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

Date of decision: 13.07.2022

+ **BAIL APPLN. 302/2022**

SANJAY NEGI

..... Petitioner

Through: Mr. Aditya Aggarwal, Mr. Naveen
Panwar, Advocates

versus

STATE

..... Respondent

Through: Mr. Hirein Sharma, Ld. APP
Insp. Jasbir Singh, PS Crime Branch

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J (ORAL)

CRL.M.A. 7936/2022 & CRL.M.A. 7937/2022-EX.

Allowed subject to all just exceptions.

The applications stand disposed of.

BAIL APPLN. 302/2022

1. This is an application filed seeking bail in the FIR 604/2021 dated 01.12.2021 registered at PS Vasant Kunj, South, Delhi under Section 20/25/29 of the NDPS Act, 1985 and later transferred to and taken over by the Narcotics Cell, Crime Branch, New Delhi.
2. The applicant has not been named in the FIR but has only been named in the second disclosure statement made by the co-accused persons, namely, Mr. Ranjeet Raina and Mr. Gulshan Kumar.
3. It is submitted by Mr. Aggarwal, learned counsel for the petitioner that the recovery was only made from Mr. Ranjeet Raina and the FIR No.

604/2021 dated 01.12.2021 was registered at Vasant Kunj, South Police Station for offences punishable under Section 20/25/29 of the NDPS Act against Mr. Ranjeet Raina and Mr. Gulshan Kumar. Mr. Gulshan Kumar was the driver of the vehicle.

4. As per the disclosure statement of Mr. Ranjeet Raina, he met the applicant on 24th and 25th November and procured the contraband from the applicant. On the said basis, the applicant was arrested from his native village in District Kullu, Himachal Pradesh and brought before the learned Special Judge, NDPS Act, Patiala House Courts, New Delhi and remanded to judicial custody. From 13.12.2021, the applicant has been in judicial custody.
5. It is further stated that the respondent took the applicant to Kullu, Himachal Pradesh on 10.12.2021 for the purpose of conducting investigation. However, there was nothing recovered from him - neither any incriminating material found from the applicant, nor the respondent could trace or identify the source of contraband alleged to have been seized from Mr. Ranjeet Raina.
6. It is, therefore, the case of the applicant that he has no connection with the accused persons and there is nothing in the CDR or whatsapp log, incriminating the applicant with the alleged offences in the FIR 604/2021. In this view of the matter, the present application has been filed.
7. As per the status report filed by the respondent, it is submitted that 9.5 kg of 'Charas' was recovered from the accused persons. The accused person disclosed that he had recovered 'Charas' from one Mr. Sanjay Negi (applicant), R/o Village Rangri, Himachal Pradesh. On the basis

of the CDR, location and information, Mr. Sanjay Negi was arrested from Kullu, Himachal Pradesh. Mr. Sanjay Negi disclosed that he knew Mr. Ranjeet Raina.

8. It is submitted by Mr. Hirein Sharma, learned APP that the applicant is liable in view of Section 29 of the NDPS Act. He further submits that the applicant also has to meet the bar of Section 37 of the NDPS Act.
9. I have heard learned counsels for the parties. It has been observed in ***Md. Irshad vs. State of NCT of Delhi*** in Bail APPL. 994/2022 dated 05.05.2022, wherein this Court relied upon the following judgments:-

“

4.

- a) *The Supreme Court judgment in Crl. Appl. No. 949/2018 dated 31.07.2018, Surinder Kumar Khanna v. Intelligence Officer Directorate of Revenue Intelligence, wherein the court has observed the following:*

“10. Even if we are to proceed on the premise that such statement under Section 67 of the NDPS Act may amount to confession, in our view, certain additional features must be established before such a confessional statement could be relied upon against a co-accused. It is noteworthy that unlike Section 15 of Terrorist and Disruptive Activities Act, 1987 which specifically makes confession of a co-accused admissible against other accused in certain eventualities; there is no such similar or identical provision in the NDPS Act making such confession admissible against a co-accused. The matter therefore has to be seen in the light of the law laid down by this Court as regards general application of a confession of a co-accused as against other accused.

14....On the touchstone of law laid down by this Court such a **confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused...**”

b) Secondly, he has relied on the judgment of the Rajasthan High Court, **Kishan Singh v. State of Rajasthan** [1995 CriLJ 3947] dated 19.01.1995 wherein the High Court observed the following:

“6....Section 29 of the Act proclaims that whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under the Act shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in Section 116 of the IPC, be punishable with the punishment provided for the offence. Thus, the abetment may take place either by instigation or conspiracy or by intentional act. But for the proof of abetment or conspiracy, there must be joining together two or more persons in the conspiracy and an act of illegal omission or commission of an offence must take place in pursuance thereof. Therefore, the actual complicity which preceded the actual commission of an offence or through some word or conduct which instigated the commission of the offence should be prima facie shown. It is true that formation of conspiracy can be inferred from circumstantial evidence or by conduct and act of parties because affirmative evidence is not always possible. **But for establishing the charge for abetment and criminal conspiracy Under Section 29 of the Act; the prosecution must adduce some independent, corroborative or affirmative legal evidence.**”

c) Thirdly, in the judgment of High Court of Judicature at Bombay, *Abdul Mohammed Shaikh v. UOI & Anr.* [Crl. B.Appl. No. 102/2020], the court has observed the following:

“16. In the light of the observation of the Apex Court in the case of *Tofan Singh (supra)* the submissions of learned counsel for the respondent cannot be accepted. In the case of *Muhammed Asarudheen Vs. State of Kerala* decided by High Court of Kerala vide order dated 14.01.2021, it was observed that the accused had made repeated applications for bail. The contention was raised that Section 50 was not complied and the statement under Section 67 is not admissible in evidence. **The Kerala High Court has observed that the confessional statement can be used as corroborative piece of evidence, provided that there are other materials available. The facts of this case indicate that there was a recovery of contraband. There is no other cogent material to corroborate statement under Section 67 of NDPS Act in the present case. The observation that confession statement can be used as corroborative piece of evidence is contrary to ratio of the aforesaid decision and well established principles of law.....**”

10. Section 29 of the NDPS Act reads as under:-

“29. Punishment for abetment and criminal conspiracy

(1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the

commission of any act in a place without and beyond India which-

*(a) would constitute an offence if committed within India; or
(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”*

11. In the present case, except for the disclosure statement, there is no other evidence against the applicant. The gist of judgments as summarized in *Md. Irshad* (supra) is reproduced and state as under:-

“13. . . .

- a) It has been held in **Surinder Kumar Khanna** (Supra) that confessional statement cannot be the only substantive evidence and it is only to assist the court.*
- b) In **Kishan Singh** (Supra), it is observed that to make out a case against the applicant/petitioner the prosecutor must ‘adduce some independent, corroborative or affirmative legal evidence’.*
- c) In **Abdul Mohammed Shaikh** (Supra), it was concluded that confessional statement can be used as corroborative statement when there are other evidences available.”*

12. Keeping the above judgments in mind, and in view of the fact that there is no other independent, corroborative or affirmative legal evidence against the applicant except the disclosure statement of Mr. Ranjeet Raina, and also the fact that the applicant does not have any past antecedents, I am of the *prima facie* view that the accused is not part of a larger conspiracy.

13. As far as Section 37 of the NDPS Act is concerned, the Hon'ble Supreme Court in '*Union of India vs. Rattan Mallik*' [(2009) 2 SCC 624] has observed as under:-

“12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on “reasonable grounds”.

13. The expression “reasonable grounds” has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering

an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of “not guilty”. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.”

14. For the reasons stated above, I am of the view that there are reasonable grounds that the accused is not guilty of the offence as alleged. I am also of the view that the applicant is not likely to commit an offence under the Act while on bail. In addition, the learned APP has been given an opportunity to oppose the application for bail. Hence, the rigours of Section 37 of the NDPS Act are met.
15. Therefore, in view of the above, I am inclined to grant bail to the applicant subject to the following terms and conditions:-
- i. The applicant shall furnish a personal bond with one local surety in the sum of Rs. 20,000/- to the satisfaction of the Trial Court;
 - ii. He shall appear before the Court as and when the matter is taken up for hearing;
 - iii. The applicant shall provide his mobile number to the Investigating Officer (IO) concerned- at the time of release, which shall be kept

in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of suspension of sentence;

- iv. He shall report to the local Police Station on the first day of every month. He shall not be forced to sit for more than half an hour on any such occasion;
 - v. In case he changes his address, he will inform the IO concerned and this Court also;
 - vi. The applicant shall not leave the country during the bail period and surrender his passport, if any, at the time of release before the Trial Court, if he has one;
 - vii. The applicant shall not indulge in any criminal activity during the bail period;
 - viii. The applicant or his friends or family members shall not communicate with/intimidate, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.
16. The application stands disposed of in the aforesaid terms.
 17. The observations made above are only for the purpose of deciding the bail application and shall have no material bearing on the evidence led and the arguments made on the basis of the evidence so led.
 18. *Dasti* under signature of Court Master/ Private Secretary.

JASMEET SINGH, J
JULY 13, 2022 / (MS) [Click here to check corrigendum, if any](#)