

**IN THE COURT OF SH. SUDHANSHU KAUSHIK :
SPECIAL JUDGE (NDPS)/ADDL. SESSIONS JUDGE (WEST DISTRICT):
TIS HAZARI COURTS : DELHI**

In view of Office Order No.152/2777/Misc./Gaz./PDJ West//2022 dated 11.02.2022 passed by Ld. Principal District & Sessions Judge (West), Tis Hazari Courts, Delhi, the matter is being taken up physically.

In the matter of :

CNR No.DLWT01-001004-2022

FIR No.714/2021

24.02.2022

State Vs Salman Khan & Ors.

U/s 20, 29 NDPS Act

PS : Rajouri Garden

File taken up today on bail application filed under Section 439 Cr.P.C on behalf of applicant/accused Salman Khan.

Present : - Sh. K.D.Pachauri, Addl. Public Prosecutor for State.
IO/SI Prakash Kashyap in person.
Sh. R.K.Giri, Counsel for applicant/accused Salman Khan.

1. Reply to the bail application furnished by the Investigating Officer is already on record.
2. Arguments on bail application heard.
3. Counsel for the applicant/accused has argued that applicant is innocent and he has been falsely implicated in the present case. He has contended that applicant is in custody since 12.08.2021 and no purpose would be served by keeping him further detained in custody as investigation stands concluded and charge-sheet has been put to the court. Counsel has contended that applicant has nothing to do with the alleged offence and he has been arrested only on the disclosure statement of co-accused. He has argued that nothing incriminating has been recovered from the possession of the applicant even after his police custody was taken by the investigating agency. Counsel has submitted that the entire case of prosecution is based on the disclosure statement of co-accused Saddam

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Hussain Ansari @ Naved but the said statement is inadmissible. Counsel has contended that it is the prosecution's case that accused Saddam Hussain Ansari and Aasif Raja were allegedly found in possession of 500 grams of Smack (250 grams each) and after arrest, Saddam Hussain Ansari disclosed the name of the applicant as the supplier of the contraband substance. Counsel has argued that the investigating agency has failed to collect any evidence to show the involvement of the applicant in the present matter. He has contended that apart from the disclosure statement of co-accused, the prosecution has also relied on some telephonic calls alleged to have taken place between the applicant and Saddam Hussain Ansari. He has contended that the prosecution has relied on the CDR analysis to show that the applicant was somehow connected with the main accused but none of the call details relates to the period prior to the arrest of the co-accused persons. Counsel has contended that the CDR filed by the investigating agency is not sufficient to connect the applicant with the alleged offence. He has argued that no contraband substance has been recovered from the possession of the applicant/accused Salman Khan and he cannot be held liable merely on the basis of the disclosure statement of co-accused. Counsel has submitted that although, commercial quantity of contraband substance has allegedly been recovered from the possession of co-accused but no recovery was effected from the possession of the applicant and therefore, the bar provided under Section 37 of the NDPS Act is not applicable in the present case. He has contended that there is no evidence to connect the applicant with the alleged offence and there are reasonable grounds for believing that the applicant is not guilty of committing the alleged offence. In order to support his contentions, counsel has relied on the decision in "*Narottam Pardhan Vs State of Delhi*" 257 (2019) DLT, "*Mukesh Vs State*" (Bail

Appl. No.1345/2020, decided by the Hon'ble High Court of Delhi), "*Mohit Aggarwal Vs NCB*" (Bail Appl. No.2585/2020, decided by the Hon'ble High Court of Delhi) and "*Dalip Singh @ Langda Vs State*" (Bail Application No.1312/2018, decided on 14.01.2019 by the Hon'ble High Court of Delhi).

4. On the other hand, Additional Public Prosecutor has opposed the bail application. He has contended that there is overwhelming evidence to show the involvement of the applicant. He has argued that the CDR analysis depicts that the applicant was in regular touch with the main accused. He has contended that the applicant was the supplier of the Smack recovered from the possession of co-accused persons and he cannot avoid his liability merely by taking defence that no incriminating substance has been recovered from his possession. He has argued that even in the absence of recovery, there is sufficient evidence to connect the applicant with the alleged offence. He has mentioned that in case of criminal conspiracy, there would hardly be any direct evidence to connect a person with the alleged offence. He has contended that the fact that applicant and co-accused had frequent telephonic calls with each other goes on to show that they both were connected to each other and they hatched criminal conspiracy to supply contraband substance. He has contended that the bar provided under Section 37 of NDPS act is applicable in the present case as commercial quantity of Smack has been recovered from the possession of accused persons. He has prayed that bail application may be dismissed.
5. I have perused the record in the light of respective arguments. It is the case of prosecution that on the basis of secret information, accused Saddam Hussain Ansari @ Naved and Aasif Raja were arrested on 09.08.2021 while they were traveling on a scooty bearing registration No.DL-8SCB-

3548 and 1000 grams of Smack (250 grams each) was recovered from their possession. During investigation, Saddam Hussain Ansari @ Naved disclosed that he used to procure Smack from the applicant. On the basis of the said disclosure statement, applicant was arrested in the present case and on the request of investigating agency, he was remanded to two days police custody but no contraband substance was recovered from his possession.

6. CDRs of the mobile numbers of the co-accused Saddam Hussain Ansari @ Naved and applicant were analyzed and it depicted that both of them were connected with each.
7. The present matter involves recovery of 500 grams of Smack, which is a commercial quantity. The prayer for bail will, thus, be circumscribed with provision of Section 37 of NDPS Act. The same provides that the accused may be granted bail only if the court is satisfied that there are reasonable grounds for believing that he is not guilty for such offence. Under Section 37(1)(b)(ii) NDPS Act, the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are; (i) The Prosecutor must be given an opportunity to oppose the application for bail; and (ii) There must exist '*reasonable grounds to believe*' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.
8. The standard prescribed for the grant of bail is '*reasonable ground to believe*' that the person is not guilty of the offence. Interpreting the standard of '*reasonable grounds to believe*', a two-judge Bench of the Apex Court in "*Union of India Vs Shiv Shanker Kesari*" (2007) 7 SCC 798 held that the expression used in Section 37(1)(b)(ii) is "*reasonable grounds*". The expression means something more than prima-facie grounds. It connotes substantial probable causes for believing that the

accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

9. Admittedly, in the present matter, no contraband substance was recovered from the possession of the applicant. The only evidence against him is the disclosure statement of co-accused and the CDR of his mobile phone showing that he had some conversation with co-accused Saddam Hussain Ansari @ Naved. In so far as the disclosure statement of the co-accused is concerned, the same is not a substantive piece of evidence and it can only be used for corroboration. The Apex Court has categorically held so in the case titled as *“Toofan Singh Vs State of Tamil Nadu”* 2020 SCC online SC 882.
10. In a similar situation, it was observed in the matter of *“Surinder Kumar Khanna Vs Intelligence Officer, Directorate of Revenue Intelligence”* in Criminal Appeal No. 949 of 2018 (Arising out of Special Leave Petition (Criminal) No.9816 of 2017, decided on 31.07.2018) that;

“In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in

the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges levelled against him.”

11. It is the prosecution’s case that the investigation with respect to Call Detail Record shows call connection between the applicant and co-accused Saddam Hussain Ansari @ Naved. Similar situation came up for consideration before the High Court of Delhi in the case titled as “*Dilip Singh @ Langra Vs State (NCT of Delhi)*” (decided on 14.01.2019) wherein it was observed that merely because the petitioner has been having telephonic conversation with the co-accused, it would not be sufficient to hold that he is guilty of having committed the offence, more particularly, in view of the fact that no recovery has been made from him. Perhaps, the present matter is on a better footing. Although, the CDRs show some call connection between the applicant and co-accused Saddam Hussain Ansari @ Naved but none of the call details relates to the period prior to the arrest of co-accused persons. In view of this, the said telephonic conversations, in the absence of any recovery, cannot be taken to be a substantive piece of evidence.

12. In view of the discussions made in afore-mentioned paras, I am of the considered view that the requirement of Section 37 of NDPS Act stands satisfied. It has been held by the Apex Court that satisfaction with regard to the likelihood of not committing the offence under the act is not of any other offence but the offence under the NDPS Act. Prosecution has not placed on record any document to show the previous involvement of the applicant in any other similar offence. Keeping in view the totality of facts and circumstances, I am of the considered view that applicant has made out a case for grant of regular bail. Accordingly, applicant/accused Salman Khan is admitted to bail subject to furnishing on a personal bond for a sum of Rs.50,000/- with one such surety of the like amount. The bail is subject to the condition that the applicant shall not leave the country without prior permission of the court. With these directions, bail application stands disposed of.

(Sudhanshu Kaushik)
Special Judge (NDPS)/
Addl. Sessions Judge (West District),
Tis Hazari Courts, Delhi
24.02.2022