

IA No. 17/2023
SC No. 373/2019
State Vs. Shanu
FIR No. 100/2019
PS: Crime Branch
U/s: 21 of NDPS Act

14.09.2023

**ORDER ON APPLICATION FOR BAIL OF
APPLICANT/ACCUSED SHANU**

1. This order of mine will disposed of an application for bail filed by applicant/accused Shanu.
2. I have heard the Ld. Counsel for the parties.
3. Sh. Shailendra Singh, Ld. Counsel for applicant/accused submitted that this applicant/accused was arrested on dated 18.04.2019. He has further submitted that in the case in hand, Sec. 50 of the NDPS Act is not complied with and in view of the same, he is entitled to the concession of bail. He has relied upon the judgment, passed by the Hon'ble High Court of Delhi in case, Mohd. Jabir Vs. State of NCT of Delhi, Bail Appl. No. 1725/22 and another judgment passed by the Hon'ble Supreme Court of India in case, Mohd. Muslim @ Hussain Vs. State of NCT of Delhi, CrI. Appeal of 2022 @ Special Leave Petition (CrI.) No. 915 of 2023.
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 this applicant/accused alongwith the co-accused were found together on a motorcycle and beneath the

seat of the said motorcycle, 1 kilogram heroin was found (in two packets) and further submitted that the quantity of the contraband recovered from the applicant/accused is of commercial in nature, so, the embargo contained in Sec. 37 of the NDPS Act is applicable in the present case. He has further submitted that this applicant/accused has concealed the material fact from this court that after dismissal of another similar application for bail by this court, the applicant/accused had filed an application for bail in the Hon'ble High Court of Delhi and on dated 20.03.2023, the said application was withdrawn by the same counsel for this accused in the Hon'ble High Court of Delhi. He has further submitted that since, the facts and circumstances of the cases mentioned in two judgments relied upon by the Ld. Counsel for the applicant/accused are totally different from the facts of the present case, so, the same are not applicable to the case in hand. He has also submitted that in view of the embargo contained u/s. 37 of the NDPS Act and 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 prayed for dismissal of this application.

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, whereon this applicant/accused and co-accused were 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.

9. 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.

10. Since, in the case in hand, the similar bail application of this applicant/accused was already dismissed by this court and this applicant/accused had chosen to file the similar application for bail in the Hon'ble High Court of Delhi and said application bearing No. 112/2023 was withdrawn by this counsel for the applicant/accused on dated 20.03.2023 and the

applicant/accused has concealed this material fact for the best reason known to this applicant/accused.

11. This court has gone through the above said judgments relied upon by the counsel for the applicant/accused, since, the facts and circumstances of the said cases were totally different from the facts of the present case, so, the said judgments relied upon by the Ld. Counsel for the applicant/accused are of no help for the applicant/accused for getting bail.

12. 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.

13. Since from the law laid down by the Hon'ble Apex Court in the above said judgment "Union of India v. Mohd. Nawas Khan (Supra)", 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 evolute the evidence on record, while exercising discretion U/sec. 439 of Cr.P.C.

14. 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.

15. Therefore, **application for grant of bail filed by the applicant/accused Shanu 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 this applicant/accused.

(PAWAN KUMAR MATTO)
(Special Judge NDPS)/Addl. Sessions Judge/
North East/KKD Courts/Delhi/14.09.2023