



\$~13

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

+ **BAIL APPLN. 3251/2024**

SURENDER KUMAR YADAV

.....Petitioner

Through: Mr. Arvind Singh and Mr. A.K.
Mishra, Advocates.

versus

**THE STATE (N.C.T. OF DELHI) THROUGH SHO P.S. GAZIPUR
NEW DELHI**

.....Respondent

Through: Ms. Richa Dhawan, APP for the State
with SI Anil Kumar, Special
Staff/East.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

14.01.2025

%

1. This hearing has been done through hybrid mode.
2. The present application under Section 483 of the BNSS seeks regular bail in case FIR No. 127/2024, under Sections 20/25/29 of the NDPS Act, registered at P.S. Ghazipur.
3. The case of the prosecution as per status report dated 26.10.2024, authored by Insp. Ajit Singh, I/C Special Staff, East District, Delhi is as under:

“1. Most respectfully it is submitted that on 03/04/2024, at about 02:35 PM SI Vikas received secret information that one person namely Surender Yadav, a resident of Bihar, involved in supplying Ganja in Delhi, would come to supply Ganja to one Chintu resident of Mandawali in a Bihar Number white Safari car, via Nala Road Ghazipur, Delhi. If raided both the accused would be apprehended within possession of Ganja. Further at 2:50 pm, SI Vikas produced the informer before Inspector Ajit Singh, IIC Special Staff, East District who himself verified the facts and informed ACP Operation about this information.

2. SI Vikas made a DD Entry regarding secret information, and a copy



was produced before Inspector Special Staff u/s 42 NDPS Act. On the directions of Inspector Special Staff, SI Vikas constituted a raiding team along with staff and an informant. They departed from the office with the IO Kit and other relevant gadgets in his private car.

3. At about 4:00 pm near the spot a Safari car bearing number BR0 1-PB-0656 stopped near the roadside where one person on the driving seat was waiting for someone. On seeing the driver in Safari car, the informer correctly identified accused Surender Yadav and told about him to SI Vikas, and left the spot swiftly. After 10 minutes when no person came to meet accused Surender Yadav, he sit on driving seat and the window pane of driver side was opened. SI Vikas along with raiding party quickly apprehended accused Surender Yadav and briefed him about the information after told the identity of raiding team. Accused identified as Surender Yadav S/o Lt. Ravi Yadav R/o Village Mohammed Pur, PS Simri Bakhtiyarpur, Sahrasa, Bihar. Search of Safari car bearing number BR 01 PB 0656 was conducted in which two bags were found containing Ganja Contraband. Total 32 Kg Ganja was recovered from the vehicle of accused Surender Yadav.

4. Accordingly, the above said case was registered at PS Ghazipur and during investigation undersigned arrested the accused. During further investigation accused disclosed that he is involved in supplying Ganja from Nepal to Delhi. He had procured Ganja from Mukesh@Amarjit S/o Bindeshwari Yadav R/o Sahrsa, Bihar and from Buptiyahai Bihar. He further disclosed that he used to supply Ganja to Geeta Sharma, Chintu @ Sintu, Mamta Sharma and Najma in the area of (Mandawali and Sudarshan Ghazipur, Mantosh r/o Jheel Khureji. Police Custody Remand of accused Surender Yadav has been granted by the concerned Ld. NDPS Court till 12/04/2024.

5. Accused Surender Yadav was taken to Bihar in search of source of recovered Ganja. Raids were conducted at the hideouts of co accused persons in Bihar but no person was traced or could be apprehended. Notices were issued u/s 67 NDPS Act to source namely Mukesh s/o Bindeshwari Parsad and others in Bihar.

6. That on 12/04/2024, on the pointing out of accused Surender Yadav, petitioner/accused Geeta Sharma w/o Dharamvir Sharma r/o H. No. 296, 2nd Floor, Main Road Mandawli, Delhi age 38 was apprehended in possession of 2 kg Gaanja (Contraband). Accordingly, as per terms of NDPS Act, she was arrested in this case.

7. That Geeta w/o Dharamvir is regular customer of accused Surender Yadav, who have received many consignments of Ganja. She paid him cash but also small amounts through Phone Pe to accused Surender



Yadav. Accused Geeta also have contact with the source of contraband namely Mukesh and also have transaction with the Mukesh. Accused Surender Yadav have multiple transaction with the source Mukesh. Details of transaction of accused Geeta with main accused Surender and source Mukesh are below:

SI. No.	Date	Sender account number and account holder name	Receiver account number and account holder name	Amount
1.	18/12/2023	108876925 Geeta Sharma	Via Phone Pe Mobile Number 9311291503 (Surender Yadav)	25000/-
2.	18/12/2023	108876925 Geeta Sharma	Via Phone Pe Mobile Number 9311291503 (Surender Yadav)	25000/-
3.	02/02/2024	108876925 Geeta Sharma	39058827059 Mukesh Kumar	1/-
4.	02/02/2024	108876925 Geeta Sharma	39058827059 Mukesh Kumar	25000/-
5.	02/02/2024	108876925 Geeta Sharma	39058827059 Mukesh Kumar	25000/-
6.	02/02/2024	108876925 Geeta Sharma	39058827059 Mukesh Kumar	15000/-

The present bail application is opposed on following grounds:-

- In this case, 32 kg Ganja was recovered from accused Surender Yadav and on the Instance of the accused 2 Kg Ganja was recovered from accused Geeta Sharma. Both the accused disclosed that the applicant is actively involved in selling Ganja.
- Surender Yadav is a Drugs Trafficker, who has supplied many consignments of Ganja. He received online payments from accused Geeta Sharma through Phone Pe. The transaction history of Phone Pe of accused Surender Yadav is on record.
- Accused Surender Yadav was apprehended possessing 32 Kg Ganja, a commercial quantity from Safari Car No. BR01-PB-0656.
- The recovery of a commercial quantity of Ganja is a serious offense under the NDPS Act. The possession and distribution of such a large



quantity indicate a significant involvement in drug-related activities, posing a threat to public health and safety. Petitioner/accused is a syndicate head of Ganja Syndicate.

e. The charge sheet accused Surender Yadav U/s 20/25/29 NDPS Act has already been filed in the Hon'ble Court on 30/09/24 and NODH of trial is 28/11/24 for Charge. It is also submitted that other co-accused persons are evading their arrest. Many facts related to the case are to be ascertained. If the accused is released on bail, he may temper the facts and assist other co-accused. The main source of recovered Ganja accused Mukesh is still on large."

4. Learned counsel appearing on behalf of the applicant submits that the description of the contraband recovered from the applicant as stated in the FIR is in the following words:

“इसके बाद मन SI कार के बायीं सीट के निचे बरामद बैग की चैन खोलकर चेक किया तो चेक करने पर बैग के अंडर बदबूदार पत्तेदार व सीलनयुक्त पदार्थ मिला, जो सुगने व भौतिक गुणों के आधार पर गांजा होना पाया गया।”

5. On the basis of the aforesaid, the learned counsel for the applicant relies upon a judgment of the Hon'ble High Court of Judicature at Bombay (Nagpur Bench): Nagpur in Criminal Application (BA) No. 602/2024, dated 20.09.2024, wherein it has been stated that the definition of *Ganja* as per Sections 2(iii) (b) and (c) of the NDPS Act is defined as the flower or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) by whatever, name they may be known or designated, and any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom. (para-5 of the aforesaid order).

6. It is pointed out that in the said case, the recovered material was not falling under the aforesaid definition and the applicant was granted bail



therein. It is stated that in view of the above and even in the present case, the description of the contraband which has been recovered shows that the same was not included in the definition of *Ganja* under the NDPS Act.

7. *Per contra*, learned APP for the State submits that the present FIR relates to commercial quantity. The FSL report with regard to the contraband recovered from the applicant has been received, wherein it is clearly stated that the contraband was *Ganja*.

8. Heard learned counsel for the parties and perused the records.

9. The samples of the contraband recovered from the applicant were sent to the FSL and as per the FSL Report, the description of the parcel/exhibits is given as “Dried greenish brown coloured flowering & fruiting vegetative material, weight 49.4 g approx., kept in a transparent polythene pouch.” Similarly, all other samples which were sent were given the same description and thereafter the result of the examination report is stated as under:

“On Physical, Microscopic, Chemical & TLC examination, exhibits ‘A-1’, ‘B-1’ & ‘C-1’ were found to be ‘Ganja’ (Cannabis).”

10. In view of the above, the alleged discrepancy between the description of the contraband recovered at the spot as contained in the FIR, as argued by learned counsel for the applicant is a matter of trial. The applicant shall have enough opportunity during the course of the trial to show that contraband recovered was not *Ganja* but some other substance. The recovery from the applicant in the present case is of 32 kgs. of *ganja*, which is commercial in nature and bar under Section 37 of the NDPS Act is clearly applicable.

11. As per nominal roll dated 18.10.2024, the applicant has been in judicial custody for 6 months 7 days as on 18.10.2024. The application is dismissed



at this stage and disposed of accordingly.

12. Pending application(s), if any, also stand disposed of.

13. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of adjudication of the present bail application.

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

15. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

JANUARY 14, 2025/bsr

Click here to check corrigendum, if any