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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 26th September, 2024*+ **BAIL APPLN. 3496/2024**

RAVI SHUKLA

.....Applicant

Through: Mr. Anshumann Rabra,
Mr. Deepanshu Nainwal &
Mr. Raghav Bakshi, Advs.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Satnarayan, Anti
Narcotic Squad, South
East District.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present application is filed seeking pre-arrest bail in FIR No. 003/2024 dated 02.01.2024, registered at Police Station Sunlight Colony, for offences under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').

2. Briefly stated, on 02.01.2024, based on a secret information received from a secret informer, the police were informed that one Surojit Bapri and his accomplice, a juvenile identified as CCL 'B', who were allegedly involved in the sale of contraband – '*Ganja*', would be arriving with the contraband at D-16, Siddharth Nagar, Ashram, New Delhi. Acting upon this



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information, a raiding team was constituted. The raiding team, accompanied by the secret informer, reached the said location at approximately 9:35 AM and at around 11:30 AM, the raiding team apprehended Surojit Bapri and CCL 'B' at the said premises. Upon conducting a search of the bag carried by them, the police recovered approximately 35.732 kg of 'Ganja'. Subsequently, both the persons were arrested, and the contraband was seized.

3. During the course of the investigation, the accused – Surojit disclosed that his sister got married to the applicant, whose mother, namely, Kanoon @ Kanno used to supply the contraband. Based on this disclosure, the police conducted a subsequent raid at the residence of Kanoon, located at Hari Nagar, Ashram, New Delhi, where they recovered ₹1,70,000/- in cash. Further investigation led the police to the residence of the accused - Ravinder Kumar, from where additional quantity of 'Ganja' was recovered weighing about 74.414 kg along with cash amounting to ₹96,000/-.

4. The investigation also revealed that the premises at D-16, Siddharth Nagar, Ashram, New Delhi where the contraband was initially recovered, had been rented to the applicant, Ravi Shukla with the help of co-accused – Naresh Kumar. It is further alleged that Ravi Shukla, being the brother-in-law of co-accused Surojit and the son of Kanoon, was actively involved in the conspiracy to traffic narcotic substances.

5. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case solely



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based on the disclosure statements of co-accused, which, as per the landmark judgment *Tofan Singh v. State of Tamil Nadu : 2020 INSC 620*, are not admissible as evidence without corroboration. He stated that the rental agreement linking the applicant to the premises expired in 2022, prior to the alleged incident.

6. He submits that the investigation in the present case is complete and the chargesheet has been filed. The applicant is willing to cooperate with the investigation as and when required and should be granted pre-arrest bail, given the lack of substantial evidence against him.

7. The learned Additional Public Prosecutor on behalf of the State submits that the allegations against the applicant are serious in nature. He submits that the investigation is at nascent stage, and the custodial interrogation of the applicant is necessary to unearth the chain of drug syndicate and money trail.

8. He submits that the applicant has been accused of a serious offence of conspiracy for indulging in drug-trafficking of commercial quantity of contraband – *Ganja*. He contends that there are no reasonable grounds for believing that the accused is *prima facie* not guilty of the alleged offence. He further submits that the applicant has criminal antecedents and is already arraigned in another case.

9. It is to be kept in mind that the considerations governing the grant of pre- arrest bail are materially different than those to be considered while adjudicating the application for grant of regular bail, as in the latter case, the accused is already under



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arrest and substantial investigation is carried out by the investigating agency.

10. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon'ble Apex Court, in the case of *State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104*, held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] : (SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated



conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

11. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [*State v. Anil Sharma : (1997) 7 SCC 187*]. Granting pre-arrest bail to the applicant would undoubtedly impede further investigation. An order of pre-arrest bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

12. It is undisputed that the premise where the contraband was recovered was rented out in the name of the applicant. Although the rental agreement is stated to have expired in September 2022, the applicant's close familial ties with co-accused Surojit (his brother-in-law) and Kanoon (his mother) *prima facie*, at this stage, point toward his continued involvement in the illegal activities that transpired at the premises.



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13. Despite the applicant's contention of false implication based solely on disclosure statements, the gravity of the offence under the NDPS Act coupled with the ongoing investigation into a larger drug syndicate, necessitates thorough custodial interrogation. The possibility of tampering with evidence or influencing witnesses cannot be ruled out, especially when the applicant has remained absconding and has not cooperated with the investigation thus far.

14. As per the schedule of the NDPS Act, the commercial quantity of *Ganja* is 20kg. It is thus not in dispute that the quantity of the narcotic substance seized in the present case is well above the commercial quantity.

15. The investigation conducted thus, so far does not indicate that the applicant is sought to be falsely implicated. The material presented by the prosecution establish a *prima facie* involvement of the applicant. The investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

16. The relief of pre-arrest bail is a legal safeguard intended to protect individuals from potential misuse of power of arrest. It plays a crucial tool in preventing harassment and unjust detention of innocent persons. However, the court must carefully balance the individual's right to liberty with the interests of society, especially in cases involving serious offences under the NDPS Act. While the presumption of innocence and the right to liberty are fundamental principles of law, they must be considered in conjunction with the gravity of the offence, its societal impact,



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and the need for a comprehensive and unobstructed investigation.

17. In cases involving the recovery of commercial quantity of narcotic substances, Courts must exercise caution in granting bail, let alone pre-arrest bail. Granting pre-arrest bail in such circumstances could hinder the investigation and undermine the broader interests of justice.

18. Even though, at this stage, the implication of the applicant is based primarily on the disclosure statements of the co-accused, the investigating agency needs to be given a fair play in the joints to investigate the matter in the manner they feel appropriate.

19. The role of the applicant cannot be fully determined without his custodial interrogation, which is crucial to uncover the entire chain of supply.

20. The investigation process at this stage is dependent on the information provided by the arrested co-accused to trace the suppliers and other involved persons. Without relying on the disclosures made during this phase, the investigating agency would be severely constrained in its ability to reach the suppliers, and consequently, the root of the criminal conspiracy. The applicant's custodial interrogation is, therefore, essential to reveal the full extent of the illegal drug network. Thus, denying pre-arrest bail at this stage is imperative to ensure that the investigation is not thwarted and that the broader interests of justice are protected.

21. The present application is accordingly dismissed.

22. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application



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and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

SEPTEMBER 26, 2024