

IA No. 16/2023
SC No. 373/2019
State Vs. Majhar Khan
FIR No. 100/2019
PS: Crime Branch
U/s: 21 of NDPS Act

27.05.2023

**ORDER ON APPLICATION FOR BAIL OF
APPLICANT/ACCUSED MAJHAR KHAN**

1. This order of mine will disposed of an application for bail filed by applicant/accused Majhar Khan.
2. I have heard the Ld. Counsel for the parties.
3. Sh. Bharat Kashyap, Ld. Counsel for applicant/accused submitted that in the case in hand, the IO has failed to comply with the provision under Section 52-A of the NDPS Act. He has also submitted that this applicant/accused was arrested way back on dated 18.04.2019 and since then, he is behind bars. He has also submitted that no public witness has joined in the investigation and further submitted that in view of the non-compliance of the provision under section 52-A of the NDPS Act and for non-joining of the public witnesses, this applicant/accused is entitled for bail and prayed for bail. He has relied upon the passed in cases *Ajwinder Singh Vs. State of Punjab*, CRM-M-10152-2023 (O&M) dated 03.03.2023; *Rattan Lal Vs. State*, 32 (1987) DLT 1; *Sunari @ Chamari Vs. State*, 34 (1988) DLT 124; *Amani Fidel Chris Vs. Narcotics Control Bureau*, Crl. Appeal No. 1027/2015 dated 13.03.2020 and

Jitendra Jain Vs. NCB & Anr., Petition for Special Leave to Appeal (Crl.) No. 8900/2022.

4. On the other hand, Sh. Sukhbeer Singh, Ld. Addl. PP for the State has vehemently opposed the present application for bail and submitted that in the case in hand, 1 kilogram heroin was recovered beneath the seat of the motorcycle, when accused was transporting the same and charges u/s. 21(C) of the NDPS Act and Sec. 192 of M. V. Act have been framed against this applicant/accused and submitted that since, the quantity of the contraband recovered from this accused is commercial in nature, so, the embargo contained in Sec. 37 of the NDPS Act is of applicable in the present case and as per the law laid down by the Hon'ble Supreme Court of India in "*Union of India v. Ram Samujh and Anr. Appeal (Crl.) 866 of 1999*" this applicant/accused does not deserve the concession of bail and the judgments relied upon by the Ld. Counsel for this applicant/accused are not applicable to the case in hand.

5. I have given thoughtful consideration to the submissions made by the Ld. Counsels for the parties and perused the record.

6. The perusal of the record reveals that 1 kilogram heroin is alleged to have recovered under the seat of the motorcycle, when this applicant/accused was allegedly transporting the same. Since, the commercial quantity of the heroin 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*”.

7. 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 CrPC.”

8. It is worthwhile to mention here that the Hon’ble Apex Court while considering the impact of Section 37 of the NDPS Act when deciding a bail application in case “*Union of India v. Ram Samujh and Anr. Appeal (Crl.)866 of 1999*” was pleased to observe as under:

It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons,

while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in into X icants clandestinely. Reason may be large stake and illegal profit involved.

8. Thus, from the law laid down by the Lordship of Supreme Court in the above said judgment, it is crystal clear that Hon'ble Supreme Court in "*Union of India v. Ram Samujh and Anr. Appeal (Crl.)866 of 1999*" was pleased to hold that the legislative mandate is required to be adhered to and followed.

9. Since, the commercial quantity of contraband is alleged to have been recovered from this applicant/accused , so, the embargo contained U/sec. 37 of the NDPS Act is applicable to the applicant/accused. Since, their lordship of the Hon'ble Supreme Court of India in the latest judgment passed on dated 11.07.2022, in case titled Satender Kumar Antil Vs. Central Bureau of Investigation and another SLP (Crl) 5191 of 2021 was pleased to direct to comply with the mandate of Sec. 436A of Code of Criminal Procedure and as per the mandate of Sec. 436A of Code of Criminal Procedure, the bail can be granted to the

accused, who had undergone detention for the period extended upto one and half of the maximum period of imprisonment specified for the offences and in the case in hand, this accused has not undergone the detention for the period of one and half of the maximum period of imprisonment prescribed under section 21(C) of the NDPS Act, so, in the considered opinion of this court, the judgments relied upon by the Ld. Counsel for the applicant/accused are of no help to this applicant/accused, in the light of the law laid down by their Lordship of Supreme Court in case of “*Union of India v. Ram Samujh and Anr. (supra)*”.

10. Since from the law laid down by the Hon’ble Apex Court in the above said judgments, it is prima facie clear that when the issue is as to whether the procedure laid down under the NDPS Act is complied with or not, the same cannot be looked into at the time of grant of bail and it can only be decided at the time of trial, as the same is question of fact. At this point, this court cannot evolve the evidence on record, while excessing discretion U/sec. 439 of Cr.P.C.

11. Since, 1 kilogram heroin is alleged to have recovered under the seat of the motorcycle, when this applicant/accused was transporting the same, so, the embargo of Sec. 37 of NDPS Act is applicable to the case in hand. So, taking into consideration the nature of accusation, gravity of offence, the provision of Sec. 37 of NDPS Act and the judgment passed by the Hon'ble Supreme Court of India in *Union of India v. Ram Samujh and Anr. (supra)*, this applicant/accused does not deserve

the concession of the bail. Therefore, **application for grant of bail filed by the applicant/accused Majhar Khan is dismissed.** Dasti copies of this order be provided to the parties. Attested copy of this order be also sent to the Superintendent of Central Jail, Tihar for supplying the same to the applicant/accused.

(PAWAN KUMAR MATTO)
(Special Judge NDPS)/Addl. Sessions Judge/
North East/KKD Courts/Delhi/27.05.2023