

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

CNR No.DLWT01-001004-2022

FIR No.714/2021

State Vs Saddam Hussain Ansari @ Naved & Ors.

U/s 21, 29 NDPS Act

PS : Rajouri Garden

30.03.2022

Present : - Sh. Virender Singh, Substitute Addl. Public Prosecutor for State.
IO/SI Prakash Kashyap is absent.
Accused Salman on bail.
Accused Saddam Hussain Ansari @ Naved and Aasif Raza
produced from JC.
Sh. U.K.Giri, Counsel for accused Salman and Saddam Hussain
Ansari @ Naved
Sh. Pradeep Kumar, Counsel for accused Aasif Raza.

Investigating Officer has forwarded a request seeking exemption from personal appearance mentioning that he has to appear before the Hon'ble High Court of Delhi today in three matters. In view of the submissions made in the application, Investigating Officer/SI Prakash Kashyap is exempted from personal appearance for today.

Fresh separate vakalatnama filed on behalf of accused Saddam Hussain Ansari @ Naved and Aasif Raza. Be taken on record.

Copy of the charge-sheet be supplied to accused Aasif Raza and Saddam Hussain Ansari @ Naved against acknowledgment. Copy supplied.

At this stage, an application seeking release of Jamatalashi articles has been filed on behalf of accused Salman. Reply to the application be summoned from the Investigating officer for 05.04.2022.

Record perused. Bail application filed under Section 439 Cr.P.C on behalf of accused Aasif Raza is pending adjudication.

Reply to the bail application has been forwarded by the Investigating Officer. Be taken on record.

Arguments on bail application heard.

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Counsel for the applicant/accused Aasif Raza 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 09.08.2021 and no purpose would be served by keeping him further detained in custody as investigation already stands concluded. Counsel has argued that charge-sheet in the present case has been put to the court and trial is bound to take time. Counsel has contended that applicant has nothing to do with the alleged offence. He has submitted that in the present matter, police officials failed to comply with the mandatory provisions of Section 50 of NDPS Act and therefore, recovery stands vitiated. He has mentioned that recovery of contraband substance has been effected from a public place but no public witness was joined in investigation. Besides this, counsel has mentioned that applicant belongs to poor strata of society and he has a large family to support. Counsel has submitted that applicant is the sole bread earner of his family and his family is facing undue hardship on account of his continuous detention. He has mentioned that applicant is ready and willing to comply with any condition that may be imposed upon him. On the force of these submissions, prayer has been made by the counsel that applicant may be released on bail.

On the other other hand, Addl. Public Prosecutor has opposed the bail application mentioning that bail cannot be granted in view of the bar of Section 37 of NDPS Act. He has argued that co-accused Saddam Hussain and applicant Asif Raja were apprehended on the basis of secret information while they were traveling on a scooty. He has submitted that on carrying out personal search of both the accused persons, 500 grams of SMACK (250 grams each) was recovered from their possession. He has argued that charges are yet to be framed and at this stage, applicant does not deserve bail.

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 applicant Aasif Raja were arrested on 09.08.2021 while they were traveling on a scooty bearing registration No.DL-8SCB-3548

and 500 grams of Smack (250 grams each) was recovered from their possession. Record depicts that recovery of contraband substance was effected from the accused persons in the presence of SHO and ACP. The present matter involves recovery of 500 grams of Smack, which is a commercial quantity and therefore, bar of Section 37 of NDPS Act applies in the present case. Although, charge-sheet has been put to the court but charges are yet to be framed. The prosecution has come up with the angle of criminal conspiracy and therefore, Section 29 of NDPS Act has been invoked. Co-accused Saddam Hussain and applicant Asif Raja were apprehended at the same time and at the same place. In case of criminal conspiracy, each one of the accused is liable for the act of the other. The Apex Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In “*Union of India Vs Ram Samujh & Ors.*” 1999 (9) SCC 429, it has been 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 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. Keeping in view the totality of circumstances, I am of the considered opinion that at this stage, no case is made out for releasing the accused/applicant Aasif Raza on bail.

The bail application stands dismissed.

Put up for scrutiny of documents/consideration on the point of charge on 02.05.2022.

Put up for reply/arguments on application of accused Salman Khan seeking release of Jamatalashi articles on 05.04.2022.

(Sudhanshu Kaushik)
Special Judge (NDPS)/
Addl. Sessions Judge (West District),
Tis Hazari Courts, Delhi
30.03.2022