

देवेन्द्र कुमार शर्मा  
DEVENDRA KUMAR SHARMA  
अतिरिक्त सत्र न्यायाधीश  
Additional Sessions Judge  
विशेष न्यायाधीश (एन डी पी एस) पश्चिम जिला  
Special Judge (NDPS) West District  
कमरा नं. 132, तीस हजारी न्यायालय, दिल्ली  
Room No. 132, Tis Hazari Courts, Delhi

CNR No DLWT 01 010281-2021

SC NO. 767-21

FIR No.552-21

PS. Rajouri Garden

State vs Ram Bharose and anr

COMMON ORDER

18.08.2022

Case file is taken up today upon the bail applications u/s 439 of Cr.P.C. for regular bail, filed on behalf of applicants/accused Manish Kumar and Sapan

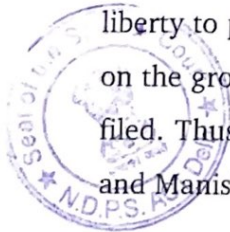
Present: Sh. K.D. Pachauri, Ld. Addl. PP for the State.

Sh Naveen Panwar, Ld counsel for both the applicants/accused persons.

SI Rajender Dhaka, IO is present in person with police file.

Common reply to the bail applications has already been filed. Today also the common reply is filed on behalf of the IO.

1. It is submitted on behalf of the accused that the co-accused Ram Bharose has been granted regular bail by the Hon'ble High Court vide order dated 05.08.2022 on considering that the procedure followed by the police at the time of sampling was not proper. The bail application preferred by present applicants were disposed of giving the liberty to prefer the regular application before this Court and therefore, on the ground of parity, the present regular bail applications have been filed. Thus, it has been prayed that the accused persons namely Sapan and Manish Kumar may kindly be released on regular bail.



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2. On the other hand, Addl. Public Prosecutor has opposed the bail application submitting that recovery of total 23.300 kg of Ganja alongwith 18 cartons of material used for making Ganja Cigarettes/rolls which comes under the ambit of Sec 37 of NDPS Act were recovered from the possession of accused persons. It is further submitted that accused persons in connivance of their father, involved in procuring ganja and its further sale from their house. It is further submitted that accused can cause disappearance of the evidence and may influence the investigation or may jump the bail, if released on bail. On the force of these submissions, prayer has been made on behalf of State that applications may kindly be dismissed.

3. I have perused the record in the light of respective arguments.

4. It is the case in the complaint that on 01.07.2021 at around 06.05 am, SI Rajender Dhaka posted at Narcotics Squad, received a secret information that a person named Ram Bharose and his two sons namely Manish Kumar and Sapan have been selling Ganja filled cigarettes from their house bearing no. B 52, TC Camp, Raghubir Nagar, Delhi. SI Rajendera Dhaka shared this information with his superiors and on their directions, a raiding team was constituted. The raiding party in civil dress reached at the said house at around 06.35 am and tried to join public witnesses but no one agreed. The complaint

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proceeds further that the raiding team entered the house where Ram Bharose and his sons were found present. On seeing the police officials, sons of Ram Bharose tried to flee from the spot but they were overpowered by the raiding team. It is further alleged that at the time when the raiding party apprehended the accused persons, co- accused Manish was found holding a black and red colour bag containing 11.430 kgs of Ganja while the accused Sapan was carrying a black-purple colour bag containing 10.420 kg of Ganga. Co-accused Ram Bharose was found to be in possession of white colour polythene bag containing 1.500 kgs of Ganja and 18 boxes of paper rolls used for making Ganja cigarettes. All the accused persons were residing together and they were apprehended at the same time and from the same place. Co- accused Ram Bharose is the father of Manish and Sapan. They were jointly found in possession of 23.300 kg of Ganja alongwith 18 cartons of material used for making ganja cigarettes/ rolls.

5. It is trite principle of law that while granting bail the court has to keep in mind (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (b) the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of cognizable offence; (c) the possibility of the applicant to flee from justice; (d) the possibility of the accused's



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likelihood to repeat similar or other offences; (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (f) Impact of grant of bail particularly in cases of large magnitude affecting a very large number of people; (g) The court should consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant and any other aspects of the case should be taken into consideration while granting bail.

a. It was held in judgment reported in (2012) 1 SCC 40 in case titled as **Sanjay Chandra vs CBI** in para 16 as under:-

The legal principle and practice validate the court considering likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore, not an exercise in irrelevant.



6. In the present case, prosecution story the recovered case property i.e. contraband were collectively put in to the one katta

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without taking the representative sample and the samples were only taken on 03.07.2021 before Ld. MM from the said katta and in this regard, the Hon'ble High Court has made observation in its order dated 05.08.2022 while disposing of the bail application no. 1623/2022 in case titled as Ram Bharose Vs. Govt. of NCT as under :

*It appears thus through the contents of the FIR that at the time of the putting together into the kattas K5 all contents of allegedly recovered contraband in the form of ganja and were put into the katta K5 and it is of this K5 that the alleged representative sample is stated to have been drawn on the date 03.07.2021 before the learned MM, West, Tis Hazari.*

*Prima facie, the said drawing of the samples as per the contents of the FIR does not appear to be in consonance with the Standing Operating Procedure in Standing Order 1/88 dated 15.3.1988 issued by the NCB required as detailed in Amani Fidel Chris Vs. Narcotics Control Bureau (Supra).*

*Resultantly, this court is of the view that the samples sent to the CRCL were not the representative samples. Besides, by mixing the contents of all the 4 packets before drawing any sample not only the sanctity of the case property in the individual packet was lost but also the evidence as to how much each individual packet weighed. In reaching the aforesaid conclusion, I also draw support from the decisions in Shajahan V. Inspector of Excise (DB) reported as 2019 SCC On Line Ket 2685 Kulwinder Kumar vs. State of Punjab, reported as 2018 SCC OnLine P&H 1754 and Santosh Kumar v. The State of Bihar passed in Criminal Appeal (SJ) No. 158/2016 decided on 30.08.2019.*

7. In view of the aforesaid settled principles of law and having heard the rival submissions on behalf of the parties and perusal of the record and report of the I.O, considering the observation made  
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by the Hon'ble High Court while disposing of the bail application of co-accused Ram Bharose regarding the sampling of contraband and therefore, on the ground of parity, the applicants/accused Sapan and Manish are entitled to be released on bail as the investigation in the present case is complete, charge sheet has already been filed, no further custodial interrogation is required, and the fact that trial will take its own time and therefore without commenting upon merits of the case, the applications filed on behalf of the applicants/accused namely Sapan and Manish Kumar are allowed. The applicants/accused are admitted to bail subject to furnishing a personal bond in the sum of Rs.50,000/-each and two sureties of like amount by each applicant/accused and subject to the following conditions : -

- I. That accused shall not come in contact with or try to influence any of the witnesses connected with the case either directly or indirectly;
- II. That accused shall not directly or indirectly make any inducement, threat or promise to any person so as to dissuade him/her from disclosing the facts before the court and accused shall not tamper with the evidence in any manner;
- III. That accused shall not change address without prior intimation to the I.O./SHO concerned.

8. Nothing discussed here-in-above shall tantamount to be an expression of opinion on the merits of the case. Applications are disposed off accordingly.



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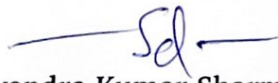
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A copy of order be sent to the concerned Jail Superintendent for intimation and due compliance.

Copy of the order be given dasti to the parties including the I.O./be sent through the electronic mode.



  
(Devendra Kumar Sharma)  
ASJ/Special Judge (NDPS)(West)  
THC/Delhi/18.08.2022  
विशेष न्यायाधीश (एन.डी.पी.एस) पश्चिमी  
Special Judge (NDPS), West  
दिल्ली  
Delhi