

04.03.2023

File taken up today on the bail applications of accused Emon Ali and Mohd. Ali Nawaz @Sethi.

Present :- Ms. Anupama, substitute Ld. Addl. PP for State.
Sh. Manu Seth, Ld. LAC for both the applicants /
accused persons.

Vide this common order I shall decide the bail applications moved on behalf of accused Emon Ali as well as accused Mohd. Ali Nawaz @ Sethi.

The limited argument of the Ld. LAC is that the proceedings u/s 52A NDPS Act was improper. It is submitted that out of the total 54 packets allegedly containing contraband substance, the samples were obtained only from 06 packets and the contents of the rest of the 48 packets were not examined at all. It was argued that the consolidated weight of the material contained in the 06 packets is less than 20 kgs and as such rigors of Sec. 37 NDPS act are not attracted. It was also argued that other co-accused Sarvan Kumar and Saroj Patnayak have already been released on bail and hence, applicants / accused persons also deserve to be released on bail on the grounds of parity.

Per contra, Ld. Substitute Addl. PP opposed the bail applications on the ground that the allegations against the accused persons are grave. It was argued that as per chargesheet, applicant / accused Emon Ali was apprehended with co-accused Sarvan Kumar and they were found in possession of 76.4 kgs of ganja which was concealed by them in a cavity created in the car

being driven by them. It was also pointed out that during the course of investigation, it was found that the applicant / accused Mohd. Ali Nawaz @ Sethi was also involved in the conspiracy and as such, he was also chargesheeted. It was argued that the applicants/ accused persons will have to clear the barrier of Sec. 37 NDPS Act before they can be considered for grant of bail.

I have gone through the record and considered the rival contentions.

Perusal of the record would reveal that at the time of sampling proceedings u/s 52A NDPS Act, 06 gunny bags recovered from the possession of the two accused persons were produced before the Ld. MM. The said 06 gunny bags contained 54 packets in total, however, samples were lifted only from 06 packets and the rest of the packets remained untouched. As such, there is no way of ascertaining the contents of the remaining packets and it cannot be presumed that such remaining packets also contained contraband substance.

My attention was also drawn to order dated 18.01.2023 passed by the Hon'ble High Court in the bail application of one of the accused Sarvan. The Hon'ble High Court accepted the contention of the Ld. Counsel for the accused that it appears plausible that the weights of the packets from which samples were taken would not be all of commercial quantity and hence, rigors of Sec. 37 NDPS Act would not apply.

The other two co-accused persons have already been released on bail, chargesheet has already been filed after completion of investigation and there is no reasonable apprehension that the applicant / accused persons would try to influence the witnesses or tamper with the evidence. Hence, **both the applicants / accused persons namely Emon Ali and Mohd.**

Ali Nawaz @ Sethi are entitled to be released on bail and are accordingly, admitted to bail on their furnishing personal bonds in the sum of Rs. 25,000/- each with two sureties each in the like amount.

The application stands disposed off accordingly.

Copy of the order be given dasti.

Copy of the order be also sent to the Jail Superintendent through e-mail.

(Gaurav Gupta)
Special Judge-NDPS/ASJ (South)
Saket Courts/04.03.2023