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

+ **BAIL APPLN. 553/2023**

**KADIR**

..... Petitioner

Through: Mr Aditya Aggarwal and Mr Naveen  
Panwar, Advs.

versus

**STATE GOVT. OF NCT OF DELHI**

..... Respondent

Through: Mr Aashneet Singh, APP for State  
ASI Raj Kumar, District Shahdara  
SI Hari Om, Spl. Staff North

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**20.04.2023**

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1. This is an application seeking grant of regular bail in FIR No. 152/2021 dated 07.06.2021, under Sections 20/29 NDPS Act, registered at Police Station – Gulabi Bagh.

2. As per the FIR, the applicant was apprehended with 22.5 kgs of *ganja* and thereafter has been in custody since 07.06.2021.

3. It is stated by Mr Aggarwal, learned counsel appearing for the applicant that in the present case, the seizure itself is showing different quantities. He states that as per the FIR, 22.5 kgs *ganja* including the bag was seized from the applicant. At the time of sampling under section 52-A NDPS application, the weight of the contraband was 22.35 kgs including the bag. It is stated that at the time of section 52-A sampling again, the photographs shows the weight of the contraband as 22 kgs with the bag.

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4. Mr Aggarwal has drawn the attention of the Court to the status report which shows that on 14.06.2021, four samples weighing 100 grams were drawn from the main parcels. The parcels were deposited with the *malkhana* and were thereafter sent to FSL. As per the examination report received from the FSL, the weight of Ex. A-1 was found approximately 134.8 grams in place of 100 grams and the weight of Ex B-1 was found to be 83.6 grams in place of 100 grams. He states that the said discrepancy in the weight of samples erodes the credibility of the sampling process as well as the version of the prosecution and entitles the applicant to bail.

5. He has drawn my attention to the judgment of *Sanjay Prasad v. State (Govt. of NCT) of Delhi* in CRL. APPEAL No. 1074/2013 dated 08.12.2015 wherein the court observed as under:

*"12 In the judgment of the Apex Court while considering similar proposition on the discrepancy i.e. in the weight of the sample, the Apex Court in Rajesh Jagdamba (Supra) had held as under:-*

*"The credibility of the recovery proceeding is considerably eroded if it is found that the quantity actually found by PW-1 was less than the quantity sealed and sent to him. As he rightly emphasized, the question was not how much was seized, but whether there was an actual seizure, and whether what was seized was really sent for chemical analysis to PW-1. The prosecution has not been able to explain this discrepancy and, therefore, it renders the case of the prosecution doubtful."*

*13 Thus it is clear that the credibility of the recovery would become considerably doubtful if there is a major discrepancy in the sample which was drawn and what was actually received in*

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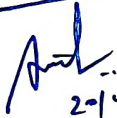
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the FSL. The difference of 60 gms is wholly unexplained by the prosecution. A sample of 200 gms having become 260 gms does not appear to be justified. Benefit of doubt accordingly accrues in favour of the appellant as what was seized and what was finally analyzed to nail the appellant becomes doubtful."

6. He also places reliance on the judgment of *Mohd. Ramzan v. State (NCT of Delhi)* (2005) 82 DRJ 435 and more particularly para 7 and 8 which reads as under:

7. With this position of law, the case cited by the petitioner [*Rajesh Jagdamba Avasthi (supra)*] and the case cited by the counsel for the State [*R. Paulsamy (supra)*] are to be considered. In the case of *Rajesh Jagdamba Avasthi (supra)*, the facts were that a recovery of charas from the shoes of the accused was alleged to have been made. 100 gms from the shoe for right foot and 115 gms from the left foot. These two quantities were placed in two envelopes 'A' and 'B' and were sent to the Junior Scientific Officer who was examined in that case as PW1. The envelopes were sealed and sent to the said Junior Scientific Officer who indicated that the seals were intact. However, on opening by the Junior Scientific Officer, the two envelopes, 'A' and 'B' were found to contain 98.16 and 82.54 gms of charas as distinct from the 100 gms and 115 (respectively) said to have been recovered from the accused. Insofar as the discrepancy between 100 gms and 98.16 is concerned, the Supreme Court found that the discrepancy was minor but, with regard to the discrepancy of the contents of

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envelope 'B' which was from 115 gms to 82.54 gms, the Supreme Court found that such a discrepancy was a major one and it cast serious doubts on the prosecution's case.

8. The High Court in that case had upheld the conviction of the appellant despite these discrepancies. However, the Supreme Court, upon a consideration of the entire case, observed as under:

"We do not find it possible to uphold this finding of the High Court. The appellant was charged of having been found in possession of Charas weighing 180.70 gms. The charas recovered from him was packed and sealed in two envelopes. When the said envelopes were opened in the laboratory by Junior Scientific Officer, PW-1, he found the quantity to be different. While in one envelope the difference was only minimal, in the other the difference in weight was significant. The High Court itself found that it could not be described as a mere minor discrepancy. Learned counsel rightly submitted before us that the High court was not justified in upholding the conviction of the appellant on the basis of what was recovered only from the envelope "A" ignoring the quantity of Charas found in envelope "B". This is because there was only one search and seizure, and whatever was recovered from the appellant was packed in two envelopes. The credibility of the recovery proceeding is considerably eroded if it is found that the quantity actually found by PW-1 was less than the quantity sealed and sent to him. As he rightly emphasized, the question

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*was not how much was seized, but whether there was an actual seizure, and whether what was seized was really sent for chemical analysis to PW-1. The prosecution has not been able to explain this discrepancy and, therefore, it renders the case of the prosecution doubtful."*

7. Mr Singh, learned APP states that the learned Sessions Court has written to the FSL asking for an explanation for the discrepancy in the two samples. The report is yet to be received.

8. The judgment of *Mohd. Ramzan (supra)* is squarely applicable to the facts of the present case. The Coordinate Bench in *Mohd. Ramzan (supra)* has relied upon the judgment of the Hon'ble Supreme Court in *Rajesh Jagdamba Avasthi v. State of Goa reported in 2005 (1) Apex Criminal Judgment 240* and has held that the discrepancy in the weight of the samples seized under Section 52 A of NDPS Act and the report of the FSL erodes the credibility of the recovery proceedings.

9. I am of the view that the discrepancy in the weight of the sample goes to the root of the matter and questions the actual seizure itself. The prosecution has not been able to explain this discrepancy at this stage. It erodes the credibility of the recovery proceedings.

10. Since the recovery of the quantity of the contraband itself has become doubtful, the applicability of Section 37 of the NDPS Act at this stage cannot be insisted upon. The applicant has no other criminal antecedents.

However, the applicant needs to satisfy the triple test viz. flight risk; influencing any witness and tampering with evidence. In my view, the same can be taken care of by imposing stringent bail conditions upon the applicant.

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11. The applicant has been in custody since 07.06.2021 which is about 1 year and 10 months. Charge-sheet has been filed in the present case and charges have also been framed and the custodial interrogation of the applicant is not required. The trial is also not likely to conclude in near future and the continued incarceration of the applicant will not serve any purpose. Since the applicant is an under trial prisoner and has already undergone about more than 1 year and 10 months of incarceration and since the applicant has no other previous criminal antecedents, I am inclined to allow the application.

12. For the aforesaid reasons, the applicant is directed to be released on bail in FIR No. 152/2021 dated 07.06.2021, under Sections 20/29 NDPS Act, registered at Police Station – Gulabi Bagh, subject to the following conditions:

- (a) The applicant shall furnish a personal bond in the sum of Rs. 10,000/- (Rupees Ten Thousand Only) each with 01 surety in the like amount, to the satisfaction of the Trial Court;
- (b) The applicant shall not leave the country and if the applicant has a passport, he shall surrender the same before the Trial Court;
- (c) The applicant shall appear before the trial Court on every date of hearing;
- (d) The applicant shall furnish to the IO/SHO concerned his cellphone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
- (e) The applicant shall drop a Google pin location from his mobile phone to the IO which shall be kept alive;

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- (f) The applicant shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;
- (g) The applicant or his family members/relatives/friends will not tamper or influence or contact any of the witnesses and/or evidence in anyway.
13. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.
14. The application is disposed of accordingly.

Copy of this order be given *dasti* under the signatures of Court Master/Private Secretary.

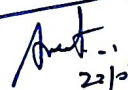
**JASMEET SINGH, J**

**APRIL 20, 2023**

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[Click here to check corrigendum, if any](#)

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