

CNR No. DLWT 01 004652-2018
SC NO 318/18
FIR No.213/17
PS Crime Branch
U/s 21/29 NDPS Act & 14 of Foreigners Act
State Vs. Hargovind Singh & Anr.

29.03.2023.

Case file is taken up today on an application u/s 439 of Cr.P.C seeking regular bail filed on behalf of applicant / accused Ikenna

Present: Sh Kamal Akhtar, Ld Addl PP for the State.

Sh Tarish V Sathe, Ld Counsel for applicant/ accused.

SI Pankaj is present in person.

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

This is stated to be second bail application for regular bail on behalf of applicant/ accused.

First regular bail application is stated to have been dismissed vide order dated 23.03.2021.

Arguments is heard. Record is perused.

1. In the nutshell, it has been submitted apart from pleading that the applicant/accused is innocent and has been falsely implicated in the present matter that the applicant/ accused was never found in possession of the alleged contraband nor anything was recovered from personal search and he was not aware about any contraband. It has been further submitted that applicant /accused is in JC since 04.12.2017 i.e. more than 5 years and 3 months which is more than
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half of the minimum punishment. It has been further submitted that the alleged recovery from the possession of accused was done illegally without complying with the mandatory provisions of NDPS Act. It has been further submitted that the recovered contraband is less than commercial quantity and therefore there is no bar in play u/s 37 of NDPS Act. It has been further submitted that the charge-sheet has already been filed, that there are 21 witnesses mentioned in the list of witnesses out of which witnesses are yet to be examined, that the applicant / accused has a clean antecedent and a deep route in the society. 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. In this regard reliance has been placed upon the judgments as under-

- a) In case titled as UOI vs Mohan Lal and ors reported in Crl.Appeal no.652/12 passed by the Hon'ble Supreme Court.
- b) Tasawwur Hussain @Tasawwur Vs DRI in bail application no. 891/22 passed by Hon'ble High Court of Delhi vide order dated 11.11.2022.
- c) Amar Singh Ramjibhai Barot vs State of Rajasthan passed by the Hon'ble Supreme Court in Crl.A.No.1218/05

2. On the other hand, bail application is vehemently opposed on behalf of State submitting that the recovery effected from the accused is of commercial quantity, charges have already been framed
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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 as he has no permanent resident in Delhi. 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 at about 08.30 am, a secret information was received by ASI Om Prakash that one person Hargovind will buy Heroin in bulk from a Nigerian person and will supply it in bulk at about 11 am at road no. 236 , Vikas Puri, Nale ke sath DAV Public School, Delhi. At the time of apprehension, the present applicant was found in possession of 120 gms of Heroin and the co accused Hargovind Singh 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.

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
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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. Further, 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 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.

7. In the present case, the charge was framed against the applicant/ accused u/s 21(b) 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. 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, that the accused being a Nigerian national, has been found in India without any legal document, that applicant was alleged to be the supplier of the contraband substance. As per record, the present applicant was previously arrested in case FIR no. 588/14 dated 27.07.2014, PS Dabri u/s 307/34 of IPC and was declared PO on 15.02.2016. Thus, he has committed the present offence while remaining on bail in the earlier case and moreover, he was declared PO thus, the possibility of his fleeing away from the jurisdiction of this Court cannot be ruled out. Therefore, with due respect, the facts of the present case are quite different from the case **FIR no. 213/17 State vs Hargovind Singh and anr** Page no. 5/6

laws relied upon on behalf of the accused.

8. 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.**

9. 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.19.05.2023.

(Devendra Kumar Sharma)
ASJ/Special Judge (NDPS)
West District, THC
Delhi/29.03.2023.