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

+ **BAIL APPLN. 2764/2024**

ODINAKA EMELIROU

.....Petitioner

Through: Mr. J.S. Kushwaha, Ms. Tanya
Kushwaha, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Priyanka Dalal, APP for the State
with SI Prem Narayan, HC Lokender
Kumar, ANC, Dwarka

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

26.09.2024

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1. The present application has been filed under Section 483 of BNSS, 2023 seeking grant of regular bail on behalf of the petitioner in case FIR No. 706/2023 registered under Section 8/22/25/29 NDPS Act at PS: Binda Pur.
2. Learned counsel for the petitioner submits that the petitioner was falsely implicated in the present case and is in custody since 20.10.2023. Learned counsel submits that in fact the petitioner was picked up from his home and the contraband was planted upon him. Learned counsel has drawn the attention of the Court to the notice under Section 50 of NDPS Act. Learned counsel submits that the perusal of this notice indicates a difference in handwriting and the purported signature of the accused, and the endorsement of the deceased made on the same. Learned counsel



submits that this shows that the proceedings were conducted falsely. Learned counsel submits that there is also difference in Chassis number and Engine number as given in the seizure memo and the Registration Certificate placed on record. It has also been submitted that as seizure memo, the colour of the scooty was black whereas and as per the Registration Certificate, the colour of the scooty was grey. Learned counsel submits that even the scooty allegedly on which the petitioner was travelling has not been shown in the site plan. Learned counsel submits that as per the case of the prosecution, Ms. Anju Bhalla was the registered owner of the scooty. It has also been submitted that Ms. Anju Bhalla in her statement under Section 161 Cr.P.C. stated that the scooty was stolen. It has further been submitted that however, no such report was lodged.

3. Learned counsel for the petitioner submits that as per proceedings under Section 52A of NDPS Act, allegedly the total weight of the contraband recovered from the accused was 70 grams and two samples of 8 grams each were taken. Learned counsel submits that after taking two samples of 8 grams each, the remainder should be 54 grams. However, as per proceedings dated 31.10.2023, the remainder contraband was 56 grams. Learned counsel submits that in fact the two samples of 7 grams each was taken and 1 gram of contraband was mixed in that, so as to implicate the accused falsely. Learned counsel also placed reliance upon ***Aabid Khan vs. State Govt. of NCT of Delhi***, 2023: DHC:8675, ***Directorate of Revenue Intelligence vs. Kulbir Singh & Anr.***, 2019 (2) LRC 557 (Del), ***Mohd. Masoom & Anr. vs. State of NCT of Delhi***, 2015 (7) LRC 87 (Del) and ***Sujit Tiwari vs. State of Gujarat and Another***,



2020 (1) Crimes 141 (SC).

4. Learned APP for the State has opposed the bail application and at the outset submits that the authorities cited by the learned counsel for the petitioner are distinguishable from the facts and circumstances. Learned APP submits that as far as the arguments raised regarding difference in Chassis number, Engine number and the colour of the scooty, it has been submitted that the same has no relevance with the present case. It has been submitted that in fact last few digits of the Engine number and Chassis number were mentioned in the seizure memo instead of the entire number. It has been submitted that since the recovery of the vehicle was affected during the night hour, the colour of the scooty was written as black whereas it was grey. Learned APP submits that the colour black and grey resemble with each other. It has also been submitted that the remaining arguments being raised by the learned counsel for the petitioner are a matter of trial.
5. The Court while granting the bail must take into account whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act must be followed. In addition to that the alleged recovery from the petitioner is of commercial quantity of contraband. Thus, the rigours Section 37 of the NDPS Act also comes into the case. Section 37 of the NDPS Act provides as under:-

“37. Offences to be cognizable and non-bailable. —



(1) Notwithstanding anything contained in the Code of Criminal Procedure, 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 sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

6. On a plain reading of Section 37(1) (b) and 37(1) (b)(ii) of the NDPS Act, within the ambit of the Settled law, it has to be understood that two ingredients shall be read conjunctively and not disjunctively. Therefore satisfaction of both conditions are sine qua non for granting bail to an accused who alleged to have been committed the offences involving commercial quantity as provided under Section 37(1)(b) of the NDPS Act. The Court cannot grant bail without recording satisfaction of the above twin ingredients.
7. As per case of petitioner, the sampling procedure under section 52A of



- NDPS Act was defective and benefit should be given to him. However, now it is settled law that deficiency if any in sampling of the contraband recovered is a matter of evidence which is to be led during trial and not to be considered during bail. In ***Shailender v. State of NCT of Delhi***, BA No. 3508/2021, a Coordinate Bench of this Court *inter alia* held that the circumstances under which the sampling procedure could not be followed as per the mandate, needs to be duly considered after the evidence has been led on record and the FSL expert is examined. In my considered opinion, there does not exist reasonable grounds at this stage to give a finding that the entire proceedings stand vitiated because of the alleged sampling procedure adopted by the investigating agency. The procedural deficiency in sampling, as contended by learned counsel for the petitioner, can be considered only after the evidence is led on record.
8. I consider that all the arguments being raised by the learned counsel for the petitioner are not relevant at the present stage as these are matters of trial.
 9. In view of the facts and circumstances, the present bail application stands dismissed.
 10. Present petition along with all pending applications stand disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 26, 2024

JN/KR..