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

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Reserved on: 01.02.2024
Pronounced on: 05.02.2024

+ **BAIL APPLN. 4016/2023**

HARI RAM

..... Petitioner

Through: Mr. M.L. Chaudhary,
Advocate

versus

STATE (NCT) OF DELHI

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI Arun
Kumar, Anti Narcotics Squad.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of applicant seeking grant of regular bail in case FIR bearing no. 146/2023, registered at Police Station Badarpur, Delhi for the offences punishable under Sections 20/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 ('NDPS Act').

2. Brief facts of the present case are that on 19.04.2023, a secret information was received that two persons namely Raveena and Hari



Ram, who supply *ganja* from Mathura, U.P. to Delhi-NCR, will arrive in a scooty near Bardarpur border to supply *ganja* to someone in Delhi. The information was shared with senior officers, and DD entry was recorded as per law. On the direction of ACP concerned, a raiding team was constituted, and a trap was laid down near Badarpur Metro Station. At about 2:30 PM, one male and one female riding on a Honda scooty, who were carrying bags with them, were apprehended by the raiding team. The male was identified as accused/applicant Hari Ram and the female was identified as Raveena Kumari. Raveena, who was pillion rides, was carrying a big black colour bag on her lap, while Hari Ram, who was driving the scooty, was carrying a black colour pithu bag on his back. Upon their search as per law, 23.465 kg and 4.015 kg of *ganja* were recovered from the bags of Raveena and Hari Ram respectively. The seizure was carried out as per law and the present FIR was registered. During the course of investigation, the accused persons were arrested and they had disclosed the source of procuring *ganja* as Chotey Lal and Sumit. Police custody remands of accused persons were obtained, and raids were carried out at Aligarh, U.P. and in Delhi NCR, and at the pointing out of the accused persons, co-accused Chhote Lal was arrested. The CDRs of all accused persons were analyzed to trace the supplier Sumit but his identity could not be revealed and he is still absconding. Samples were drawn as per law and case property was sealed with a sealed of Magistrate. FSL report was received, and the chargesheet was filed after conclusion of investigation.



3. Learned counsel for the present accused/applicant states that the applicant is in judicial custody since 19.04.2023 and he is a young man of 24 years of age. It is argued that only 4.015 kgs of *ganja* was allegedly recovered from his possession, which is intermediate quantity, and therefore, bar under Section 37 of NDPS Act will not be applicable. It is also stated that the main accused is co-accused Raveena, and since investigation in this case has been concluded and chargesheet has already been filed, no useful purpose will be served by keeping the applicant behind bars. Therefore, it is prayed that applicant be granted regular bail.

4. Learned APP for the State, on the other hand, argues that Section 29 of NDPS Act is attracted in this case as applicant Hari Ram and co-accused Raveena were carrying *ganja* while travelling on the same scooty, from Mathura to Delhi. It is stated that the quantity recovered from both the accused i.e. total 27.471 kgs of *ganja* is commercial in nature, and therefore, bar of Section 37 of NDPS Act is applicable in this case. Learned APP also states that material witnesses are yet to be examined in this case and therefore, the present application be dismissed.

5. In rebuttal, learned counsel for the applicant, while relying on the judgment of *Amar Singh Ramji Bhai Barot v. State of Gujarat* (2005) 7 SCC 550, argues that recovery of two accused in this case cannot be clubbed together for the determination as to whether it was commercial quantity or not and thus, Section 29 of NDPS Act will not be attracted.



6. This Court has heard arguments addressed by both the learned counsels, and has perused the material placed on record.

7. In the case at hand, the applicant Hari Ram and co-accused Raveena were apprehended on 19.04.2023 at about 02:30 PM, while they were riding a scooty. As alleged, they had started their journey from Mathura and had arrived in Delhi, for supplying *ganja*. During their search, 23.456 kg of *ganja* was recovered from co-accused Raveena whereas 4.015 kg of *ganja* was recovered from applicant Hari Ram. Thus, the total recovery in this case, made on the spot from both the accused persons was 27.471 kgs of *ganja*, which is commercial quantity.

8. During the course of arguments, learned APP for the State had also submitted that charges in this case already stand framed under Section 29 read with Section 20(b)(ii)(c) of NDPS Act, *vide* order dated 12.12.2023. In these circumstances, this Court is of the opinion that the argument of learned counsel for applicant that Section 29 is not attracted in this case and therefore, the bar under Section 37 will not be applicable here, is without any merit, since on a *prima facie* view of the material available on record, the learned Trial Court has already framed charges under Section 29 of NDPS Act.

9. As noted above, applicant and co-accused Raveena were travelling on the same scooty from Mathura to Delhi. A perusal of chargesheet further reveals that at the instance of both the applicant and co-accused Raveena, the investigating agency had arrested another co-accused Chhote Lal in this case. The judgment of ***Amar Singh Ramji Bhai Barot*** (*supra*) is clearly distinguishable on the



facts and circumstances, since the Hon'ble Apex Court was adjudicating an appeal after the trial was over and the prosecution had failed to bring on record any evidence to show any abatement or conspiracy under Section 29, and thus, it can be of no help to the applicant at this stage. Therefore, at this stage, the applicant cannot contend that Section 37 of NDPS Act is not applicable for the purpose of adjudicating the present bail application.

10. As regards the law of Section 37 of NDPS Act, it will be relevant to refer to the observations of the Hon'ble Apex Court in case of *Narcotics Control Bureau v. Mohit Aggarwal* 2022 SCC OnLine SC 891, which read as under:

“10. The provisions of Section 37 of the NDPS Act read as follows:

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

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



14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail..."

11. FSL report in this case concludes that the contraband recovered from the applicant and co-accused Raveena was *ganja*. The recovery in this case is of commercial quantity, and as noted above, bar under Section 37 of NDPS Act will be attracted in this case. Charges have already been framed, and material witnesses are yet to be examined before the learned Trial Court. Considering the aforesaid facts and circumstances, no ground for grant of bail is made out.

12. Accordingly, the present bail application stands dismissed.

13. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 5, 2024/zp