

IA no. 02/23  
CNR No. DLWT01-000498-2021  
SC No.49/2021  
FIR No. 301/2019  
u/s 21/29 NDPS Act  
PS: Crime Branch  
State Vs. Sonu Kumar

**22.02.2023**

**Case file is taken up today upon the bail application filed on behalf of accused Sonu u/s 439 of Cr.P.C for grant of interim bail for a period of two months.**

Present: Sh. Rakesh Kumar, Ld. Addl. PP for the State.  
Sh. S N Popli, Proxy Counsel for the accused.  
SI Sudhir on behalf of IO is present in person.  
Reply/report is filed. Copy be supplied.

I. It has been submitted on behalf of applicant/accused that accused is in JC since 05.10.2019 and nothing was recovered from the possession of applicant/ accused. It has been further submitted that applicant/accused is an innocent person and he has been falsely implicated in this present case. It has been further submitted that accused/applicant has clean antecedents. It has been further submitted that till date only 2 witnesses have been examined out of 19 witnesses and the trial will take its own time and furthermore, all the witnesses are police officials. It has been further submitted that charge in the

present case has already been framed. It has been further submitted that applicant/ accused is in custody for more than 3 years 4 months and the case property has been planted upon the applicant so as to bring the case of commercial quantity of contraband. It has been further submitted that accused is ready to abide by all the terms and conditions. Thus, it has been prayed that the accused may kindly be released on interim bail for the period of 2 months. Ld Counsel for applicant/ accused has relied upon the judgment case titled as **Jitendra Jain vs NCB and anr vide SLP (Crl) No. 8900/22.**

II. On the other hand, the bail application is opposed on behalf of the State vehemently. It has been submitted that the applicant/ accused was found in possession of one kg Heroin which is commercial in nature. It has been further submitted that offence committed by applicant/ accused is heinous in nature. It has been further submitted that the charges has been framed in the present case for possession of Heroin for the commercial quantity against the present accused and thus there is bar under Sec 37 of NDPS Act. The trial is at the stage of PE. It has been further submitted that applicant/ accused has 3 previous involvement of Delhi Excise Act. It has been further submitted that there is likelihood that accused may flee away from the jurisdiction of this Court or may tamper with the evidence or may repeat the similar kind of offence. Thus, it has been prayed that the bail application filed by the applicant/accused may kindly be

dismissed.

III. Heard the rival submission and perused the records.

IV. It is trite principle of law that while granting bail the court has to keep in mind (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (b) the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of cognizable offence; (c) the possibility of the applicant to flee from justice; (d) the possibility of the accused's likelihood to repeat similar or other offences; (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (f) Impact of grant of bail particularly in cases of large magnitude affecting a very large number of people; (g) The court should consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant and any other aspects of the case should be taken into consideration while granting bail.

V. It has been held by the Hon'ble High Court of Delhi in "Athar Pervez Vs State" (Crl. Ref.1/2015, decided on 26.01.2016) that the power to grant interim bail is to be sparingly used, when intolerable

grief and suffering in the given facts may justify temporary release. It has been further held that while rejecting or accepting an application for grant of “interim” bail, the trial court will keep in mind the strict provisions of Section 37/32A of the NDPS Act and only when there are compelling reasons which would justify and require the grant of “interim” bail the application should be allowed. It was further held that the Court must take into account whether or not the accused/convict is likely to commit or indulge in similar violations.

VI. In the present case, the present accused was arrested on 06.10.2019 and charge were framed on 26.08.2022. Thereafter, the two official witnesses were examined. The last witness was examined on 06.01.2023 and thereafter, the matter is fixed for further evidence on 24.03.2023. In the meantime, present bail application filed on behalf of the present applicant/ accused Sonu on account of delay in trial though the previous bail application for interim bail was allowed for 10 days on the ground of illness of his wife with the observation that there is a Bar u/s 37 of NDPS Act applicable in the present case as the contraband recovered from the accused/ applicant is of commercial quantity i.e. 1 kg of Heroin, that for about two years during the pandemic period the witnesses could not be examined. Thereafter, 2 witnesses have already been examined. The bar u/s 37 of NDPS Act is applicable qua the twin condition while granting the bail and at this

stage it cannot be said that there is no possibility of accused not being held guilty in the present case. That the applicant/ accused is involved in 3 cases of Delhi Excise Act. The case laws relied upon on behalf of applicant/ accused, with due respect, has no application to the facts and circumstances of present case as in the present case the delay was beyond control because of the act of the God due to COVID-19 pandemic and further, this Court has no other power to release the accused on bail except under Sec 439 of Cr.P.C r/w Sec 37 of NDPS Act. Therefore, *considering the nature of allegations against the applicant/accused and that the recovered contraband is of commercial quantity, that the applicant/ accused was found in possession of contraband, therefore, without making any comment upon the merit of the case, this Court is of the opinion that no ground for bail is made out at this stage.* Hence, the **bail application is dismissed being without any merit.**

VII. Nothing discussed hereinabove shall tantamount to be an expression upon the merits of the case.

Copy of the order be given dasti to the parties including I.O.

Copy of the order be sent to the concerned Jail Superintendent for perusal and due compliance.

Main case file be put up on date already fixed i.e. **24.03.2023.**

**(Devendra Kumar Sharma)**  
**ASJ/Special Judge (NDPS)(West)**  
**THC/Delhi/22.02.2023**