

STATE Vs. Nongaitthem Jashobanta Singh and Ors.
FIR no. 260/2023
PS Crime Branch-West Delhi

20.07.2024

Pr: Sh. Subhash Chauhan, Ld. Addl. PP for the State.
Ld. Counsel for accused/applicant.
IO in person.

This is an application filed on behalf of applicant/accused for grant of bail. Reply to the bail application filed. Copy supplied.

Application perused. Arguments heard. Case file also gone through.

It is submitted by Ld. Counsel that the applicant/accused is innocent and is wrongly implicated in the present case. It is further submitted that accused was arrested in the present case on 29.10.2023 and since then he is in JC. It is further submitted that has been falsely implicated in the present case and nothing was recovered from his possession and the recovery, if shown, is planted upon him. It is further submitted that the investigation has already been completed and chargesheet has already been filed in the present case and applicant is no more required for the purpose of further investigation. It is further submitted that applicant is a young age person and is sole bread earner of his family. Ld. Counsel further argued that applicant/accused is kidney doner and is suffering from Hyper Kalemia and other severe illnesses due to which the accused was granted interim

bail by the Hon'ble High Court of Delhi. Ld. Counsel further submits that the accused has never misused the liberty of the said interim bail and has surrendered well before the stipulated time.

Ld. Counsel further submits that there is non-compliance of Section 42 of NDPS Act as the secret information received in the present case was allegedly recorded as GD 18-A and same was forwarded to Inspector Rakesh Sharma and ACP Naresh Yadav. Ld. Counsel further submits that the said information was recorded as a General Diary no. 18-A and was not recorded as Daily Diary entry. Ld. Counsel further contends that the alleged GD no. 18-A is neither the part of the charge-sheet nor the same is filed alongwith the documents of the present final report hence there is non-compliance of Section 42 of NDPS Act.

Ld. Counsel further submits that there is delay in sending the samples to FSL and there is non-compliance of Section 52-A of NDPS Act. Ld. Counsel further submits that no independent witnesses were joined at the time of the alleged recovery of contraband from the accused/applicant despite availability of the same as there are various other premises/residences near the residence of the accused/applicant. Ld. Counsel further submits that neither photography or videography of the alleged recovery of contraband as well as of the alleged investigated proceedings nor any CCTV footage was collected of the same from the nearby locations. With these submissions, Ld. Counsel for accused/applicant prays for grant of bail in favour of accused.

On the other hand, Ld. Addl. PP for the state has strongly opposed the present bail application on the ground that 22.13 kg of Ganja and 100 gm OG was recovered from the applicant/accused in the present case, which is a commercial quantity and there is a bar u/s 37 of NDPS Act. Ld. Addl. PP further submits possibility of tempering of evidence and influencing of witness and fleeing away from the justice cannot be ruled out in case applicant/accused is admitted on bail. Ld. Addl. P.P has prayed for the dismissal of the present bail application of the accused.

Brief facts of the case are that on 29.10.2023, at around 07:00 AM, one secret informer informed regarding the supply of high quality Ganja/Charas/OG by a syndicate of North-East persons from H.No. E-11, Tower-E, DLF, Moti Nagar, New Delhi, whose head is the accused and is residing in the said premises. It is alleged that the said information was shared with higher police officials and accordingly a GD entry no. 18-A entry was recorded in compliance of Section 42 of NDPS Act. As per the direction of the then ACP, a raiding team was constituted and trap was laid near the spot and two accused persons were apprehended and were found in possession of 22.13 kg of Ganja and 100 gm of OG (from accused/applicant) and 23.26 Kg of Ganja (Thiyam Rabikanta Singh) from both of them. Thereafter, the alleged recovered contraband substance was placed in separate duly sealed plastic box and accordingly the present case

was registered. It is further alleged that the during further investigation, another co-accused namely Rudransh Gupta was also arrested from whom 2.78 kg of Ganja was recovered. Thereafter, it is alleged that after due compliances, investigation was concluded and charge-sheet was filed against the accused persons u/s 20/29 of NDPS Act.

One of the ground of bail taken by the accused in the present case is that applicant is a kidney doner and is suffering from various ailments. It is relevant to mention here that Hon'ble High Court of Delhi has granted interim bail to the applicant/accused vide order dt. 12.03.2024 on the ground of abovesaid medical illness and same was extended from time to time. It is further relevant to mention here that accused has duly surrendered himself before the Court within the stipulated time in compliance of the interim bail order granted in favour of accused by Hon'ble High Court of Delhi. The medical illness report and medical status report of the accused issued by the concerned medical officer and intimated to the Court by the concerned Jail Superintendent shows that the petitioner is a case of Gouty arthritis, hypertension and Chronic Hyperuricemia and he is also known case of left kidney doner with persistent increase in urin acid level despite ongoing treatment for the same.

The relevant part of the medical status report reads as under:

“.....

At present inmate patient is a known case of Gouty arthritis, Hypertension and Chronic Hyperuricemia with complaint of multiple joint pain, Left Knee Pain and Lower Back Pain on and off Haematuria, Bleeding per Rectum with Lower Abdomen Pain and Burning Micturition. Inmate patient is a known case of Left Kidney Doner with persistently increased uric acid level despite of ongoing treatment for the same (latest report shows 9.6 gm/dl.).

.....
Thereafter on 02/01/2024 and 05/01/2024 inmate patient was reviewed by doctor on duty for the complaint of bleeding per rectum, lower abdomen pain, constipation, weakness, joints pain with follow-up case of chronic Hyperuricemia with left side kidney doner, for which after thorough examination, prescribed appropriate treatment, certain investigations and specialists review accordingly.

.....
On 10/01/2024 his blood investigation have been carried out from jail dispensary itself and his uric level was found on higher side (9.6 mg/dl)"

The medical report/medical status report of the applicant/accused reveals that after the lodging of the applicant/accused in jail, he remained under medical treatment on many occasions due to severity of his ailments and there is not

much relief to him and he was also admitted to DDU hospital on several times and is receiving treatment from doctor on duty/jail visiting medicine and Ortho specialist/department of medicine, Orthopedic, Surgery at DDU and sometimes also remained under round the clock monitoring and care. Further the abovesaid medical condition of the accused/applicant are not disputed at all.

Another ground raised by the accused/applicant for the grant of bail is the non-compliance of section 42 of NDPS Act. Hon'ble Apex Court has held in a case titled as Sukhdev Singh Vs. State of Haryana, AIR 2013, Supreme Court 953 that the compliance of Section 42 of NDPS Act is mandatory. It is further held by the Court that :

"25. Before we part with this file, we consider it the duty of the Court to direct the Director General of Police concerned of all the States to issue appropriate instructions directing the investigating officers to duly comply with the provisions of Section 42 of NDPS Act at the appropriate stage to avoid such acquittals. Compliance to the provisions of Section 42 being mandatory, it is the incumbent duty of every investigating officer to comply with the same in true substance and spirit in consonance with the law stated by this Court in the case of Karnail Singh (supra).

In case Abdul Rakib Vs The State Of West Bengal, CRM (NDPS) 546 Of 2023, decided on 25.08.2023, Hon'ble High Court of Kolkata held that :

"18. In the present case, the prosecution has submitted that the alleged secret information received by the prosecution was written down vide a General Diary Entry by the Special Task Force which was subsequently intimated to the superior officer. The relevant documents are part of records.

19. We are, however, of the view that a mere GDE entry does not amount to due compliance of Section 42(1). The Bombay High Court in *Raju Bhavlal Pawar and Ors. Vs. State of Maharashtra* Bail Application No.568 of 2021 held that an entry taken down in the station diary cannot be treated as information recorded under Section 42(1) of the Act. The court relied on *Rajaram Kadu vs. the State of Maharashtra* Bail Application No.2108 of 2016, also a decision of the Bombay High Court, to hold that an entry in the station diary is not due compliance of Section 42(1) of the NDPS Act.

20. The second point which merits consideration is whether there has been due compliance of Section 42(2) of the NDPS Act. The prosecution has relied on the Case Diary to show that there has been compliance of Section 42(2) of the Act.

21. The Supreme Court, however, in *Mahabir Singh vs. State of Haryana* reported at (2001) 7 SCC 148 held, inter-alia, that the court is forbidden from using the entries of such diaries as evidence against the accused cannot also be used in any other manner against him. It was further held that if the court uses the entries in a Case Diary for contradicting a police officer, it can only be done in the manner provided under Section 145 of the Evidence Act, that is, by giving the author of the statement an opportunity to explain the contradiction. The alleged compliance of Section 42(2) being part of the Case Diary therefore falls short of due statutory compliance.

22. We also rely on *Boota Singh (Supra)* to come to the conclusion that non-compliance of Section 42 is not permissible in law. We are of the view that the report under Section 42(1) must be in terms of a clear recorded statement in writing by the authorized officer under Section 42(1) and must not be contained in a document which is closed from public view.

In another case i.e. *Gurjant Singh vs The State of Punjab.*, CRM-M-20943-2022, decided on 20.05.2022 by Hon'ble High Court of Punjab and Haryana held that :

"The Counsel for the petitioner has vehemently argued that the provisions of Section 42 of the NDPS Act have been violated and this fact alone entitles the petitioner to the grant of bail.

During the hearing of the bail application of the co-accused of the petitioner, Harshdeep (since granted bail) this Court had asked the State Counsel to verify as to whether Section 42 of the NDPS Act has been complied with or not. As per the reply there was no specific response to the contention raised by the counsel for the petitioner therein regarding the violation of Section 42 of the NDPS Act. Infact the learned State Counsel and the IO of the case ASI Raj Singh were asked to examine the report under Section 173 Cr.PC along with accompanying documents in Court and they factually conceded that there was no document in the entire challan showing that the provisions of Section 42 NDPS Act had been complied with. The same is the position today. A reading of the reply filed by the State dated 18.04.2022 would show that there is no specific response to the contention of the petitioner that Section 42 of the NDPS Act had not been complied with. Thus it is apparent that prima facie appears to be non-compliance of Section 42 of the NDPS Act.

In another matter i.e. *Sarija Banu (A) Janarthani @ Janani & Anr. Vs. State through Inspector of Police 2004 (12) SCC 266* Hon'ble Supreme Court held as under:

- 7. It is pertinent to note that in the bail application the appellants, it was alleged, that there was serious violation of Section 42 of the NDPS Act. In the impugned order nothing is stated about the alleged violation of Section 42, and it is observed that it was not necessary to consider such violation at this stage. The compliance of Section 42 is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application.*

Now coming to the facts of the present case, wherein it is the case of the prosecution that on 29.10.2023, one secret informer came at office of crime branch at R.K. Puram Delhi and informed regarding the supply of contraband by syndicate members of North Eastern persons. Accordingly, the said secret information was recorded as a GD Entry (General Diary) no.

18A, PS Crime Branch dated 29.10.2023 for the purpose of compliance of section 42 of NDPS Act. As per the case of the prosecution, the said information was shared by SI Amit Greywal with Inspector Rakesh Sharma, who further discussed the same with the then ACP Naresh Yadav. It is relevant to mention here that in the present case, IO has claimed that there was full compliance of provisions of section 42 of NDPS Act as proper entry in the form of GD Entry no. 18A dated 29.10.2023 is made regarding the receiving of the secret information in the office of crime branch. However, it is pertinent to mention here that the alleged GD Entry no. 18A dated 29.10.2023 is neither available in the entire chargesheet nor is part of the present chargesheet, which is itself voluminous in nature. It is further relevant to mention here that during investigation of the present case, IO has neither recorded the statement of the abovesaid Inspector Rakesh Sharma and the then ACP Naresh Yadav u/s 161 Cr. P.C. nor the said officials are cited as prosecution witness in the present case. Moreso, no separate Daily Diary entry for the recording of the alleged secret information in the crime branch on 29.10.2023. Moreso, as per the reply of the IO, there is no specific response to the abovesaid contention raised on behalf of the applicant/accused regarding the violation of mandatory provisions of section 42 of NDPS Act. Moreso, IO was also asked to again examine the final report furnished in the present case u/s 173 Cr. P.C. along with accompanying annexures/

documents in court. However, he conceded that there is no document in the entire challan showing the availability of GD Entry no. 18A dated 29.10.2023 regarding compliance of provisions of section 42 of NDPS Act. It is well settled law that the compliance of provisions of section 42 of NDPS Act is mandatory in nature. Thus, considering the facts of the case it is apparent that prima facie there is non-compliance of section 42 of the NDPS Act.

The abovesaid mandatory non-compliance casts a serious doubt on the genuineness of the case of the prosecution. Admittedly, the accused is not involved in any other case of similar nature. Considering the facts of the case, abovesaid non-compliance is sufficient ground to record satisfaction that the applicant is not guilty for the offence charged. The rigors of section 37 of NDPS Act become inoperative in view to the above mentioned cases and observation of Hon'ble Supreme Court and aforesaid discussions. Admittedly, the accused has never misused the liberty of interim bail granted to him and may not commit similar offence again. The conclusion of trial shall take considerable time. The PWs in the present case are police officials and there is no apprehension of causing any influence upon them. Considering the aforesaid circumstances in entirety this court is of opinion that the applicant has made a prima facie case for grant of regular bail Accordingly, the applicant/accused is admitted to bail upon furnishing of personal bond in sum of

₹50,000/- with one surety of the like amount with following conditions:

- i) That the accused will not jump the bail and will appear in the court regularly.
- ii) That accused shall not indulge into similar offence or any other offence in the event of release on bail.
- iii) That accused shall not tamper/influence any evidence/ witness in any manner.
- iv) That in case of change of residential address, accused shall intimate the court about the same within a week.
- v) That accused shall give his mobile number to the IO and will keep it operational.
- vi) That accused shall not leave the country without permission of Court and the accused shall deposit his passport, if any, with the court.

Nothing stated hereinabove shall tantamount to be an expression of final opinion on the merits of the case and the observation made above are only for the purpose of deciding the present bail application. With above observations, application stands disposed off accordingly.

Copy of the order be given dasti, as prayed for. Copy of the order be also sent to the concerned Jail Superintendent.

(SATVIR SINGH LAMBA)
ASJ/SPECIAL JUDGE (NDPS),
WEST DISTRICT, DELHI/20.07.2024