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

+ **BAIL APPLN. 3584/2024**

MUKESH MISHRA

.....Petitioner

Through: Mr. Karan Verma, Mr. Keshav Verma
and Ms. Sulakshna, Advocates.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State
with SI Anil, PS Seema Puri.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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11.11.2024

1. This petition has been filed seeking regular bail in FIR No.532/2022, dated 22nd June 2022, registered at police station Seemapuri under Sections 20/61/85 NDPS, Act. As per the Nominal Roll, the petitioner has been in custody since 22nd June, 2022, has no previous involvements and was granted interim bail from 4th March, 2024 to 17th July, 2024. It is not stated that he has misused his liberty at any stage.

2. The case of the prosecution is that on 22nd June, 2022, Ct. Robin along with Ct. Satyanarayan and Ct. Pradeep were on patrolling duty in the area of Seemapuri. At about 03:00 AM on the intervening night of 22nd and 23rd June, 2022 when they reached Old Seemapuri Gol Chakkar, they saw two persons with bags in their hands. On suspicion, they checked the bags and found contraband which appeared to be *Ganja*. Ct. Robin Kumar made a call to Duty Officer, police station Seemapuri and gave the said information.



The IO was sent and the information was recorded in DD No. 19A.

3. It is stated by the prosecution that the amount of *Ganja* recovered from the petitioner/accused is 20.85 kgs. which is just above the commercial quantity threshold i.e. 20 kgs.

4. Counsel for the petitioner states that as per GD No.004A, Ct. Robin was duty rostered at Beat No.4, DTC Depot and, this being a case of chance recovery, his presence at Old Seemapuri Gol Chakkar cannot be taken to be verified. Moreover, while Ct. Robin states in DD No. 19A that he telephonically informed the police station about the recovery. In statements recorded under Section 161 Cr.P.C., he stated that it was Ct. Pradeep who had informed the police station about the recovery. This was corroborated by Ct. Pradeep in his statement recorded under Section 161 of Cr.P.C. Moreover, it is contended that Ct. Robin in his testimony states that the substance recovered seemed like *Ganja* but he could not say with certainty that it was *Ganja*.

5. PW-5, Ct. Pradeep says that he did not check the bags. The bags contained *dandinuma ghasnuma* substance which seemed like *Ganja*. Ct. Robin told him that it was like *Ganja*, since he had not seen *Ganja* prior thereto.

6. Moreover, Ct. Pradeep states that the field-testing kit was deposited after testing the contraband. He does not remember who checked the contraband on the field-testing kit.

7. Counsel for the petitioner further states that it is a case of chance recovery in the middle of the night, there was no videography, no photography, no independent witness, and no CCTV footage. Further, the sampling was done on 1st July, 2022 and after 8 days, the samples were sent



to FSL. Their application before the Magistrate for sampling was also filed 6 days later.

8. APP for the State, however, states that CCTV footage could not be obtained, they were not used for the investigation considering it did not have any recording, though it was stated that the same were installed in front of Kalyan Hospital.

9. Ct. Robin categorically stated that he is the one who had done the recovery and statements under Section 161 Cr.P.C. cannot possibly be more correct. The FSL report has verified that the seized contraband, in fact, was *Ganja*, therefore, there cannot be any doubt on that issue.

10. Considering that the petitioner has been in custody for more than 2 years and, in the situation of chance recovery, *prima facie* there are certain objections which have been taken by counsel for the petitioner as also that there is no previous involvement and that the petitioner was out on interim bail where he did not misuse liberty, this Court is of the view that the petitioner be released on bail.

11. At this stage, this Court, basis the contentions of the petitioner, is inclined to *prima facie* state that there are reasonable grounds that petitioner may not be guilty for the offence and there is nothing to state that he would be inclined to commit offence if enlarged on bail.

12. Moreover, the medical documents of the petitioner, from the Jail, have also been perused, which note that he is a follow up case of leprosy, and is under continuous medication. He has been examined consistently for left claw hand correction and advised to wear on daily basis and recommended pre-construction surgery which is to be done after the trial is complete.



13. The medical report as well as the one-page note be placed on record by the counsel for the petitioner.

14. In these facts and circumstances, the petition is allowed. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically before the concerned I.O. every first and third Thursday of every month at 4 p.m. and will be not kept waiting for more than an hour.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

15. Needless to state, but any observation touching the merits of the case



is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

16. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

17. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

18. Order be uploaded on the website of this Court.

ANISH DAYAL, J

NOVEMBER 11, 2024

DU/sc