

IA No. 04/2020  
SC No. 391/2018  
FIR No. 250/2018  
PS: Crime Branch  
State Vs. Mohd. Hussain

27.02.2020

**File taken up today on the application for grant of bail moved on behalf of applicant/accused Mohd. Hussain.**

Present: Sh. D. K. Singh, Ld. Substitute Addl. PP for the State.  
Sh. C. S. Tyagi, Ld. Counsel for applicant.

Submissions heard on bail application.

1. The applicant is facing trial in the present case for the offence punishable u/s 21 (b) of NDPS Act and 7 witnesses have been examined in respect of the charge by the prosecution.
2. The applicant is seeking bail in the present matter with submissions that he is in custody since 02.10.2018 and as per the schedule of the NDPS Act, the quantity of the heroin allegedly recovered from the possession of the applicant is covered under intermediate quantity, as such the application is not barred as per Section 37 of NDPS Act. It is submitted that the applicant has been falsely implicated in the present case due to enmity and that prosecution has not followed the settled provisions of Section 50 of NDPS Act. It is submitted that the prosecution did not state weight of the alleged contraband and weight of alleged polythene in which contraband was recovered in separate manner. It is submitted that prosecution did not mix up the alleged contraband prior to taking out the samples. It is submitted that the applicant is no more required for any purpose of custodial interrogation and is sole bread earner in his family and is ready to abide all terms and conditions imposed upon him by the court. Reliance is placed upon a case of **Gurutej**

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**Singh Vs State, 2019 (1) LRC 338 (Delhi) and Arif Khan @ Aaga Khan Vs State of Uttarakhand, decided by the Supreme court on 27.04.2018.**

3. On the other hand, the application is opposed by Ld. Substitute Addl. PP for State with the submissions that witnesses examined have supported the charge and the earlier application moved by the applicant has already been dismissed by the court.

4. Considering the facts and circumstances of the case, where the trial is not complete, I am restraining myself from commenting upon the merits of the case as during the disposal of the bail application, mini trial is not permissible.

5. Recently, this court has received order of Bail Application No. 973/19 decided by the Hon'ble High Court of Delhi on 20.01.2020 in the case of **Akhilesh Bharti Vs State** which is pending for trial before this court. In the said order, the Hon'ble High Court of Delhi upon consideration of case of **Vijaysinh Chandubha Jadeja (2011) 1 SCC 609, case of Arif Khan AIR 2018SC2123 and case of S. K. Raju (2018) 9 SCC 708** has come to the opinion that the provisions of Section 50 of NDPS Act has not been complied with as per law and has found the case to admit the accused on bail. It is the requirement of law that the person whose search is to be taken has to be apprised of his right to be searched before a Gazetted Officer or before a Magistrate and despite his denial, he is to be produced before Gazetted Officer or a Magistrate for his search. The provision of Section 50 NDPS Act also attracts in the case in which the contraband is recovered from a bag or a vehicle carried by the person and his personal search is taken after the recovery.

6. In the facts of the present case, in light of observation of Hon'ble High Court of Delhi in case of Akhilesh Bharti where the accused has not been produced for his search before any Gazetted Officer or the Magistrate in

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compliance of Section 50 of the NDPS Act, I am of the view that the case is made out to admit the applicant/accused on bail. **Hence application for grant of bail of applicant Mohd. Hussain is allowed.** Applicant Mohd. Hussain is admitted to bail on furnishing of bail bond in the sum of Rs. 50,000/- with one surety of the like amount.

Application is disposed off accordingly.

Put up on date fixed i.e. 03.04.2020.

(Sunil Chaudhary)  
Special Judge (NDPS)/ASJ  
North-East/KKD/Delhi/27.02.2020