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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3968/2023

ARSAD ALI

.....Petitioner

Through: Mr. Shadman Ali, Advocate.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Amol Sinha, ASC (Crl.) for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms. Chavi Lazarus, Advocates with SI Kartar Singh, Narcotic Cell, Outer North Distt. and ASI Vikas, NAV, DAP, Vikaspuri.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

19.07.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973, the petitioner seeks regular bail in case FIR No.781/2021 dated 09.11.2021 registered under sections 21/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at P.S.: Bhalswa Dairy, Delhi.

2. Mr. Sinha has handed-up written submissions dated 15.05.2023 filed on behalf of the State alongwith a compilation of judgments. The same is taken on record.
3. In brief, the allegation against the petitioner is, that based on information received by the police, 01 kilogram of heroine, which is commercial quantity, was recovered from a bag in a taxi in which the petitioner was riding along with other co-accused persons. The allegation goes that the petitioner/Arsad Ali, in association with one



Asif Kasai and Bhure, was engaged in the sale and supply of heroine in Delhi and Uttar Pradesh and had come to deliver a consignment of the contraband near Bhalswa Lake, Delhi in a taxi bearing No. UP-25-DT 5525 between 09:00 p.m. and 11:00 p.m. on 08.11.2021.

4. The two issues which have been the subject of consideration in the present bail petition relate to the recovery of the contraband *i.e.* whether the respondent had complied with the provisions of section 50 of the NDPS Act, namely the requirement of service of notice under that provision prior to conducting personal search. The second issue is whether there was any requirement for complying with the provisions of section 42 of the NDPS Act prior to the search being conducted.
5. Mr. Shadman Ali, learned counsel appearing for the petitioner has argued that the respondent had failed to comply with either of the aforesaid two provisions; and accordingly the search and seizure of the contraband allegedly from the petitioner is vitiated.
6. It is however the admitted position, that as per the allegations in the FIR, the contraband was recovered on the evening of 08.11.2021 *from a bag* that was found in a taxi in which the petitioner and other co-accused persons were riding.
7. Learned counsel for petitioner however asserts, that regardless of the aforesaid allegation, the police were required to reduce the alleged information received into writing and only then could they have searched for the contraband or seized it even from the taxi. Furthermore, learned counsel also argues that the seizure of the contraband, in the manner alleged in the FIR, would also have



required compliance of the conditions under section 50 of the NDPS Act.

8. On the other hand, Mr. Amol Sinha, learned Additional Standing Counsel (Criminal) appearing for the State submits, that as per the allegations in the FIR, there was no requirement for the police to have complied either with the provisions of section 42 or section 50 of the NDPS Act. Insofar as the requirement of complying with section 50 of the NDPS Act is concerned, Mr. Sinha argues, that admittedly the contraband was not seized upon any *personal search* of the petitioner but that it was found in a bag lying in the taxi in which the petitioner was riding. Learned ASC submits that therefore, as per the position of law laid down by the Supreme Court *inter-alia* in **Ranjan Kumar Chadha vs. State of Himachal Pradesh**¹, section 50 has no application where recovery is made not from the *person* of an accused, but from a place or a receptacle. Furthermore, Mr. Sinha argues that where the recovery is made from a “public place”, section 42 of the NDPS Act has no application and such situation is covered by the provisions of section 43 of the NDPS Act, the explanation to which section says that “any public conveyance” is also a public place.
9. It is pointed-out in its recent judgment of **State of Rajasthan vs. Jagraj Singh**², the Supreme Court has clarified that the word ‘public conveyance’ refers to any conveyance (*i.e.* a vehicle) which “can be

¹ (2023) SCC OnLine SC 1262

² (2016) 11 SCC 687



used by public in general” and which has been licensed to do so by a permit obtained under the Motor Vehicles Act, 1988. It is accordingly argued that since in the present case, the bag from which contraband was recovered was lying in a taxi, which is a public conveyance, there was no requirement of complying with section 42 of the NDPS Act, and that the position is covered under section 43 of the NDPS Act.

10. In view of the above, and since no other point has been raised on behalf of the petitioner in support of the bail petition, this court is not persuaded to allow the present petition, which is accordingly dismissed; without however making any observations on the merits of the matter.
11. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 19, 2024/ak