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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3609/2024

YUMNAM SUDHIR SINGH

.....Applicant

Through: Mr. Chanderkant Tyagi
and Mr. Ajmal Hussain,
Advts.

versus

STATE(GOVT. OF NCT OF DELHI)

.....Respondent

Through: Mr. Ashneet Singh, APP
for the State with SI Deep
Sharma, PS NDRS.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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08.11.2024

**CRL.M.A. 30140/2024 (exemption from filing of certified copies
/ original copies of annexures)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present application is filed seeking regular bail in FIR No. 29/2024 dated 16.04.2024, registered at Police Station New Delhi Railway Station, for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (**NDPS Act**).

4. It is alleged that the co-accused Sanjeev Kumar was apprehended at New Delhi Railway Station, carrying 12.250 kg *ganja*.

5. It is the case of the prosecution that the said contraband (*ganja*) was provided by the applicant to the co-accused – Sanjeev Kumar at Dimapur Railway Station (Nagaland), for being transported to Delhi.

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6. The co-accused Sanjeev Kumar was arrested on 16.04.2024 and on his disclosure, it was found that the contraband was supplied by the present applicant. He further disclosed that the applicant had offered him ₹10,000/- for transporting the said contraband and ₹4,500/- were paid in cash and ₹4,500/- were transferred into his account.

7. It is the case of the prosecution that the notice for joining investigation was thereafter served on the applicant. He, however, did not join the investigation. The applicant surrendered before the Court on 24.06.2024 and was thereafter, formally arrested.

8. Chargesheet has been filed in the present case.

9. The learned counsel for the applicant submits that no recovery has been affected from the applicant and he has been falsely implicated in the present case solely on the basis of the disclosure statement of the accused. He submits that the provisions of Section 37 of the NDPS Act are not attracted since no recovery has been made from the applicant.

10. He submits that the investigation in respect to the applicant is complete and nothing incriminating has been recovered from the applicant. He further submits that the applicant is in incarceration since 24.06.2024.

11. Concededly, the case against the applicant at this stage is that the accused in whose possession the contraband was recovered, had disclosed the applicant to be the one who had supplied the contraband.

12. The said fact is sought to be corroborated by the fact that a sum of ₹4,500/- was transferred by the applicant into the account of the co-accused Sanjeev Kumar.



13. It is relevant to note that the veracity of the disclosure statement of the said co-accused is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Supreme Court in ***Tofan Singh v. State of Tamil Nadu*** (*supra*), wherein it was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration. The relevant paragraphs of the said judgment is set out below:

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.

157. On the other hand, for the reasons given by us in this judgment, the judgments in Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law.

158. We answer the reference by stating:

158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”



(emphasis supplied)



14. A Coordinate Bench of this Court in ***Phundreimayum Yas Khan Vs. State (GNCT of Delhi)*** : 2023 SCC OnLine Del 135, held that when there is no material to link the applicant with the recovery of the commercial quantity from the co-accused persons, the rigors of Section 37 would not apply. It was further held that the disclosure statement of co-accused is per se not admissible without there being any corroboration.

15. Even though, it is alleged that ₹4,500/- was transferred by the applicant to the co-accused for transporting the contraband, however, there is no material at this stage to establish the same.

16. At this stage, there is no other evidence to show that the applicant is involved in any manner with the accused – Sanjeev Kumar. Admittedly no recovery has been affected from the applicant and in such circumstances, the Courts are not expected to accept every allegation made by the prosecution as a gospel truth.

17. In view of the above, this Court is of the opinion that the embargo of Section 37 of the NDPS Act does not come in the way of granting bail to the applicant.

18. The applicant is in custody since 24.06.2024. It is not disputed that the applicant has clean antecedents. The chargesheet has already been filed and the investigation in relation to applicant is stated to be complete.

19. In view of the facts of the case, in the opinion of this Court, the applicant has *prima facie* established a case for grant of bail.

20. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹20,000/- with two



sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;
- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

21. In the event of there being any FIR/DD entry/complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

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

23. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

NOVEMBER 8, 2024/ 'KDK'