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

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Reserved on: 16.01.2024
Pronounced on: 24.01.2024

+ **BAIL APPLN. 4085/2023**

NAVED @ PATHAN

..... Petitioner

Through: Mr. Mohd. Raees Khan,
Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Suresh Bhatia, Anti
Narcotics Squad/SED.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present bail application has been filed under Section 439 of Code of Criminal Procedure, 1973 ('Cr.P.C.') on behalf of the accused/applicant seeking grant of regular bail in FIR No. 155/2023, registered at Police Station Govindpuri, New Delhi, under Sections 20/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

2. Brief facts of the case are that the present FIR was registered on a complaint filed on 06.03.2023 and upon receipt of certain information regarding one Ranjan Biswas being in possession of charas. Upon



receipt of this information, the information was shared with ACP, Kalkaji who had directed the Investigating Officer to conduct a raid. Accordingly, the Investigating Officer had constituted a raiding team, and a trap was laid near Guru Ravidas Marg, Govind Puri, New Delhi, and at about 10:45 AM, the co-accused Ranjan Biswas was apprehended. Thereafter, a Notice under Section 50 of NDPS Act was served upon him and he had given his reply refusal to the notice under Section 50 of NDPS Act in Hindi. The raiding team conducted a search and upon a search, 582 grams of *charas* was recovered from his capry/short nikkar that he was wearing. The recovered substance was kept in a plastic transparent box and was sealed. It was taken into possession, and rukka under Section 20/61/85 of NDPS Act was prepared. Copy of the seizure memo and sealed exhibits were sent to Police Station Govindpuri for compliance of Section 55 of NDPS Act, and the present FIR was registered. During investigation, co-accused Ranjan Biswas had disclosed that he had purchased the charas from present accused/applicant Naved@ Pathan, and thereafter, the present applicant was arrested in this case.

3. Learned counsel for the accused/applicant argues that in this case, there is clear violation of Section 50 of NDPS Act since when on 09.03.2023, the applicant was arrested from Baraut, U.P., he was not informed about his right to be searched in the presence of a Gazetted Officer. It is also argued that notice under Section 50 of NDPS Act was given to the accused/applicant only on 10.03.2023. It is further argued that the chargesheet in this case has been filed and there is no requirement of the applicant/accused in custody. It is stated that the



applicant/accused has been in judicial custody since 09.03.2023; and he has been falsely implicated in this case and no other case is pending against him, and therefore, he be released on regular bail.

4. Learned APP for the State, on the other hand, argues that co-accused Ranjan Biswas was caught red handed and 582 grams of *charas* was recovered from his possession, which was supplied to him by the present applicant Naved. It is stated that applicant was arrested from Baraut, U.P., after surveillance and at his instance, 150 grams of *charas* was recovered from his house. It is stated that contentions raised regarding notice under Section 50 of NDPS Act are a matter of trial. It is also argued that Call Detail Records establish the conspiracy between the accused persons, and that the case is still at the initial stage of hearing arguments on charge and material witnesses are yet to be examined. It is further stated that bail application of co-accused Ranjan Biswas was dismissed by this Court *vide* order dated 31.10.2023. Therefore, it is prayed that present bail application be dismissed.

5. This Court has heard arguments addressed by the learned counsel for the applicant and learned APP for the State, and has perused material on record.

6. In the present case, on the instance of co-accused Ranjan Biswas from whose possession 582 grams of *charas* was recovered, the present applicant Naved @ Pathan was arrested. The applicant herein was apprehended from Baraut, Uttar Pradesh and he had disclosed that he had purchased the contraband from one Babu and Mustakim, who are residents of Saharanpur, U.P. and thereafter, he had sold it to co-accused Ranjan Biswas. He had also disclosed that rest of the



contraband was kept at his home. Thereafter, 150 grams of charas was recovered from his house at his instance, which was also seized and sealed.

7. Further, the contention of the learned counsel for applicant regarding discrepancies or irregularities regarding compliance of Section 50 of NDPS Act cannot be a ground for grant of bail to the accused since the recovery of contraband was effected from the house of accused/applicant Naved @ Pathan and not from his person.

8. A perusal of CDR analysis of co-accused Ranjan Biswas and present applicant Naved@Pathan reveals that they were in constant touch with each other, and in addition to this, as per the bank account details, several money transaction have been found between the co-accused persons. The Call Detail Records as well as the bank transactions between the present accused and the co-accused could not be explained on the part of present accused/applicant.

9. Charges in this case are yet to be framed and material witnesses are yet to be examined. Considering the overall facts and circumstances of the case, and for reasons recorded in preceding paragraphs, this Court is not inclined to grant bail to the applicant at this stage.

10. Accordingly, the present bail application stands dismissed.

11. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression on merits of the case.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 24, 2024/ns