

**Hearing through Video Conferencing by Cisco Webex meeting App**

**State Vs Mohnees Javed Khan  
FIR No. 854/2019  
PS: New Usmanpur  
U/s 20/29 NDPS Act**

**28.07.2020**

Present: Sh. U. A. Khan, Ld. Counsel for the applicant/accused.  
Sh. Ashok Kumar, Ld. Addl. PP for the State.  
SI/IO Ravi Poonia from PS New Usmanpur

Submissions on the bail application heard.

1. By way of present application, the applicant is seeking bail in the present case with the submissions that he has been falsely implicated on the basis of conjectures and surmises and he even remotely not connected with the present case. It is submitted that he was arrested on 19/10/2019 and since then is in judicial custody and the charge-sheet has already been filed in the court but due to non-functioning of the regular court the matter could not be prosecuted further.

2. It is submitted that the false implication of the applicant is apparent from the quality of the investigation. It is submitted that despite having prior information from the secret informer, the member of raiding party did not make any sincere effort to call the Magistrate or Gazetted Officer or to join the public person while conducting the proceeding on the spot at the time of search and seizure. It is submitted that as per settled law the accused is required to be informed about his right to be searched in the presence of Magistrate or Gazetted Officer and even if he denies he is to be searched in the presence of the Magistrate or Gazetted Officer. It is

submitted that in the present case the IO has not apprised the accused about his right and has not conducted the search before a Magistrate or Gazetted Officer. It is submitted that the notice under section 50 of NDPS Act allegedly served upon the accused is not prepared on the spot as the same is a typewritten paper.

3. It is submitted that although it is mentioned in the report that ACP Seelampur was asked to come at the spot and he came there but no document is filed having his signatures to show that he was present at the spot. It is submitted that the secret information was received but the secret informer did not told the name and physical description of the accused nor stated with regard to the registration number of the car nor he had stated from whom he brought the ganja the and to whom he is going to supply and that these infirmities indicate that no such secret information had ever been received by the police. It is submitted that the story of the prosecution is false and bogus as all the papers i.e. notice under section 50 NDPS Act, seizure memo asal tehrir were prepared at the spot prior to registration of the FIR but number of FIR is mentioned in all the documents which suggest that the case was prepared while sitting in the police station in order to falsely implicate the applicant. It is submitted that as per prosecution the proceedings were conducted which took around seven hours but neither the Gazetted Officer nor a Magistrate nor any public person was tried to be called to join the investigation, nor videography/photography of the search, seizure and other proceedings in order to strengthen their investigation at the spot was taken.

4. It is submitted that applicant is ready to furnish the surety bond to the satisfaction of this court if bail is granted and he will not tamper the investigations of the case and will not misuse the concession of the bail. Reliance is placed in support of bail application on the cases *Prithvi Pal Singh @ Munna Vs State 2000 (1) JCC (Delhi) 274; Rakesh @ Shankar Vs*

*State 2014 (1) JCC (Narcotics)13; Ravinder @ Binder Vs State of Haryana 2016 STPL 831 P&H; Dilip & Anr Vs State of MP 2007 (1) JCC (Narcotics) 5; UOI Vs Shah Alam & Anr. 2009 (3) JCC (Narcotics) 108; Dharambir Vs State 2019 (1) JCC 361 (Delhi); Mohan Lal Vs State of Punjab AIR 2018 SC 3853; Gurtej Singh Batth Vs State 2018 (4) JCC (Narcotics) 236; Basant Balram Vs State of Kerala 2019 (2) JCC 1720 and Vijay Verma Vs State BA 2653/2018 decided by Hon'ble High Court of Delhi on 14-03-2019.*

5. On the other hand, application is opposed by learned APP with the submissions that 60 KG ganja was recovered from the car of the applicant and physical search of the applicant was not taken in regard to the contraband as such there is no requirement of compliance of section 50 of NDPS Act. It is submitted that moreover the car was searched in the presence of ACP Seelampur who is a Gazetted Officer thus, the compliance of law is made. It is submitted that in the charge-sheet it is mentioned that ACP Seelampur arrived at the spot and in his presence search of the car was taken and contraband was recovered from the bags taken out from the car which was also personally checked and smelled by him and thereafter upon receiving a wireless message he left the spot. It is submitted that the presence of ACP cannot be denied at the stage.

6. It is further submitted that the IO has given the reasons for non-joining of public witnesses during the process of recovery and the reasons are sufficient or not is a matter of trial and the same cannot be doubted at the stage. It is further submitted that the case laws relied upon by the learned counsel for the applicant are distinguishable in the facts of the present case as the findings in the said cases are given after completion of trial whereas in the present case trial is yet to take place and the facts mentioned in the charge-sheet cannot be doubted at the time of bail. It is further submitted that in the reply filed to the bail application it is mentioned that expert opined about the samples that they are of ganja. It is submitted

that non-filing of the FSL report by the IO is not fatal to the case of the prosecution as there may be negligence in filing the report in the court despite its receiving at the part of police for which the case of the prosecution must not suffer.

7. It is further submitted that only after the search and finding contraband from the car of the applicant and satisfying that the same is ganja, a complaint was made by ASI Sabu S and thereafter investigations were marked to Sub-Inspector Ravi Poonia after registration of the FIR and the further investigations were carried out by him and there is no violation of law and the investigations are conducted in a fair manner. It is submitted that no case is made out to admit the applicant on bail as 60 KG of ganja is recovered which is commercial quantity.

8. As per report, on 19/11/2019 at about 12:45 PM secret informer appeared before ASI Sabu S and informed that one person who is supplying ganja will come at about 2:30 PM in one white colour i-20 car and will go towards Brahmपुरi passing through the front of JPC hospital and there may be ganja in his car. He was produced before SHO and information was shared with him and raiding team was prepared after sharing the information with senior officers and upon receiving orders to do the needful. The team led by ASI Sabu S reached to the gate of JPC hospital and put barricades and also tried 4/5 passersby to join into the raid but they after telling their reasons without disclosing name and addresses and due to shortage of time written notice could not be served upon them. At about 2:45 PM one white colour i-20 car was found coming and seeing it informer pointed it out and left the spot. The car was got stopped and two person sitting in it were apprehended and upon enquiry the driver told his name as Mohnees Javed Khan and the person sitting adjacent to him told his name as Sadab Ansari. They were informed about the information having by the team by notice under section 50 NDPS Act and the need of search of their

car. They both denied to be searched in the presence of the Gazetted Officer or Magistrate or to take the search of police party prior to their search and their answer was recorded at the carbon copy of the notice. At about 3:30 PM ACP Seelampur was requested telephonically to come to spot and he reached there at about 4:55 PM and in his presence dicky of the car was opened and one purple bag was taken out. Thereafter two bags of pink and blue colour kept on the rear seat of the car were also taken out. The bags were checked and were found having 12, 9 and 9 packets respectively closed with tape. The said packets were checked and were found having brownish grassy material with seeds and leaves which was smelled by ASI and ACP and was found as ganja which was slightly damp. ACP received wireless message and left the spot at 5:10 PM giving instructions to the team. The recovered material was put together at one place and was weighed and was found 60 KG. Three samples of 500 gms each were taken out and were kept in cloth and thereafter were sealed and the remnants were sealed in two bags. After preparation of the tahrir, it was given to police constable with the sealed pulandas who produced the same to SHO and case was registered. Investigations of the matter were assigned to SI Ravi Poonia who reached at the spot and arrested the applicant and the co-accused. Statement of the witnesses were recorded by him and samples were sent to FSL and upon completion of investigations charge-sheet was filed by him in the court.

9. It is clear from the report that the applicant was not searched personally in regard to recovery of any contraband and only the car was searched from which the contraband was recovered. In these circumstances section 50 of NDPS Act is not found applicable. Reliance may be placed in this regard on the finding in the case Dilip and Anr. Vs State of MP (2007) 1 SCC 450 which is also relied by the applicant. Further the recovery from the car was made in the presence of ACP who is a

Gazetted Officer. Thus, in the facts of the present case the case laws cited by the learned counsel for the applicant on the point of non-compliance of mandatory notice of section 50 NDPS act are not helpful to him.

10. It is well settled law that at the time of bail, mini trial is not permissible and the court cannot appreciate and weigh the statement of witnesses recorded by the IO in detail. It is mentioned in the report that passerby were tried to join the raid but they left the spot giving their reasons and due to shortage of time written notice to them could not be given. The said fact is to be considered by the court after trial and is to be considered whether there were genuine efforts made to join the public witnesses or the reasons are given mechanically.

11. The counsel for the applicant has placed reliance upon case of Mohan Lal and Gurtej Singh Batth with the contention that investigations have not been conducted in a fair manner and the papers prepared at the time of recovery are having FIR number written on them. In the said case of Mohan Lal, the Hon'ble Court dealt the position where investigations were carried out by the same person who gave the complaint and upon which the case was registered. But in the present case complaint is given by ASI Suba S and the investigations i.e preparation of site plan, recording of statement of the members of the raiding team, arrest of the accused, recording of the disclosure statement and efforts to trace the source of contraband are made by SI Ravi Poonia. ASI Sabu S has done nothing after registration of the case except handing over the custody of apprehended person and the document to SI Ravi Poonia. Thus, in the present case it cannot be said that the case is investigated by the same police official who is complainant in the case and it cannot be said that investigations has not been carried out in a fair manner due to which applicant has been jeopardized. It is mentioned in the report that the FIR number was written by IO on the papers handed over by ASI to him.

12. The counsel for the applicant has also placed reliance on the case of Ravinder in which the Hon'ble Punjab and Haryana High Court found the case for bail as the charge was framed by the trial court without receiving FSL report. In the present case the final report has been filed without FSL report of the samples sent to it taken out from the recovered contraband. The court was awaiting the FSL report and thereafter normal functioning of the court is hampered by the lockdown due to Covid-19. It is reported by the Judicial Assistant that the FSL report has not been filed so far. The IO, present in the hearing through video conferencing, submitted that the FSL result has been received but due to lockdown the same could not be filed in the Court. It is submitted by the learned APP that in the reply given to the bail application the opinion given by the expert on the samples is mentioned and it cannot be said that there is no FSL result till date. It is submitted that in the case relied upon the charge was framed without FSL report but in the present case bail application is being dealt and the same may be considered as per the facts given in the charge-sheet and the reply file by the IO. After going through the case law in the light of facts of the present case, I am of view that the findings of the Hon'ble Court in the said case are not helpful to the applicant as the court is dealing with the bail application and in the charge-sheet it is mentioned that the recovered contraband was smelled by ASI and ACP and was found ganja. The Court may consider that ACP is a police officer of higher rank and during discharge of his duty and the training they are trained to identify the psychotropic substances. Even in the reply to the application the IO has mentioned about the opinion given by the FSL. The case of Saira Bano vs State (Govt. Of Nct) 79 (1999) DLT 637 may be referred at the stage in which the Hon'ble High Court of Delhi has declined to bail out the accused under section 167(2) CrPC despite the fact that CFSL report was not filed with the final report and 90 days had expired.

13. Thus, considering the facts and circumstance of the case I found no ground to disbelieve the case and to admit the applicant on bail, accordingly application is dismissed.

14. I deem it necessary to bring into the notice of DCP north-east again about the non-filing of expert opinions/FSL reports well in time in the Court with expectations that appropriate steps will be taken by him personally in this regard.

Copy of the order be sent to the parties.

**(SUNIL CHAUDHARY)**  
**Special Judge (NDPS)/ASJ**  
**NE/KKD/Delhi/28.07.2020**