

SC 360/2023
STATE Vs. SUMITRA
FIR No. 119 /2023
PS Baba Haridas Nagar
U/s 08/20 NDPS Act
CNR No. DLSW01-005297-2023

04.10.2023

This is the second application under Section 439 Cr.P.C moved on behalf of applicant/accused Sumitra for grant of bail.

Present: Sh. Brijesh Kumar, Ld. Addl. PP for the State.
Sh. Aditya Aggarwal and Ms. Shivani Sharma, Ld.
Counsels for the applicant.
IO/ASI Bidyanand is also present.

It is stated that the first bail application of the accused/applicant was dismissed by this Court on 06.06.2023 and thereafter, the accused/applicant approached Hon'ble High Court of Delhi for grant of bail, which application was disposed of as withdrawn as supplementary charge-sheet/FSL result came to be filed before this Court which resulted in change in circumstances. Hence, the present second bail application was preferred before this Court.

It is stated that the applicant/accused was apprehended by Ct. Ajay on being suspected to be carrying contraband i.e. Ganja and thereafter, the alleged contraband was recovered from a sack on her head which weighed 20 kgs and 400 grams including the weight of the sack. The main ground taken for bail as per ld. arguing Counsel is the discrepancy in weight after receipt of FSL report as per which 100 grams of sample/Ex.P1 was found to be containing 70.8 grams of greenish brown coloured dried flowering and vegetative material

(without box). Thus, it was argued that the discrepancy per 100 grams in light of total weight of seized contraband to be 20 kgs and 400 grams would be substantial in case more samples of 100 grams each were taken and sent for testing. Reliance in this regard has been placed upon:

- i) Sanja Prasad Vs. State (Govt. of NCT) of Delhi,*
- ii) Mohd. Ramzan Vs. State (NCT of Delhi),*
- iii) Rajesh Jagdamba Avasthi Vs. State of Goa and*
- iv) Kadir Vs. State Govt. of NCT of Delhi.*

Thus, it has been argued that the contraband/ganja recovered as per prosecution is even otherwise 20 kgs and 400 grams which is just above the intermediate quantity and reliance has been placed upon case titled ***Fasil Vs. State of Kerala*** (Bail App. No. 3849/2022 decided on 13.04.2023). It has further been argued that in view of the discrepancy of weight the bar of section 37 of NDPS Act would be lifted and benefit of doubt is to be granted to the accused/applicant who is languishing in custody since 07.03.2023.

IO has filed reply as per which it has been stated that accused/applicant was apprehended with Ganja weighing 20 kgs and 400 grams and charge-sheet has already been filed in the present case.

Ld. APP for Stated has argued that the weight of Ganja reduces with time and the sample was sent after 02 months of recovery resulting in discrepancy in weight in the report received from FSL.

I have perused the bail application, citations relied upon. I have heard Ld. Addl. PP for State and Ld. Defence Counsel. Even

though, recovery witnesses are yet to be examined in this matter, however, the discrepancy of 30 grams in the weight of the sample which weighed 100 grams when sent to FSL dents a hole in the story of the prosecution with regard to the actual weight of the seized contraband. Thus, the factum of recovery of the alleged quantity of Ganja becomes doubtful and if considered in toto the difference would be substantial. Thus, in light of section 37 of the NDPS Act, this Court is to be satisfied that there are reasonable ground for believing that the accused/applicant is not guilty of the offences or that she is not likely to commit any offence while on bail. Such situations, as regards discrepancy in weight of the samples have also been considered in Judgment of Mohd. Ramzan (supra) which is squarely applicable to the facts of the present case. The coordinate bench in Mohd. Ramzan (supra) has relied upon the judgment of Hon'ble Supreme Court in Rajesh Jagdamba Avasthi Vs. State of Goa (supra) and has held that the discrepancy in the weight of samples seized u/s 52A of NDPS Act and the report of FSL erodes the credibility of recovery proceedings.

In the present case also, the discrepancy in the weight of the sample, questions the actual seizure and the prosecution has not been able to explain the discrepancy at this stage. Since, the applicant has no other criminal antecedents and since the applicability of section 37 of NDPS Act, at this stage, cannot be insisted upon on account of above-mentioned reasons, the accused/applicant becomes entitled to bail as investigation qua her complete and she is in custody since 07.03.2023.

For the aforesaid reasons, the accused/applicant is directed to be released on bail in the present FIR on furnishing personal bonds in the sum of Rs.20,000/- with two sureties in the like amount and if the accused/applicant has a passport, she shall surrender the same to this Court. In case, the accused/applicant commits similar offence in future, the State shall be at liberty to apply for cancellation of her bail in the present case.

Bail application of the accused/applicant is disposed of as allowed accordingly.

Copy of this order be given dasti to Ld. counsel for the accused, as prayed for. Copy of this order be also sent to Jail Superintendent for information and compliance.

Re-notify the matter for the date already fixed i.e.
14.10.2023.

(Chetna Singh)
Spl. Judge (NDPS)/Dwarka Courts/SW
New Delhi/04.10.2023