

CNR No DLWT 01 006852-2016
SC No 58078-16
FIR No. 36-16
PS: Crime Branch
U/s 21/29 NDPS Act
State Vs. Ajay Kumar

30.08.2022

An application filed u/s 439 r/w Sec 436 A of Cr.P.C. for grant of bail on behalf of accused Ajay.

Present: Sh. K.D. Pachauri, Ld. Addl. PP for State.

Mr Amit Gupta, Ld. Amicus Curiae for applicant/accused.

HC Vikram Singh is present in person and has filed previous conviction/ involvement report.

Reply to the bail application has already been filed.

Argument is heard. Record is perused.

1. It is submitted on behalf of accused that the accused has been falsely implicated in the present case and presently he is in JC since 29.03.2016. It is further submitted that the custody period of accused is more than 6 years and 3 months and even no witness has been examined as the witnesses already examined were examined in absence of other co accused who was arrested later on and charges were framed against him on 03.08.2019 and thus, practically brought

the case for de novo trial. It is further submitted that nothing has been recovered / found on the instance of applicant/ accused at the time of arrest. It is further submitted that applicant/ accused was allegedly found in possession of 260 gm of Contraband Heroin which was planted. It is further submitted that as per samples sent by Police, it was containing only 5gm each while in FSL Report the said sample was found containing the weight of 5.28 gms and 5.88 gms respectively which itself contradicts the version of prosecution. It is further submitted that the alleged recovery of 260 gms of contraband from the applicant / accused only stands to only 35 gms (Approx) in accordance with the FSL Report having purity of about 13.5% (found in sample) which is small quantity as per NDPS Act and therefore, attracts minor punishment. It is further submitted that co- accused of applicant/ accused has already been released on regular bail. It is further submitted that no useful purpose will be served by keeping the applicant/ accused in JC as trial of instant matter will further take a considerable amount of time. It is further submitted that applicant/ accused is only bread earner to look after his family. It is further submitted that accused is ready to abide by all the terms and conditions, if released on bail. Thus, it has been prayed that the accused may kindly be released on bail. Ld Counsel for applicant/ accused has relied upon the judgment which are as under:-

a. Sonadhar Vs State of Chattisgarh, SLP (Criminal) no. 529/2021.

- b. Satender Kumar Antil vs CBI and anr, SLP (Criminal) no. 5191/2021.
- c. State of Kerala vs Raneef in CA no. 03/2011 by the Hon'ble Supremet Court.
- d. Sarvan Kumar @ Kishan vs The State of NCT in Bail application no. 956/22, order dated 18.07.2022 by the Hon'ble High Court of Delhi.
- e. Atul Aggarwal vs Directorate of Revenue Intelligence in Bail application no. 2477/2021, order dated 21.12.2021 by the Hon'ble High Court of Delhi.
- f. Anil Kumar @ Nilu vs The State of NCT in Bail application no.1724/21, order dated 21.03.2022 by the Hon'ble High Court of Delhi.

2. On the other hand, bail application has been opposed on behalf of the State submitting that the applicant/ accused is involved in a heinous crime of drug trafficking. It has been further submitted that present case is case of commercial quantity and therefore, bar u/s 37 of NDPS Act will be applicable. It is further submitted that applicant / accused is habitual offender and may indulge in similar offence, if released on bail. It has been further submitted that accused causes deleterious effects and hazard to the society and also there is no control over the applicant by any of his family member. It is further submitted that applicant/ accused may flee away from the jurisdiction of this

Court or may tamper with the evidence. Thus, it has been prayed that bail application may kindly be dismissed. Reliance has been placed upon the judgments titled as *Vijay Aggarwal vs UOI* in writ petition (Criminal no. 32/2013) by the Hon'ble Supreme Court by order dated 05.09.2014 with the arguments on behalf of State that it is the maximum period of punishment which will be taken into consideration in view of the Provision u/s 436 A of Cr.P.C and not the minimum sentence.

3. I have perused the record in the light of respective arguments.

4. It is the case of prosecution that on 28.03.2016 at about 02.45 pm, upon the secret information received that one person namely Praveen alongwith co- accused Ajay used to deal in the sale/ purchase of Heroin. It is further alleged both Praveen and Ajay are drug addict and Ajay used to purchase the large quantity of Heroin from outside Delhi. It is further alleged that police official shared this information with his superiors and on their directions, a raiding team was constituted. The raiding party requested public persons to join proceedings but no one agreed. It is further alleged that raiding team was prepared who took the position at Main Gate, Keshav Park, New Moti Nagar, Delhi. It is further alleged that applicant / accused Ajay

seen at about 5 pm was carrying a cloth bag on his shoulder and was waiting for someone and after 2-3 minutes one person came outside from the park. It is further alleged that both Ajay and Praveen were talking with each other thereafter, Ajay gave something to co- accused Praveen from his bag. It is further alleged that SI Jai Prakash alongwith other police officials overpowered both the persons. It is further alleged that the accused was found in possession of 260 gms of Heroin.

5. 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.

6. It was held in judgment reported in **(2012) 1 SCC 40** in case titled as **Sanjay Chandra vs CBI** in para 16 as under:-

“The legal principle and practice validate the court considering likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore, not an exercise in irrelevant”.

7. In the present case, the present accused are arrested alongwith co accused Praveen Kumar (since deceased) on 28.03.2016 and charges were framed on 28.11.2016 thereafter, witness PW 1 to PW 5 were examined and witness no. 6 was partly examined. However, in the mean time co- accused Rashid @ Sajid was arrested and the charges have been framed again on 03.08.2019. Thereafter, there has been lockdown and no other witness was examined. Thus the present case is at the stage of virtually the examination of witness in de novo.

Admittedly, there has been custody of the accused throughout this period and thus he is in custody for more than 6 years. Therefore, the ratio laid down on the judgment of Hon'ble High Court of Delhi in case titled as **Atul Aggarwal (supra)** wherein the following finding was given which runs as under:-

Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rs 1 lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rs 1 lakh with two sureties of like amount.

8. Therefore, in the light of abovesaid discussion and the case law, nature of allegation, period of custody which is more than 5 years i.e. more than half of the prescribed minimum punishment and that not a single witness has been examined after the arrest of the co-accused and therefore, the trial will take its own time, therefore, considering the overall facts and circumstances of the present case, without commenting on the merits of the case, the ***application in hand is allowed and accused be released on furnishing of personal bond in the sum of Rs 1 lakh and two sureties of like amount with the direction that they will provide a mobile no. to the IO/ SHO concerned and shall report to the PS concerned on 02nd Saturday and 4th Saturday during the pending trial. Application is disposed***

off accordingly.

Nothing discussed herein-above shall have any bearing upon the merits of the case.

The copy of this order be given dasti to the parties/ be sent through electronic modes.

Copy of the order be sent to the concerned Jail Superintendent.

Be put up for PE on. 28.11.2022.

Let witnesses appearing at serial no. 1 and 9 in the list of witnesses be summoned for the next date of hearing through IO alongwith IO and case property, if any

**(Devendra Kumar Sharma)
ASJ/Special Judge (NDPS)(West)
THC/Delhi/30.08.2022**