

IA/3/22
SC No. 46/2022
State V. Asim Khan S/o Bahid Khan
FIR No. 607//2021
PS Bawana
Under Section 21/25/29 NDPS Act

10.03.2022

Present: Sh. Ajay Kumar Mishra, Ld. Chief P.P for the State

Sh. Yogender Kumar & Avantika Sharma, Ld. Counsel for the
applicant/accused

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 08.08.2021. The accused/applicant has been arrested during the course of investigation as he was named by main accused Hussain. The accused/applicant was running a factory of ladies footwears at Madi Pur. He is the sole bread earner in the family which consists of three daughters, wife and old aged ailing parents. 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.

It is further stated that the recovery has been effected from one alleged place which is MadiPur with which the applicant has no connection at all. It is crowded area but despite that no public witness has been joined in the investigation. The recovery has also not been effected in the presence of Gazetted Officer or Magistrate. Therefore, there is total non-compliance of Section 50 of NDPS Act.

In support of his arguments, Ld. Counsel for the accused/applicant has placed reliance upon judgment titled (1) **Makhan Singh V. State of Haryana Criminal Appeal No. 682/2015**, (2) **State of Rajasthan V. Parmanand & Anr. Criminal Appeal No. 78 of**

2005 of Hon'ble Supreme Court and (3) Arif Khan @ Agha Khan V. State of Uttarakhand Criminal Appeal No. 273/2007. Hence, prayer is made for grant of regular bail to the accused/applicant.

Per contra, Ld. Chief P.P for the State has vehemently opposed the bail application stating that as per the reply filed by the IO, initially accused Hussain was arrested with 400 gram of heroine and at his instance accused Asim Khan (accused/applicant) was arrested with 500 gram heroin at his rented house at Madipur, Delhi. Accused/applicant disclosed that he used to procure the heroin from Husnain @ Hasan Khan of Bareilly, U.P who too has been arrested in the present case with 300 gram heroin. The investigation is still going on.

It is further submitted by Ld. Chief P.P for the State that the recovery of contraband from accused persons fall under the category of Commercial Quantity and bar under Section 37 of NDPS Act is attracted in the present case. There is no change of circumstances since the dismissal of previous bail application dated 17.11.2021. Section 50 of NDPS Act is not applicable qua the recovery as the same has been effected from the refrigerator lying in the house of the accused/applicant.

Heard and considered.

The previous bail application of the accused/applicant has been dismissed vide order dated 17.11.2021. The argument advanced on behalf of the accused/applicant that there being non-compliance of Section 50 of the NDPS Act is also misplaced one. The recovery has been effected from the refrigerator kept in the rented house of the accused/applicant not from his personal search. The other argument of the accused/applicant that he is having no connection with the house from where the recovery has been effected is also matter of trial and at this stage no document on record probablise the said defence. The consequence of non-joining of public witness is also matter of trial and at the stage the recovery of the alleged contraband cannot be discarded only on the ground of non-joining of public witnesses. Furthermore, the amount of heroin i.e 400 gram and 500 gram seized from the possession of co-accused Hussain and accused/applicant respectively falls under the category of commercial quantity and hence, the bar under Section 37 of NDPS is applicable in the present case.

The judgments relied upon by Ld counsel for the accused/applicant are not applicable

in the present case being distinguishable on facts.

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 the accused/applicant stands dismissed.

(Gagandeep Singh)
ASJ/Spl. Judge (NDPS):
North, Rohini Courts, Delhi
10.03.2022