

IA No. 24-23 SC 46-02
STATE Vs. Asim Khan
FIR No. 607/21
PS Bawana
U/s 21/25/29 NDPS Act

01.09.2023

This is fourth bail application moved on behalf of accused/applicant.

Lawyers are on strike today.

Pr: Ms. Promila Singh, Ld. Addl. PP for the State
None for accused/applicant.

Arguments on application have already been heard.

It was argued on behalf of accused/applicant that accused/applicant has been falsely implicated in this case and he is in JC since 08.08.2021. It was further argued that there is non compliance of section 50 of NDPS Act in this case as no notice has been served upon the accused/applicant. It was further submitted that no entry under section 42 NDPS Act was registered by the IO prior to arrest of present applicant. It was further stated that accused/applicant is entitled to be released on bail on the ground of parity as co-accused Husnain @ Hasan has already been released on bail. It was further submitted that case of the applicant is also on the same footing as it is clear from the evidence recorded so far that there is possibility of manipulation with case property. Ld. Counsel for accused/applicant relied upon testimony of PW3 Ct. Vinod to support his argument that case property remained in his custody for eight days after sampling process and prior to deposition the same in FSL on 07.08.2021. It was further stated that co-accused Husnain @ Hasan was released on bail by the court on the same ground as the case property was not deposited in malkhana after seizure of the same by the IO.

On the other hand, Ld. Addl. PP for the State has vehemently objected the bail application stating that on receipt of secret information, co-accused Hussain was arrested on 06.08.2021 with 400 grams heroin recovered from his scooty bearing No. DL-11G-0491. It was stated that during interrogation, co-accused Hussain disclosed that recovered heron was supplied to him by accused/applicant Asim. It was stated that during investigation, on the pointing out of co-accused, accused/applicant Asim was apprehended from his rented house. During search of house of accused/applicant, 500 grams of heroin was recovered. Accused/applicant was arrested and contraband was seized. During interrogation, accused/applicant Asim disclosed that recovered heroin was supplied to him by co-accused Husnain an Shahid Khan of Bareilly. Co-accused Husnain was arrested during interrogation and 300 grams heroin was recovered from his motorcycle bearing No. UP-25DC-2205.

Ld. Counsel has relied upon **Mohan Lal Vs. State of Punjab (2018) 17 SCC 627, Vijay Pandey Vs. State of U. P. (2019) 18 SCC 215, State of Himachal Pradesh Vs. Sunil Kumar (2014) 4 SCC 780, State of Punjab Vs. Baldev Singh (1999) SCC OnLine SC 632, Delhi in Nabi Alam @ Abbas Vs. State (Govt. of NCT of Delhi) Bail Appl. No. 2641/2018 and Crl. M (Bail) 555/2021, Mohd. Muslim @ Hussain State (NCT of Delhi) 2023 SCC OnLine SC 352 and Ouseph Vs. State of Kerala (2004) 10 SCC 647** in support his contentions.

Submissions heard. Record perused.

As far as compliance of non compliance of section 50 and 42 NDPS Act are concerned, same have already been dealt with by my Ld. Predecessor while disposing off previous

bail applications and I have no reason to further discuss on this ground. As far as manipulation of case property is concerned, which is being relied upon by Ld. Counsel for applicant on the basis of testimony of PW3 Ct. Vinod, I am of the considered view that the ground is misconceived. As per FSL result, samples which were drawn before Ld. Magistrate were sent to the FSL and same were received in sealed condition with the seal of Ld. MM. Therefore, tampering with case property is ruled out as seals were affixed by Magistrate was found to be intact. Moreover, law is settled that at the time of consideration of bail application, the court is not supposed to minutely go through the evidence of prosecution witnesses. Hon'ble Supreme Court of India in case titled as **"Satish Jaggi vs State of Chattisgarh"** in criminal appeal no.651/2017 decided on 30.04.2017 has already dealt that if trial is in progress, the question of credibility and liability of prosecution witnesses can only be decided after the trial and cannot be gone into of these stage of considering the bail application. Therefore, the ground of deposition of PW3 Ct. Vinod is of no consequence to the present bail application. The ground of parity is also not available to the accused as co-accused Husnain was released on bail because IO did not deposit the case property instantly after recovery of the same from the accused. The judgment relied upon by Ld. Counsel for accused are differentiated on the basis of facts. The granting of bail is a discretion which is to be exercised by the Court as per facts and circumstance of each case.

In view of the above facts and circumstances of the case, **I am of the considered view that no ground is made out for grant of bail to accused/applicant. Therefore, the**

application moved on behalf of accused/applicant Asim Khan stands dismissed.

A copy of this order be sent to the Jail Superintendent concerned for further communication to the accused/applicant. Copy of this order be also forwarded to Jail Superintendent concerned through E-Mail. Copy of this order be given dasti.

(Dhirendra Rana)
Special Judge (NDPS):
North, Rohini Courts, Delhi
01.09.2023