

गौरव गुप्ता
GAURAV GUPTA
अतिरिक्त सत्र न्यायाधीश विशेष न्यायाधीश (एन.डी.डी.एल.) एवं
A.B.J./Special Judge (NDPS) Act, South District
दक्षिण जिला
South District
कमरा नं. 505, पंचवटा ताल
Room No. 505, Fifth Floor
साकेत न्यायालय परिसर
Saket Court Complex
नई दिल्ली-110017
New Delhi-110017

IA 1/23
State Vs. Arvind
FIR No.32/2023
PS-Ambedkar Nagar

29.08.2023

This is an application u/s 439 Cr.P.C. for grant of regular bail moved on behalf of applicant/accused Arvind.

Present: Sh. Anil Kumar, Ld. Substitute Addl. PP for the State.
Ld. counsel for applicant/accused.

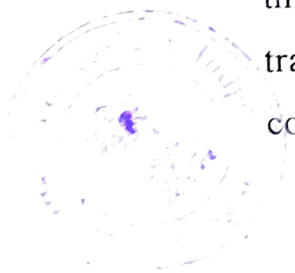
1. It was argued by Ld. counsel for the applicant/accused that the applicant had been falsely implicated only on the basis of disclosure statement. It was pointed out by Ld. counsel that no recovery of any contraband substances was effected from the possession of or at the instance of the applicant/accused and that simply because the applicant is the owner of the car in which the co-accused persons were apprehended along with contraband substance, he was also implicated. It was argued that the applicant had given the car on rent to co-accused Sumit and had no knowledge that the said car was being used by the co-accused to transport contraband substance. It was further argued that the applicant being the owner cannot be held liable if the vehicle was used for commission of an offence without his knowledge and consent. Ld. counsel further pointed out that the investigating agency has not produced any evidence to show that there was any monetary transaction between the applicant and the co-accused with respect to the contraband substance.



2. In support of his arguments, Ld. counsel relied upon the following decisions:

1. *Chand Mehra Vs. State of NCT of Delhi*, Bail Application No. 4245/21, decided on 10.02.2023
2. *Amit Ranjan Vs. NCB, Delhi*, Bail Application No. 1189/20, decided on 23.05.2022.
3. *Haresh Rawal Vs NCB, Delhi*, Bail Application No. 1177/21, decided on 03.06.2021.
4. *Galiv Hussain Vs. State NCT of Delhi*, Bail Application No. 3425/22, decided on 25.04.2023.
5. *Phundreinayun Yas Khan Vs. State NCT of Delhi*, Bail Application No. 1383/22, decided on 11.01.2023.
6. *Harbhajan Singh Vs State of Haryana*, Cr. Appeal no. 1480/2011, decided on 25.04.2023.

3. Ld. Addl. PP assisted by IO SI Yogesh Kumar opposed the application on the ground of severity of allegations. It was argued that two co-accused persons Sumit and Anisha were apprehended on the basis of secret information while they were travelling in a Verna Car bearing registration no. UP14CF5803 belonging to the applicant Arvind and the said two co-accused persons were found in possession of commercial quantity of Ganja. It was further argued that the applicant had knowingly permitted the co-accused persons to transport Ganja in his car. It was further argued that during the course of investigation, accused disclosed that he along with co-



accused Sumit used to bring Ganja from Odisha from one Jidiya Nayak @ Jeet and that from the analysis of CDR of the mobile phones, it was revealed that the said two accused persons were in touch with each other and their location was also found in Odisha at the same time.

4. I have considered the rival contentions and perused the record carefully.

5. In **Harbhanjan Singh's Case (supra)**, the Hon'ble Supreme Court held as under:

" In the entire evidence led by the prosecution, no material was produced against the appellant to discharge initial burden to prove the foundational facts that the offence was committed with the knowledge and consent of the appellant. It is a case in which, he was not with the vehicle nor was he arrested from the spot when the accident occurred or when truck and contraband were taken into custody. The trial Court had put entire burden of defence on the appellant being the registered owner of the vehicle.....

..... the prosecution has failed to produce any material on record to show that the vehicle in question, if it was used for any illegal activity, was used with the knowledge and consent of the appellant. Even presumption as provided for u/s 35 of the NDPS Act will not be available for the reason that the prosecution had failed to discharge initial burden on it to prove the foundational facts. In the absence thereof, the onus will not shift on the accused. "

6. The Hon'ble Court relied upon its earlier decision in the case of **Bhola Singh Vs. State of Punjab (2011) 11 SCC 653** wherein it was held that unless the vehicle is used with the knowledge and consent of the owner thereof, which is *sine qua non* for applicability of Section 25 of the NDPS Act, conviction there under cannot be legally sustained.



7. Further, in **Chand Mehra's Case (supra)**, the accused was granted bail by the Hon'ble High Court of Delhi on the ground that no recovery was effected from his possession and that he was merely the owner of the car from which recovery was effected and the said car was in possession of the other co-accused. Another incriminating circumstance against the accused in the said case was the CDR reflecting phone calls between him and the other co-accused. The Hon'ble court opined that apart from the said two circumstances, there was no evidence on record to demonstrate that the vehicle was being used for transportation of contraband with the knowledge and connivance of the accused. It was held that twin conditions of Section 37 stood satisfied and the accused was granted bail.

8. Coming to the facts of the present case, no recovery was effected from the possession of or at the instance of applicant/accused. As per the allegations, applicant is the owner of the vehicle in which the co-accused persons were found transporting Ganja, however, the applicant was not present with the vehicle at that time and was also not apprehended from the spot. So far as the CDR is concerned, there are no call recordings or any transcripts of any call record and the mere fact that the accused had made phone calls to the co-accused does not in any manner incriminate the applicant /accused. The fact that the applicant/accused and co-accused Sumit's mobile location was seen in Odisha at the same time, the same is inconsequential in the absence of any evidence regarding procurement/purchase of contraband from Odisha.



9. The applicant has been arrayed as an accused in the present case on the basis of his disclosure statement, however, said statement is inadmissible as the same is hit by Section 25 of the Evidence Act. At this stage, other than the disclosure statement there is nothing to show that the applicant/accused had allowed the use of his car for transportation of contraband with his knowledge and consent.

10. I am of the opinion that the applicant/accused has been able to show a probable cause justifying recording of satisfaction u/s 37 of the NDPS Act and further there being no previous involvement, there does not appear to be any apprehension that the applicant/accused is likely to commit similar offence. The twin conditions of Section 37 stands satisfied. **Accordingly, the applicant Arvind is admitted to bail on the following conditions:**

1. The applicant shall furnish personal bond in the sum of Rs. 50,000/- with two sureties in the like amount.
2. The applicant shall furnish his permanent address as well as all the contact numbers to the IO of the case and shall not change the same without prior permission of the court.
3. The applicant shall keep the GPS location of his mobile phone number on at all times.
4. The applicant shall not leave the country without prior permission of the court.
5. The applicant shall not in any manner try to tamper with the evidence or offer any threat inducement or promise to any person associated with the present case.



6.The applicant shall also not commit any offence while he remains on bail in the present case.

The application stands disposed of accordingly.

Copy of the order be given dasti.

Copy be sent to Jail Superintendent through email for compliance.




(Gaurav Gupta)

Spl. Judge-NDPS/ASJ (South)
Saket Courts, New Delhi 29.08.2023

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ASJ/Special Judge, NDPS A
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