

IA-1-2023
State V. Raj Kishore
FIR No. 174/2022
PS Crime Branch
Under Section 15/25 NDPS Act

23.02.2023

Pr: Sh. J.S Malik, Ld. Addl. Substitute P.P for the State.
Sh. Ankit Rai, Ld. Counsel for the applicant / accused
I.O with case file.

Arguments heard on the **second application** under Section 439 Cr.P.C for grant of regular bail to accused-applicant.

It is pleaded on behalf of the applicant that the accused/applicant has been falsely implicated in the present case and has been lying in Judicial Custody since 17.08.2022. It is submitted that earlier bail application of the accused/applicant was dismissed vide order date 15.09.2022 by wrongly placing reliance upon the judgment of Hon'ble SC in **Union of India through NCB Lucknow V. Nawaz Khan, Crl. Appeal No. 1043/2021 which does not apply herein.**

It is argued that the investigating authority has not complied with the mandatory provisions of Section 50 of the NDPS Act and the alleged recovery has not been effected in the presence of any Gazetted Officer or Magistrate. In this regard, reliance is placed upon case titled **Vijaysinh Chandubha Jadeja V. State of Gujarat Crl. Appeal No. 943/2005 dated 29.10.2010 passed by Hon'ble Supreme Court.** It is further pleaded that as such nothing has been recovered from the possession of the accused/applicant and the alleged recovery is

planted upon the accused/applicant. It is further pleaded on behalf of the accused/applicant that the investigation qua the accused/applicant in the matter has already been completed and he is no longer required for purpose of investigation. In support of his arguments, Ld. Counsel for the accused/applicant has placed reliance on the following judgments:

- (I) **Dataram Singh V. State of U.P & Anr (2018) 3 SCC 22**
- (II) **Sanjay Chandra V. CBI, Criminal Appeal No. 2178 to 2182 of 2011**
- (III) **Arnab Manojraja Goswami V. State of Maharashtra & Ors (2020) SCC OnLine SC 964.**

Per contra, Ld. Addl. P.P for the State has vehemently opposed the bail application stating that as per the reply filed by the IO, on the intervening night of 16-17/08/2022, on a prior information regarding supply of poppy straw, a trap was laid and one tempo Tata Ace DL 1LW 4392 was intercepted which was loaded with 8 plastic bags containing poppy straw and accused Raj Kishore (accused/applicant) and Rajesh Rajpit were arrested. Each bag was weighing around 19.7 KG (Total 154.6 KG poppy straw) on the basis of which FIR was got registered. On the interrogation of accused /applicant, one accused Sanjay was arrested with poppy straw weighing around 356.6 KG. Source of the recovered contraband was disclosed to be one Nirpal who is still absconding and coercive process has been got issued qua him. **The vehicle Tata Ace DL 1LW 4392 was also found registered in the name of accused/applicant herein.**

It is further submitted by Ld. Addl. PP for the State that the accused/applicant is involved in recovery of commercial quantity of contraband and hence, rigors of Section 37 of NDPS Act are

attracted in the present case. It is further submitted that there is no change of circumstances since the dismissal of previous bail application dated 15.09.2022.

Heard and considered.

Since the dismissal of previous bail application, the chargesheet in the matter has been filed.

The only fresh ground taken in the present second bail application is the non-compliance of mandatory provisions of Section 50 of the NDPS Act though it is not elaborated as to how the said non-compliance is there. It is simplicitor claimed on behalf of the accused/applicant that the alleged recovery has not been effected in the presence of any Gazetted Officer or Magistrate.

As per the case of prosecution, the allegations against the accused/applicant are that he was found travelling by tempo Tata Ace DL 1LW 4392 alongwith co-accused Rajesh Rajpit and the recovery of contraband has been effected from the said Tata Ace Tempo only . It is not from the personal search of the accused/applicant. Hence, there is no issue of compliance of Section 50 of NDPS Act for conducting search of aforesaid Tata Ace Tempo.

It is not disputed that the amount of quantity recovered from the accused/applicant falls under the category of commercial quantity and bar under 37 of the NDPS Act is applicable in the present. Therefore, the onus is upon the applicant to satisfy the twin conditions imposed as mandated in judgment viz; Union of India through NCB Lucknow V. Nawaz Khan, Crl. Appeal No. 1043/2021. Thus, the accused/applicant has failed to overcome the bar prescribed under Section 37 of NDPS Act which dis-entitle him for the bail.

Thus, there is no change of circumstances since the dismissal of previous bail application dated 15.09.2022.

The judgments relied upon Ld. Counsel for the accused/applicant are not applicable to the present case being distinguishable on facts.

In view of the above facts and circumstances of the case, **I am of the considered view that no ground is made out for grant of bail to accused/applicant. Therefore, the application moved on behalf of the accused/applicant stands dismissed.**

A copy of this order be sent to the Jail Superintendent concerned for further communication to the accused/applicant. Copy of this order be also forwarded to Superintendent concerned through E-Mail.

(Gagandeep Singh)
ASJ/Spl. Judge (NDPS):
North, Rohini Courts, Delhi
23.02.2023