

IA No. 16/2023
SC No. 53/2022
State Vs. Furkan Ahmad
FIR No. 760/2021
PS: New Usmanpur
U/s: 20 of NDPS Act

19.09.2023

**ORDER ON APPLICATION FOR GRANT OF BAIL
FILED BY THE APPLICANT/ACCUSED FURKAN
AHMAD.**

1. This order of mine will dispose of an application for grant of bail filed by this applicant/accused Furkan Ahmad.
2. I have heard the counsel for this applicant/accused and Ld. Additional Public Prosecutor for State.
3. Sh. Amit Gupta, Ld. Counsel for applicant/accused has submitted that this applicant/accused was arrested way back on dated 16.10.2021 and since then, he is behind bars. He has also submitted that there is not even a single call between this applicant/accused and co-accused Anuj. He has submitted that co-accused Shakeel is brother-in-law of this applicant/accused and section 50 of the NDPS Act is not complied with. He has further submitted that since, the contraband has been recovered from the dicky of the car owned by the co-accused Anuj and this applicant/accused was not aware, so, taking into consideration the period of incarceration spent behind the bars by this applicant/accused, he may be granted bail. He has relied upon the

judgments, **Sachin Arora Vs. State Govt. NCT of Delhi**, *Bail Appln. 1661/2022*; **Usman Vs. The State Govt. of NCT of Delhi**, *Bail Appln. 1891/2023*; **Mohd. Jabir Vs. State of NCT of Delhi**, *2023 SCC Online Del 1827*; **Kishore Bira Vs. State of Odisha**, *2022 SCC Online Ori 2203*; **Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh**, *Petition (s) for Special Leave to Appeal (Crl.) No (s). 6690/2022* & **Rabi Prakash Vs. The State of Odisha**, *Petition (s) for Special Leave to Appeal (Crl.) No (s). 4169/2023*.

4. On the other hand, Sh. Sukhbeer Singh, the Ld. Additional Public Prosecutor for the State has vehemently opposed the present application and submitted that in the case in hand, on dated 17.10.2021 at about 2:15 AM, this applicant/accused alongwith co-accused were found transporting the Ganja weight whereof was 31.084 kilograms in a car owned by the co-accused Anuj and further submitted that the contraband has been recovered from the dicky of the said car, so, section 50 of the NDPS Act is not applicable in the case in hand and also submitted that two bail applications of this applicant/accused have already been dismissed and there is no change of circumstances and submitted that charge against this applicant/accused has been framed u/s. 20(C) of the NDPS Act and also submitted that during the arguments, Ld. Counsel for the applicant/accused has admitted that the co-accused is the brother-in-law of this applicant/accused and submitted that since, all the three accused were found in the same vehicle, when they were

transporting the contraband of commercial quantity and the maximum punishment for the offence punishable u/s. 20(C) of the NDPS Act is 20 years and this applicant/accused has not spent half of the maximum punishment, so, as per the law laid down by the Hon'ble Appex Court in case "***Satender Kumar Antil vs. Central Bureau of Investigation and another***" and submitted that in view of the embargo contained U/sec. 37 of the NDPS Act and the law laid down in case, "***Union of India v. Ram Samujh and Anr. Appeal (Crl.)866 of 1999***", this applicant/accused is not entitled for bail and prayed for dismissal of this application for grant of bail.

5. I have given thoughtful consideration to the submissions made by counsel for this applicant/accused and Ld. Additional Public Prosecutor for State and perused the record.

6. The perusal of the record reveals that in the case in hand, this applicant/accused alongwith the co-accused was found in a vehicle bearing registration no. UP-80CC-7027 and 31.084 kilograms ganja has been recovered from the dicky of the said car. Since, the offence alleged to have been committed by this applicant/accused is related to the commercial quantity of the contraband and since, their lordship of Supreme Court of India in "***Satender Kumar Antil vs. Central Bureau of Investigation and another***" was pleased to hold that the provision of Sec. 436-A of CrPC is to be complied with and since, this applicant/accused has not spent half of the maximum punishment and since, the facts and circumstances of the cases mentioned in

the judgments relied upon by the Ld. Counsel for the applicant/accused are not similar to the facts and circumstances of the present case, so, the ratio decidendi of the said judgments relied upon by the Ld. Counsel for the applicant/accused are of no help for the accused.

7. Since, the commercial quantity of the ganja is alleged to have been recovered from this accused and their Lordship of High Court of Kerala in case *Shanmughadas @ Appu v. State of Kerala, Bail Application No. 3410/2022* was pleased to decline the application for grant of bail in similar case, after consideration of the judgment passed by their Lordship of Supreme Court in case “Union of India v. Mohd. Nawas Khan, 2021 (10) SCC, 100, “Union of India v. Ram Samujh and Anr. Appeal (Crl.) 866 of 1999”.

8. As their Lordship of Supreme Court in case “*Union of India v. Mohd. Nawas Khan, 2021(10)SCC, 100*”, was pleased to hold as under:-

“that when the issue is as to whether the procedure laid down under the NDPS Act is complied or not, the same cannot be looked into at the time of grant of bail and can only be decided at the time of trial, as the same is a question of fact. At this point, this court cannot evaluate the evidence on record while exercising discretion under section 439 Cr.P.C”.

9. Since the Hon’ble Supreme Court of India in

“Union of India v. Ram Samujh and Anr. Appeal (Crl.)866 of 1999” while dealing with bail matter relating to the commercial quantity of contraband was pleased to observe as under:-

To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,

(i)there are reasonable grounds for believing that accused is not guilty of such offence; and

(2)that he is not likely to commit while on. are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the spirit with which the Parliament, after due deliberation, has amended.

In the result, appeal is allowed. The impugned Order dated 20 August, 1998 passed by the High Court of Judicature at Allahabad, Lucknow Bench, releasing respondent No. 1, Ram Samujh is quashed and set aside. Respondent No. 1 is directed to surrender.

10. Since, the commercial quantity of contraband is alleged to have been recovered from the vehicle, wherein, the accused were allegedly transporting the contraband, so, the embargo contained U/sec. 37 of the NDPS Act is applicable to the applicant/accused. So, taking into consideration the nature of accusation, gravity of offence alleged to have been committed by this applicant/accused, the provision of Sec. 37 of NDPS Act and the law laid down by their Lordship of Supreme Court in case of *Union of India v. Ram Samujh and Anr.(supra)*, this applicant/accused **Furkan Ahmad** does not deserve the concession of bail, so, this application for grant of bail filed by the applicant/accused **Furkan Ahmad** is hereby dismissed. Dasti copy of this order be provided to the parties. **The attested copy of this order be sent to the Superintendent of Central Jail, Tihar for supplying the same to this applicant/accused.**

(PAWAN KUMAR MATTO)
Special Judge (NDPS)/Addl. Sessions Judge/
North East/KKD Courts/Delhi/19.09.2023