

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 etc.

11.07.2023

File taken up today on an application filed on behalf of applicant/accused Sonu u/s 439 of Cr.P.C for bail.

Present: Mr. Kamal Akhtar, Ld Addl PP for the State.
SI Ram Kishan in person.
Mr. Urooj Ahmed Khan, Ld Counsel for applicant/
accused Sandeep.

Intimation regarding surrender of applicant/accused before Jail Authorities on 10.07.2022 after expiry of interim bail has been received. It be taken on record.

IO files the reply to the bail application. Application is seen and respective submissions of both sides heard at length. Record perused.

It is submitted on behalf of applicant/accused that he is in JC since 05.10.2019 and he has been falsely implicated in this case by planted the alleged contraband. It is further submitted that there is non-compliance of Section 42, 50, 52A, 55 & 57 of NDPS Act. It is further submitted that IO did not serve any notice u/s 50 NDPS Act to the applicant before conducting search of the bag of applicant nor informed him about his legal rights that his personal search can be conducted in the presence of the nearest Magistrate or Gazetted Officer, therefore, the entire recovery was vitiated. He also pointed out that

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applicant has even not signed any receiving of even defective notice u/s 50 NDPS Act wherein he is purportedly informed about his right as to he may be searched in presence of any Magistrate or Gazetted Officer instead of nearest ones as per Section 50 of NDPS Act. Here he emphatically refers to Order of Hon'ble Delhi High Court in *Mohd. Jabir V/s State of NCT of Delhi in bail application no.1725/2022*. It is further submitted that earlier the applicant/ accused was granted interim bail by this Court and he has not misused the liberty of interim bail. It has been further submitted that there is no likelihood of his absconding or tampering with the prosecution evidence. It has been further submitted that accused is ready to abide by all the terms and conditions as he is the permanent resident of Delhi. Ld. defence counsel has also relied upon the following authorities :-

1. *Nitish Adhikary @Bapan V/s State of West Bengal, SLA(Crl.) No.5769/2022*
2. *Gopal Krishna Patra V/s UOI, Crl. Appeal No.1169/2022*
3. *Shariful Islam @Sharif V/s State of West Bengal, SLA(Crl.) No.4173/2022*
4. *Chitta Biswas @Subhas V/s State of West Bengal, SLA (Crl.) No.8823/2019*
5. *Mohammad Salman Hanif Sheikh V/s State of Gujarat, SLA (Crl.) No.5530/2022*
6. *Naib Singh V/s State of Haryana, Crl.M.No.29466/2022*
7. *Sandeep Singh @Sonu V/s State of Punjab, Crl. M. No. 34488/2022*

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On the other hand, Ld. Addl. PP for State has strongly resisted the bail plea of applicant/accused while stating that applicant/accused was found in conscious possession of one Kilograms Heroin which is commercial amount and thus, the bar under Sec 37 of NDPS Act will apply against him. He also contends that the provisions under Section 50 NDPS Act is not applicable in the present case as recovery of contraband of huge commercial quantity was found from the bag of the accused which he was carrying in his hand. Here, he refers to the Order of Hon'ble Delhi High Court in case of Hardeep Singh V/s State in Bail Application No.3582/2021. It has been further submitted that offence committed by applicant/accused is heinous in nature and he has five previous involvement in matters under 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.

The menace of selling of Smack/Heroin has become rampant and the young generation is being seriously indulged in consumption of the contraband and in this regard, Hon'ble Supreme Court of India in case titled as "***Union of India Vs Ram Samujh & Ors.***" 1999 (9) SCC 429, has elaborated that offences under NDPS Act are even more serious and grave than Murder cases. The Apex Court observed, "It is to be borne in

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mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This line of reasoning has been reiterated in the pronouncement in **“State of Kerala Vs Rajesh” in Criminal Appeal No.(S). 154157 of 2020** (arising out of SLP (Crl.) No.(s).7309-7312 of 2019) decided on 24.01.2020 by the Hon’ble Supreme Court of India.

Hon'ble Delhi High Court in *Hardeep Singh's case(supra)* observed as under :-

31. As regards non-compliance of Section 50 is concerned, the provisions of Section 50 do not extend to the recovery made from the car. The Hon'ble Supreme Court in State of H.P. Versus Pawan Kumar (2005) 4 SCC 350 considered the question, on difference of opinion between two Hon'ble Judges, whether and after discussing the dictum of the Constitution Bench Judgement in State of Punjab Versus Baldev Singh, held as under :

“14. The above quoted dictum of the Constitution Bench shows that the provisions of Section 50 will come into play only in the case of personal search of the accused and not of some baggage like a bag, article or container etc. which he may be carrying.”

In the instant case, one Kilogram Heroin was recovered from the *pithu* bag which accused was carrying in his hand and therefore, Section 50 of NDPS Act could not apply to the accused as it was not the case of personal search of the accused wherein the alleged contraband was recovered.

Accordingly, the bar u/s 37 of NDPS Act is applicable and the twin conditions must be fulfilled before granting the bail in such case as at this stage it cannot be said that there is no possibility of accused not being held guilty in the present case and he will not indulge in similar kind of offence in future, if released on bail. It is noticeable that the applicant/accused is involved in five cases of Delhi Excise Act. For want of time in view of heavy work load and for sake of brevity, it is also observed that the case laws sought to be relied by the applicant/accused do not squarely apply to the present case entitling him to bail in view of different set of facts and circumstances of this case.

In view of abovesaid discussion, recovery of huge quantity of contraband of commercial quantity from the bag of accused, bar of Section 37 NDPS Act to the bail of accused in such cases and non-fulfillment of twin conditions of the said provision by the applicant/accused, this Court is not inclined to grant bail to the applicant/accused at this stage. Accordingly, the present bail application stands dismissed.

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

Copy of the order be given dasti and also be sent to the concerned Jail Superintendent for information to accused

Put up on date already fixed i.e. 26.07.2023.

(RAKESH KUMAR RAMPURI)
ASJ/ SPECIAL JUDGE: (NDPS)
(WEST)DELHI/ 11.07.2023.