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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 4226/2024 & CRL.M.A. 34690/2024

ANIL KUMAR SINGH

.....Applicant

Through: Mr. Gaurav Tyagi, Mr.
Deepanshu B, Mr. Jatin
Nagar, Mr. Abhishek
Khari and Mr. Gaurav
Bidhuri, Advs.

versus

STATE GOVT. OF NCT OF DELHIRespondent

Through: Mr. Aman Usman, APP
for the State with ASI
Pawan Kumar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

20.11.2024

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1. The present bail application is filed seeking regular bail in FIR No. 116/2023 dated 24.07.2023, registered at Police Station Maurice Nagar, for offences under Sections 21/29 of the Narcotics Drugs & Psychotropic Substances Act, 1985 ('NDPS Act').

2. It is alleged that a secret information was received on 24.07.2023 that a person named Safiulla, along with the present applicant and other accused person, would come to supply heroin to his associate, one Ranjan Singh.

3. A raiding team was formed who went to the spot as informed by the secret informer. It is alleged that public witnesses were requested to join the Police investigation, however, none of them agreed citing different reasons.

4. It is alleged that, at around 12:55 p.m., one person carrying a yellow cloth bag was pointed by the informer to be Safiulla. Another person accompanying Safiulla, was identified as Ranjan Singh.



5. Subsequently, Safiulla and Ranjan Singh were apprehended and on being searched, they were found to be carrying 320 grams and 280 grams of narcotic substance respectively, which on being tested with Field-Testing Kit, was found to be heroin.
6. On disclosure statement of the accused persons, the applicant was arrested on 27.07.2023 from his native place at District Bhojpur, Bihar.
7. The learned counsel for the applicant submits that the applicant has been falsely implicated in the present case.
8. He submits that no recovery was effected from the applicant. The only reason for his arrest is the disclosure made by the accused persons, which is not admissible.
9. The learned Additional Public Prosecutor for the State submits that the disclosure statement of the accused persons is corroborated with the call details record (**CDR**), which revealed that the accused persons were in touch with the applicant.
10. The Status Report was filed before the learned Trial Court. On being asked, it is stated that there is nothing more to add in it.
11. Concededly, no recovery was ever effected from the applicant. The evidence against the applicant, at this stage, seems to be the disclosure statement and the alleged call record showing the applicant to be in touch with the accused persons who were arrested while carrying the narcotic substance.
12. In regard to the disclosure statement the Hon'ble Apex Court in **Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1**, held that disclosure statements made under Section 67 of the NDPS Act are inadmissible as evidence unless corroborated by independent material. The relevant paragraphs of the said



judgment are 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)

13. 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.

14. It is not denied that there is no phone recording which would show that the accused persons were in contact with each other in regard to the alleged activities. Merely being in touch



with other persons does not mean that the person was also involved with those persons in regard to the criminal activity.

15. This Court, in the case of ***Dalip Singh v. State (NCT of Delhi)*** : 2019 SCC OnLine Del 6494, had observed as under:

“11. On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.

12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.”

(emphasis supplied)

16. Admittedly no recovery has been affected from the applicant and in such circumstances because the applicant was in touch with the co-accused the bar of Section 37 NDPS Act is not attracted. The Courts are not expected to accept every allegation made by the prosecution as a gospel truth.

17. The Hon’ble Apex Court, in the case of ***Union of India v. Shiv Shanker Kesari*** : (2007) 7 SCC 798, has observed as under:

“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited



purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.”

18. 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.

19. The applicant is stated to be of clean antecedents. Therefore, this Court is satisfied that the applicant is not likely to commit any offence while on bail. Further, the applicant is in custody since 27.07.2023 and the investigation is already complete. No further purpose would be served by keeping the applicant in custody.

20. The object of jail is to secure the appearance of the accused during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment. However, appropriate conditions ought to be put to allay the apprehension of the applicant tampering with the evidence or evading the trial.

21. 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.

22. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹25,000/- 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 applicants shall under no circumstance leave the boundaries of Delhi without informing the concerned IO;
 - c. The applicant shall appear before the learned Trial Court on every date;
 - d. The applicant shall, after his release, appear before the concerned Investigating Officer once in every week;
 - e. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/ SHO;
 - f. 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.
23. 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.
24. 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.
25. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

NOVEMBER 20, 2024 / 'KDK'