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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 3981/2024**

MOHD. RIAZUDDIN @ BABU @ PINTUPetitioner
Through: **Mr. S.K. Santoshi and Mr. C.D. Rai,**
Advocates.
versus

THE STATE NCT OF DELHIRespondent
Through: **Mr. Laksh Khanna, APP for State**
with SI Kartar Singh Rawat, P.S.
Narcotics Cell.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
27.11.2024

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1. By way of present bail application, the applicant seeks regular bail in FIR No.253/2021 registered under Sections 21/25/29 of the NDPS Act at P.S. Narela, Delhi.
2. Learned counsel for the applicant submits that applicant is in custody since 18.06.2021 and during the investigation there have been violations of Section 42 as well as 52 of the NDPS Act, which are mandatory in nature. It is submitted that though recovery of 260 grams of heroin was shown however, the same was not pursuant to any disclosure by the present applicant.
3. Bail application is opposed by Ld. APP for the State who submits that the applicant is habitual offender, inasmuch as, he has three previous involvements being FIR Nos. 631/2003, 80/2009 and 200/2012. He submits that while applicant was acquitted in FIR No. 631/2003 however, he was



convicted in the latter two FIRs. Applicant's appeal with respect to FIR No. 200/2012 is pending consideration before the Court and after his release on his sentence being suspended, the applicant has been found to be involved in the present FIR. It is further submitted that insofar as recovery is concerned, compliance of Section 50 is not required as the same is not from his person. Further, in so far as the compliance of Section 42 is concerned, the requisite statement of concerned ACP is also on record.

4. At this stage, Id. Counsel for the applicant submits that after registration of third case, the applicant has complained about the local police due to which he has been framed in the present case. He also submits that the State has put the applicant under preventive detention in PITNDPS proceedings however, the said detention has been set aside by a Division Bench of this Court.

5. I have heard the learned counsel for the parties and perused the record.

6. The applicant has been convicted in FIR No. 80/2009 in which he has undergone the sentence. In his third involvement i.e. FIR No. 200/2012, the applicant has been convicted for 15 years. The present FIR is the fourth involvement and was registered after his sentence was suspended. Insofar as Section 50 is concerned, the law is well settled that if the search is not from the person of the accused, but rather a room, building etc, strict compliance is not required. In Ranjan Kumar Chadha v. State of H.P., reported as **2023 SCC OnLine SC 1262**, it has been held as under :-

“36. Considering the aforesaid provisions, the inference which can be drawn is that “to search any person” would mean only search of the body or wearing apparels of such person and in that case the procedure which is required to be followed would



be the one prescribed under Section 50 of the NDPS Act. In contrast, if search of any building, conveyance or place, including a public place, is to be carried out, then there is no question of following the procedure prescribed under Section 50. However, when a suspected or arrested person is to be searched, then the procedure prescribed under Section 50 comes into operation and the procedure thereunder is required to be followed. This can be seen by referring to Section 100(3) of the CrPC 1973 which provides that where any person is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency. The concealment which is suspected is on the person or about his person.”

7. Considering the totality of the facts and circumstances and also that parameters of Section 37 of NDPS are not met in the present case, I find no ground to admit the applicant on bail. Consequently, present bail application is dismissed.

MANOJ KUMAR OHRI, J

NOVEMBER 27, 2024/ga