

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

In view of Office Order No.533-617/Admn./PD&SJ/West/2021 dated 13.01.2022 passed by Ld. Principal District & Sessions Judge (West), Tis Hazari Courts, Delhi, the matter is being taken up through Video Conferencing.

**CNR No.DLWT01-010379-2019
FIR No.361/2019
State Vs Sunny
U/s 20 NDPS Act
PS : Rajouri Garden**

19.01.2022

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

Present : - Sh. K.D.Pachauri, Addl. Public Prosecutor for State.
Applicant/accused Sunny is stated to be on interim bail.
Sh. Shobhit Mittal, Counsel for applicant/accused Sunny.

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

Arguments on bail application heard through video conferencing.

Counsel for the applicant/accused has argued that applicant is innocent and he has been falsely implicated in the present case. Counsel has submitted that recovery has been planted upon the applicant. Counsel has contended that charge-sheet in the present matter has already been filed and no purpose would be served by sending the applicant to custody. 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. Counsel has mentioned that applicant belongs to poor strata of society and he has clean antecedents. He has submitted that applicant is a tea vendor. He has contended

that applicant has to take care of his three minor children including one infant. Counsel has submitted that the 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. Counsel has pointed out that on an earlier occasion, applicant was granted interim bail and he never misused the liberty granted to him. On the force of these submissions, prayer has been made by the counsel that applicant may be admitted to regular bail.

On the other hand, Additional Public Prosecutor has opposed the bail application mentioning that 25 kg of ganja was recovered on the spot from the possession of the applicant/accused Sunny. He has contended that since commercial quantity of contraband substance has been recovered from the possession of the applicant, therefore, rigor of Section 37 of the NDPS Act is applicable in the present case. He has mentioned that presently, applicant is on interim bail till 24.01.2022 and he is not entitled to be admitted on regular bail until he surrenders before the concerned Jail Superintendent. He has contended that initially, applicant was granted interim bail to take care of his pregnant wife. He has mentioned that the wife of the applicant has delivered a baby and the purpose of interim bail is over. He has contended that at this stage, applicant does not deserve regular bail.

I have perused the record in the light of respective arguments. Initially, applicant was granted interim bail for a period of 90 days vide order dated 18.08.2021 passed by this court on account of pregnancy of his wife. His interim bail was extended for further period of 60 days vide order dated 24.11.2021 passed by this court to take care of his wife and infant. Interim bail of the applicant is stated to be expiring on 24.01.2022. Now, applicant has moved an application seeking regular bail. It is the case of prosecution that on 08.08.2019, on receiving secret information, at around 10:00 – 10:30 PM, at TC Camp Chowk, Raghubir Nagar, Delhi, applicant/accused Sunny was apprehended and he was found in possession of 25 kg of Ganja, which falls under the *FIR No.361/2019, State Vs Sunny*

commercial quantity. I find force in the submissions made by the prosecution that the bar provided for bail under Section 37 of the NDPS Act is applicable in the present case as the commercial quantity of ganja has been recovered from the possession of applicant. Applicant was granted interim bail solely for the purpose of taking care of his wife and infant. It has been stated that the wife of the applicant has delivered a baby and interim bail of the applicant is expiring on 24.01.2022. Applicant is yet to surrender before the concerned Jail Superintendent. I am of the considered opinion that the purpose of interim bail stands fulfilled and no ground is made out for admitting the applicant on regular bail. Huge quantity of contraband substance was recovered from the possession of the applicant. Although, charge-sheet has been put to the court but material witnesses are yet to be examined. Keeping in view the quantity of contraband substance recovered from the possession of applicant, I am of the considered opinion that, at this stage, no case is made out for admitting the accused/applicant Sunny on regular bail. The bail application stands dismissed. Applicant is directed to surrender before the concerned Jail Superintendent immediately on expiry of his interim bail.

Copy of this order be given dasti to the counsel for the applicant.

(Sudhanshu Kaushik)
Special Judge (NDPS)/
Addl. Sessions Judge (West District),
Tis Hazari Courts, Delhi
19.01.2022