and the petitioner and co-accused were carrying commercial quantity of Ganja which is more than 20 Kgs. The bar of Section 37 of the NDPS Act, 1985 would thus, be applicable. Moreover, the prosecution witnesses are yet to be examined and if the bail is granted to the petitioner, there is likelihood of the petitioner jumping the bail.

17. Therefore, the present petition has been opposed on behalf of the State.

18. **Submissions heard.**

19. It is not in dispute that from the petitioner, there was a recovery of 4.015 kg of Ganja and 23.465 kg of Ganja was recovered from the co-accused, Raveena, but as held in the case of Amar Singh Ramji Bhai



Barot, (supra) followed by the High Court of Punjab and Haryana in Vickey Kaur, (supra) and also observed in Anita @ Kallo vs. State, 2023 OnLine Del 4178, the separate quantity recovered from the two accused persons cannot be clubbed as one recovery.

20. In the present case, ***the recovery from the petitioner is only 4.015 kg of Ganja which comes in the category of intermediate quantity.*** Consequently, Section 37 of the NDPS Act, 1985 for grant of regular bail, would not become applicable.

21. Admittedly, the petitioner has not been involved in any other crime previously and has clean antecedents. Moreover, there is nothing to show that the petitioner is likely to tamper with the evidence or influence the witnesses. Considering the background, it can also not be said that he is a flight risk.

22. Considering the nature of allegations and the petitioner's clean antecedents, coupled with the fact that the trial is still ongoing, the present petition is allowed and the petitioner is admitted to regular bail in FIR No. 146/2023 registered under Section 29 read with Section 20(B)(ii)(c) of NDPS Act, 1985 at Police Station Badarpur, Delhi, upon his furnishing a personal bond in the sum of Rs. 25,000/- and one surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions: -

- a) Petitioner shall appear before the Court as and when the matter is taken up for hearing;
- b) Petitioner shall provide his mobile number and also the mobile number of their wife/surety to the IO concerned, both of which shall be kept in working condition at all times and they shall not change the



mobile numbers without prior intimation to the Investigating Officer concerned;

d) Petitioner shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;

e) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

23. The Registry is further directed to communicate this Order to the learned Trial Court and as well as to the concerned Jail Superintendent.

24. Accordingly, the present petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 13, 2024
S.Sharma