

IA/1/22.
SC No 317/18
FIR No. 213/17
P.S Crime Branch West
State Vs Hargovind Singh and anr
u/s 21/29/61/85 of NDPS Act r/w14, The Foreigners Act, 1946

07.10.2022

Case file is taken up today on an application u/s 439 of Cr.P.C. filed on behalf of accused Hargovind Singh for regular bail.

Present: Sh. K.D. Pachauri, Ld. Addl. PP for State.
Sh Anand Bhargav , Ld Counsel for applicant/ accused
IO SI Sukhraj Singh is present in person with police file

Reply to the bail application is filed. Copy is supplied.

1. It is submitted on behalf of applicant/ accused that accused is in JC since 05.12.2017. It has been further submitted that much prior to the registration of the present case the accused was called by the police on 24.11.2017 in the name of inquiry at PS Crime Branch, Kotwali, Delhi and illegal demands were made from him with the threat that in case he fails, he will be implicated in a false case. It has been further submitted that the accused has nothing to do with the commission of alleged crime but was falsely implicated with the ulterior motives and he is not aware about the co -accused. It has been further submitted that no public witness has joined the investigation

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and there is unexplained delay in lodging the present FIR as the alleged recovery of contraband is shown to be at 10.50 am and present FIR was lodged at 04.30 pm. It has been further submitted that even there is no proper compliance of the procedure u/s 50 of NDPS Act as the IO was not authorised to have personal search. It has been further submitted that when it is the case that both the accused persons were apprehended while they were exchanging contrabands, it is beyond comprehension as to how the recovery of contraband article is shown to be from the right pocket of the pant of the applicant and this fact itself casts doubts upon the story of prosecution. It has been further submitted that even the raiding party was out from the office for about 07.30 hours but there was no information or discussion between the raising party and the officers. It has been further submitted that no finger prints or chance print were lifted at the time of alleged recovery. It has been further submitted that the evidences collected are contradictory to each other raising serious doubts about the truthfulness of the prosecution story. It has been further submitted that the alleged recovery is planted one, charge-sheet has already been filed, till date only 5 formal witness have been examined and therefore, trial will take considerable time. It has been further submitted that in view of the non compliance of the mandatory provisions, the bar under Sec 37 of NDPS Act has no application. It has been further submitted that accused is in JC for more than four years and ten months, therefore, he is entitled for bail on this ground alone. It has been **FIR no. 213/17 State vs Hargovind Singh and anr Page no. 2/8**

further submitted that applicant/ accused has been falsely implicated in the present case and nothing incriminating has been recovered from his possession. 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 bail. The reliance is placed on behalf of applicant/ accused upon the following judgment:

i) Case titled as Gopal Krishna Patra @ Gopalrusma vs UOI in Cr.A. No. 1169/22 vide order dated 05.08.2022 passed by the Hon'ble Supreme Court.

2. On the other hand, reply to bail application and previous conviction report are filed. Bail application is opposed on behalf of State submitting that the recovery effected from the accused is of commercial quantity, charges have already been framed and there is bar under Sec 37 of NDPS Act. It is 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 is prayed that present bail application may kindly be dismissed.

3. Heard the rival submission and perused the record.

4. It is the case of prosecution that on 04.12.2017, in pursuance of criminal conspiracy with co-accused, the present applicant

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was found involved in illegal trafficking of Heroin at about 11 am at road no. 236 , Vikas Puri, Nale ke sath DAV Public School, Delhi. At the time of his apprehension, the present applicant was found in illegal possession of 260 gms of Heroin. As per FSL Result, the substance recovered from the present applicant was found to be Heroin.

6. 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.

7. Further, the menace of selling of Smack / heroin has become rampant and the young generation is being seriously indulged

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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 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.

8. 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 **FIR no. 213/17 State vs Hargovind Singh and anr** Page no. 5/8

application for grant of “interim” bail, the trial Court will keep in mind the strict provisions of Sec 37/32 of NDPS Act and only when there are compelling reasons which would justify and require the grant of “interim” bail, should the application 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.

9. As per record, the notice u/s 50 of NDPS Act was given to the accused. There is no law which mandate that in every case the public witness must join the investigation and otherwise to join the investigation by the public witness is itself a miracle which happens rarely and therefore, on this ground an accused cannot be granted bail. Moreso, in the present case, it is the case of the prosecution that the raiding team/ IO requested the public persons to join the investigation but they refused and thus, non joining of the public witness of the proceeding of the present case can not be said to be a ground for bail especially in the facts and circumstances of the present case. So far as delay in the registration of the FIR is concerned, it is commonly known fact that it is a factual dispute which can be very well decided after the full fledged trial. Moreso, the proceedings on the spot in NDPS Cases takes considerable time and therefore, the delay pointed out cannot be said to be fatal to the prosecution story at this stage. The minor discrepancy here and there during the investigation and other proceeding is bound to happen and that cannot be considered to be a

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ground for bail at this stage unless it is shown that it has caused prejudice to the case of the accused or it is against the well established procedure of law. It is well settled law that these arguments pertaining to the facts are matter of trial.

10. In the present case, the charge was framed against the applicant/ accused u/s 21(c) of NDPS Act r/w Sec 29 of NDPS Act and the said charge has never been challenged and therefore, in view of Sec 35 and 54 of NDPS Act, there is presumption of culpable mental state. Since, even the charge has been framed for the commercial quantity therefore, the twin bar as prescribed u/s 37 of NDPS Act is applicable and at this stage, it cannot be said that the applicant/ accused will not be found guilty after trial. Furthermore, in the present case 6 witnesses have already been examined and the seventh witness is under examination despite the pandemic for last about two years.

11. In view of the aforesaid discussion after having heard the rival submissions on behalf of the parties and perusal of the record and report of the IO, considering the nature of allegations against the applicant/accused and 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.**

12. Nothing discussed here-in-above shall tantamount to be an expression of opinion on the merits of the case. Application is disposed off accordingly.

A copy of order be sent to the concerned Jail Superintendent for intimation and due compliance.

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

The main case file be put up on the date already fixed i.e. 18.11.2022.

(Devendra Kumar Sharma)
ASJ/Special Judge (NDPS)
West District, THC
Delhi/07.10.2022