

IA-5-2023 SC No.890-2022

State V. Shahbuddin

FIR No. 152/2022

PS Crime Branch Under Section 20/25/29 NDPS Act & 174A IPC

08.02.2023

Pr: Sh. Gurbhej Singh Guraya, Ld. Addl. P.P for the State.
Sh. Aditya Aggarwal & Ankit Mutreja, Ld. Counsel for the
applicant / accused
I.O with case file.
Arguments heard on the application under Section 439
Cr.P.C for grant of regular bail to accused-applicant.

It is pleaded on behalf of the applicant that the accused/applicant has been falsely implicated in the present case and has been lying in Judicial Custody since 25.07.2022.

At the outset, it is pleaded in the application that the application has not touched the merits of the case and is solely based upon judgment of Hon'ble High Court of Delhi in case titled **Basant Rai V State Crl. Appeal No. 909-2005 dated 02.07.2012** which has been followed in various cases including **Laxman Thakur V. State Bail Applications No. 3233-2022 dated 14.12.2022.**

It is argued that the procedure adopted by the prosecution for conducting the sampling of alleged recovered contraband is not in consonance with law as laid down in **Laxman Thakur (supra) case.** The Hon'ble High Court of Delhi has granted relief to the petitioner in **catena of judgments viz; Ahmed Hassan Muhammed V. The Customs Bail Application No. 3076-2020) dated 11.02.2021, Basant Rai (supra) case, Charlse Howell @ Abel Kom V. NCB Crl. Appeal No. 755-2016 dated 13.08.2018, Edward Khimani Kamau V. NCB (MANU/DE/1748/2015) dated 28.05.2014, Gopal Das V. NCB Bail Application No. 3491/2020 dated 04.02.2021 of Hon'ble High Court of Delhi, Amani Fidel Chris V. NCB Crl Appeal No 1027/2015 & Crl. MB 511/2019 and Crl. MA No. 1660/2020 dated 13.03.2020 of Hon'ble High**

Court of Delhi, Om Parkash Verma V. State of U.P Crl. Misc Bail Application No. 9660-2021 dated 11.03.2021 of Hon'ble High Court of Allahabad, Ram Bharose V. State of NCT of Delhi, Bail Application No. 1623/2022 dated 05.08.2022 of Hon'ble High Court of Delhi, Santini Simone V. Department of Customs Crl. Bail No. 7501/2020 on 05.10.2020 of Hon'ble High Court of Delhi and Naim Khan V. State of M.P of Hon'ble High Court of M.P.

It is further argued that co-accused Pawan has been admitted to regular bail by this Hon'ble Court observing the ground mentioned in the present application. Hence, the accused/applicant is entitled to bail on the principles of parity. It is further pleaded on behalf of the accused/applicant that the investigation qua the accused/applicant in the matter has already been completed and he is no longer required for purpose of investigation. Chargesheet has also been filed. Hence, prayer is made for grant of regular bail to the accused/applicant.

Per contra, Ld. Addl. P.P for the State has vehemently opposed the bail application stating that as per the reply filed by the IO, on 25.07.2022, on receipt of secret information accused/applicant Shabuddin, Mohd Ishrafeel @ Ramchander and Pal Ji Gautam were apprehended alongwith Tata Truck bearing No. PB03A T5233 with 250 KG Ganja recovered in 10 kattas from hidden cavity in fuel tank over the driver's cabin.

During the further investigation, arrested accused persons revealed that Ganja was provided by one Rabindra Nayak and truck was provided by co-accused Pawan. The source of the illegal contraband is absconding and has been declared P.O. Accused/applicant herein was arrested on 14.08.2022.

From the record of RTA Tata Truck bearing No. PB03A T5233 from which the contraband was recovered is registered in

the name of Surender Singh who on interrogation stated that he sold the said truck in 2020 to one Ram Mehar on power of attorney. The said Ram Mehar on interrogation stated that he had purchased the said truck from Surender (his uncle) but after lock down he was not able to pay its installment and get the permit, so, he asked Ajeet S/o Ram Kishan to pay the pending installments by using the said truck. The said Ajeet paid four installments and started using the said truck. On interrogation, Ajeet told that as he had to pay some money to co-accused Pawan, he gave the said truck to said accused and hence accused Pawan was in possession of truck in question .

It is further submitted that as per the CDR analysis Pawan was in touch with three accused persons including the accused/applicant herein who were apprehended with commercial quantity of Ganja i.e 250 Kg. Investigation also revealed that accused Pawan got replaced the fuel tank with accused Ishrafeel @ Ram Chander from Transport Nagar, Panipat. Further, accused Pawan paid last two installments of the truck in question for the month of May and June 2022 with financier Indusind Bank. Bank statements of accused persons revealed that accused Pawan had received a sum of Rs.1,37,000/- in May and July from one Ram Kumar Tiwari.

It is further argued that the recovery made from accused/applicant falls under the commercial quantity and hence, bar under Section 37 of the NDPS Act is applicable in the present case. No parity can be claimed by the applicant with co-accused Pawan against whom there is no direct evidence .

Heard and considered.

The main thrust of the arguments advanced in the present bail application is qua sampling procedure. The said issue has been decided in detail while deciding/granting bail to co-accused Pawan by this Court vide its order dated 09.01.2023 which is reproduced

hereunder:

“The issue herein which has been argued and pressed in the present second bail application is the manner of drawing of the samples and it being against the settled procedure of law as has been dealt in the abovenoted number of judgments by the Hon’ble Delhi High Court. The latest judgment of the Hon’ble Delhi High Court involving the ganja is *Laxman Thakur Vs State (supra)* and the relevant para no. 12 of the said judgment is reproduced herein below for reference :

“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 cause 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.”

In the present case in hand too, the contents of the chargesheet, seizure memo as well as the statements of recovery witnesses, all reflects that ten kattas were recovered from Tata Truck bearing No. PB03A T5233. The said kattas were having packets of different sizes and all the said packets were wrapped with a brown colour tape. The contents of different sizes of packets were opened and were poured back into the single katta weighing 250 kg. Similar manner was adopted qua the all said ten kattas. Therefore, the said homogenizing of the contents of the recovered material and thereafter drawing of the samples from the same is against the procedure of standing order no. 1/89 of Department of Revenue, Govt. of India. The same causes prejudice to the accused.

In light of the abovesaid reasons, I am of the considered opinion that the accused / applicant Pawan is able to satisfy one of the twin conditions as laid down u/s 37 of NDPS Act.”

Accordingly, the above-quoted observations applies in the present case too in respect of the issue of procedure of sampling. Thus, the accused/applicant herein is also entitled for regular bail on the principles of parity as co-accused Pawan has already been admitted to regular bail vide order dated 09.1.2023. The onus placed upon the applicant of satisfying the one of the condition's

u/s 37 of Act stands satisfied . As far as the second condition is concerned, there is no probability of he again committing the offence as he has clean past .

Keeping in view the above facts and circumstances of the case, **the accused/applicant is admitted to bail subject to furnishing a personal bond in the sum of Rs.50,000/- with one surety in the like amount on the following conditions:**

- i) That the applicant/accused shall not leave Delhi without prior intimation to the IO/Court either by written intimation or through SMS to IO on mobile phone in advance;
- ii) That the applicant/accused will supply all numbers of his functioning phones/mobile phones to the IO as well as about his whereabouts.
- iii) That the applicant/accused shall not tamper with the evidence;
- iv) That the applicant/accused shall not try to contact in any manner or threat the prosecution witnesses;
- v) That in case of change of his residential address, he shall intimate the court about the same;
- vi) That the applicant shall attend the Court on each and every date of hearing without fail.
- vii) In case of involvement in any criminal case during bail period the bail shall be liable to be cancelled.

A copy of this order be sent to the Jail Superintendent concerned for further communication to the accused/applicant.

(Gagandeep Singh)
ASJ/Spl. Judge (NDPS):
North, Rohini Courts, Delhi
08.02.2023