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BAIL (DASTI)

D/O

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 22400/ Crl.

Dated 27/04/22

From:

The Registrar General,
High Court of Delhi,
New Delhi.

To,

1. Mr. Sudhir Kumar Sirohi, Special Judge NDPS Act, Room No. 35, P. Building, Patiala House Courts, New Delhi or Successors Courts.
2. The Superintendent, Central Jail, Tihar, New Delhi.
3. The SHO/IO, Police Station-Crime Branch, Delhi.

BAIL APPLICATION NO. 557/2023

Sachin Kumar

.....Petitioner

V E R S U S

State (Govt. of NCT of Delhi)

.....Respondent

Petition under Section 439 Code of Crl. Procedure in case relating to FIR NO. 186/2020, U/s 20/25/29 NDPS Act, ¹⁹⁸⁵ registered at Police Station- Crime Branch, Delhi.

Sir,

I am directed to forward herewith for immediate compliance/ necessary action a copy of judgment/ order dt. 26.04.2023 passed in the above case by Hon'ble Mr. Justice Yogesh Khanna of this Court.

The Hon'ble Court while disposing of the instant case has directed, the petitioner is admitted to bail on his furnishing personal bond in the sum of Rs. 25,000/- with one surety in the like amount to be satisfaction of the learned Trial Court.

Necessary directions are contained in the enclosed copy of order.

Yours faithfully

Handy
27/4/23

Encl: Copy of order dated 26.04.2023
and memo of parties.

A.R. (CRL.)
For Registrar General

IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLICATION NO. _____ OF 2023

The present petition arises from FIR No. 186/2020 registered at Police Station Crime Branch under section 20/25/29 of the NDPS Act on 03.12.2020

IN THE MATTER OF:

Sachin Kumar

...Petitioner

Versus

State

(Govt. of NCT of Delhi)

...Respondent

MEMO OF PARTIES

Sachin Kumar

S/o Sh. Om Prakash Singh

R/o Village Machar, P.S. Jahangirpur,

District Bulandshahar, UP

...Petitioner

Versus

State

Govt of NCT of Delhi

Through SHO

PS : Crime Branch

Office At : STF Crime Branch,

Sunlight Colony, Delhi

...Respondent



(ADITYA AGGARWAL, ANKIT MUTREJA &
KAJOL GARG)
ADVOCATE

EN.ROLL.NO. D/982/06, D/2123/16 & D/3706/2020
15, Basement, Birbal Road, Jangpura Extn., Delhi-110014
M: 9891789459 & 9990206703

E-Mail ID: adv.ankitmutreja@gmail.com

Place: Delhi

Date: 18.02.2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 557/2023

SACHIN KUMAR

..... Petitioner

Through: Mr. Aditya Aggarwal and Mr. Mohd. Yasir, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for State along with ASI Pramod Singh, Crime Branch, Sunlight Colony.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

26.04.2023

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1. The present petition has been filed for grant of regular bail the present applicant/petitioner.
2. As per the prosecution case, two persons were arrested namely Dinesh Kumar @ Dina and Sachin Kumar, the present applicant, while they were in a U.P. numbered vehicle i.e. white colour Scorpio No. 17J 5200. From the possession of the present applicant/Sachin Kumar, four Kattas were recovered, each Katta contained four brown taped bundles, weighing total 41.250 Kilograms of Ganja.
3. It is the case of the prosecution all the four brown taped bundles in each Katta contained Ganja, however, learned counsel for the petitioner submits that samples were not taken in accordance with law and he referred to the proceedings under Section 52-A of the NDPS Act, which is on record as Annexure 'P4' and is at page No. 134 of the paper-book to say admittedly each plastic katta had four plastic brown taped bundles allegedly containing Ganja and two samples each from every bundle ought to have been taken but instead only two samples were taken from each katta containing four brown

taped bundles making it to a total of only eight number of samples whereas total 32 number of samples ought to have been taken.

4. Order dated 18.01.2023 passed by this Court in *Bail Application No. 2781/2022* titled '*Sarvan v. State Govt. of NCT of Delhi*', is referred to, wherein the discrepancy in the sampling process and violation of Section 52-A of the NDPS Act, resulted to grant of bail to the said accused. It was decided as under by this Court :

"...6 The proceedings under Section 52A of the NDPS Act is infact in line of the objection raised by the learned counsel for petitioner viz. out of various packets in each parcel, the samples were not taken from each of the parcels in the six parcels leaving other packets in each of the six parcels untouched, hence raising apprehension as to if other packets in each of the gunny bags contain contraband or not. The apprehension, raised by the learned counsel for petitioner appears to be plausible. It is submitted it would rather satisfy the requirement under Section 37 NDPS Act as the weight of the packets from which samples were taken would not be all of commercial quantity, hence rigors would not apply..."

5. Similarly in *Bail Application No. 3233/2022* titled '*Laxman Thakur v. State*', decided on 14.12.2022, it was held as under by this Court :-

"...9 The 3 Bench judgment of *Bal Mukund (supra)* is binding on this Court.

10 Relevant portion of Standing order 1/88 reads as under:

"2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each packet/container in case of seizure of more than one package/container."

11 The standing order 1/88 mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.

12 I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable..."

6. Further in *Bail Application No. 3076/2020* titled '*Ahmed Hassan Muhammed v. The Customs*', decided on 11.02.2021, it was held as under by this Court :-

"...17 In Basanti Rai (Supra), while dealing with a case where accused was found carrying a polythene bag containing 8 similar polythene bags having brown colour substance and Investigating Officer took small pieces of charas from each packet, mixed the same and drew two sample parcels which were sent to FSL for analysis, I had allowed the appeal while holding as under:-

"25 After hearing both the learned counsel for parties and going through the Trial Court Record, I find force in the submission of learned counsel for appellant. Admittedly, the samples were drawn after breaking small pieces from 08 of the polythene bags which were allegedly kept in a green coloured bag by the appellant in his right hand. The 10 prepared two samples of 25 grams each after taking a small quantity from each of the slabs.

26. Though the settled law is that if it is not practicable to send the entire quantity then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination. Otherwise, result thereon, may be doubted.

27. For example, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed, without that the results would be negative..."

7. Considering the above facts where sampling was not done in accordance with law and the proceedings under Section 52-A of the NDPS Act being in line to the objections raised by learned counsel for the petitioner viz samples were not taken from each of the brown taped bundle,

raises an apprehension that the brown taped bundles left over may not have contained the contraband. From the proceedings it is also not clear from which of the different bundles lying in Kattas the two samples were taken. It is not clear from out of 16 bundles the samples were taken from which of the four Kattas and hence rigors of Section 37 NDPS Act would not apply as there exist a dispute qua the weight of the Ganja actually recovered from the person of the present applicant.

8. In view of the facts so stated by the learned counsel for the petitioner and considering the period of custody already undergone by the petitioner since 03.12.2020, the petitioner is admitted to bail on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court. The applicant/petitioner shall furnish his contact/address details to the Investigating Officer/SHO concerned and shall keep his mobile location app open at all time. He shall not try to contact/threaten/intimidate the witnesses in any manner, *lest* it shall be a ground for cancellation of his bail.

9. The application stands disposed of.

10. A copy of this order be communicated to the learned Trial Court/Jail Superintendent for information and compliance. Order *dasti*.

APRIL 26, 2023

j




YOGESH KHANNA, J.


True Copy