

Bail Matter  
STATE Vs SUBHASH CHAND @ SUBHAS CHANDER  
FIR No 21/2021  
PS CRIME BRANCH-SOUTH EAST  
u/s 20/25/29 NDPS Act.  
28.11.2022

Present: Sh. Wasi-Ur- Rahman, Ld. Addl. PP for the State.  
Sh. Jitender Singh, Ld. Counsel for accused.

**ORDER ON REGULAR BAIL APPLICATION**

1 Vide this order, this Court shall adjudicate upon the regular bail application filed on behalf of the applicants/accused Subhash Chand. Arguments were heard in extenso, the gist whereof is discussed hereunder.

2 Ld. Counsel for accused submitted that the accused has been falsely implicated in the present case as he has nothing to do with alleged incident. It was submitted that investigation has already been completed in the present case. It was also submitted that no evidence was found in the investigation qua the present accused/applicant. It was further contended the accused has clean antecedents and has no previous involvements in any other criminal offence. Further, Ld. Counsel submitted that the wife of applicant/accused is handicapped and having two minor children and there is no only in his family members to look after him. It was also contended that the accused has not made even a single call to anyone and he was working merely as a helper in the alleged Truck and he has nothing to do with the alleged incident. Ld. Counsel submitted that accused ought to be granted bail as he is ready to abide by all the terms and conditions imposed by this Court.

3 *Per contra*, Ld. Addl PP for State opposed the bail application citing the gravity of offence as one of the main grounds. It was submitted that the commercial quantity of alleged contraband ie Ganja was recovered from the possession of accused. It was submitted that the helper ought to have some knowledge about the items loaded in the truck as the truck was being driven in his presence and he was the one who had loaded the goods in the alleged truck. Ld. Addl PP for State submitted that the accused was caught on the spot with the alleged contraband. Thus, accused ought not to be granted bail as he may jump the conditions of bail and may commit another offence of similar nature.

4 Submissions heard.

5 From a perusal of reply of the IO, it has transpired that **commercial quantity** of alleged contraband ie Ganja was recovered from the possession of applicant/accused. Further, during the course of arguments, it was brought to the fore that alleged truck was being driven by accused Subhash Chand and he himself had loaded the items/good in the said truck. So there might be possibility of accused having knowledge about the items/good loaded in the truck as he was the helper in that truck. Further, the embargo of Section 37 NDPS Act is very much applicable in the present case. In this context, it would be apt to peruse the following extracts of *Mohd. Muslim @ Hussain Vs. The State ( Govt of NCT of Delhi) Bail Appln 2675/2022*, in which it was held as thus;

*“6 The grant or rejection of a bail application in case of commercial*

quantity of 180 kgs would attract bar of Section 37 of NDPS Act.

7 Since the quantity of ganja recovered in this case is commercial quantity, it will attract bar under Section 37 of NDPS Act.

8 Section 37 is a negation rule of bail, which has an exception laid down under Section 37(1) (b) (i) and Section 37(1) (b) (ii). The rule of negation and exception within Section 37 has been reaffirmed in **Madhya Pradesh v. Kajad, (2001) 7 SCC 673**, wherein the Hon'ble Supreme Court observed as follows:

*"The purpose for which the Act was enacted and the menace of drug trafficking which intends to curtail is evident from its scheme. A perusal of Section 37 of the Act. leaves no doubt in the mind of the court that a person^accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant and exception under sub-clause (U) of clause (b) of Section 7(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions*

*for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code Of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.*

9. Further, the criterion and broad parameters under Section 37 of NDPS Act have been discussed in **Collector of Customs v. Ahmadaliev Nodira, (2004) 3 SCC 549** observations of the Hon'ble Supreme Court read as follows: -

*"6. As observed by this Court in Union of India v. Thamisharasi .[(1995) 4 SCC 190 : 1995 SCC (Cri) 665 JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the when the question of granting bail arises on merits. bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bai The limitations on granting of bail come in, only Apart from the- grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused- respondent 'is*

*concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence: The reasonable belief contemplated in the provision requires existence of such, facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence "*  
*when the question of granting bail arises on merits.*

6 So far as charge qua the accused has not been framed and none of the prosecution witnesses have been examined. However, at this stage it is sufficient to note that there is nothing to arrive at a conclusion that the prosecution story is entirely a false one or the prosecution is likely to fail. Thus, this Court cannot countenance the submissions of Ld. Counsel for accused that there are reasonable ground for believing that the applicant/accused is not guilty of the offence.

7 Also considering the alleged manner of commission of offence and the huge quantity allegedly recovered, there is nothing before this Court to infer that the accused is not likely to commit a similar offence in future. From the material on record at this stage, when the prosecution witnesses are yet to be examined, this Court is unable to form a view that there are reasonable grounds for believing that the accused did not commit the offence.

8 The seizure memo, the recovery made, are some of the relevant material at this stage against the accused. Further,

charges qua the accused have not yet been framed as the FSL report is still awaited.

9 Under these circumstances, taking into the account the gravity of the offence, the role attributed to the accused herein, the fact that charge qua the accused has yet to be framed as the FSL report is still awaited and further material prosecution witnesses are yet to be examined, this Court is of the opinion that bail ought not to be granted to the accused at this juncture. Accordingly, the present bail application is hereby dismissed.

10 Needless to say, the abovementioned observations are predicated solely on the facts as alleged, and brought forth at this juncture, and are not findings on merits, and would also have no bearing on the merits of the case. With these conditions, and observations, the regular bail application stands disposed of.

11 In compliance of ***Sanjay Singh Vs. State ( Govt of N.C.T of Delhi) Writ Petition Criminal 974/2022***, copy of this order be sent to concerned Jail Superintendent to convey the order to inmate.

Order be given dasti.

(ARUL VARMA )

ASJ-04 + Spl. Judge (NDPS) South East District,  
Saket Court, New Delhi: 28.11.2022