

ORDER BELOW EXH.22

(Passed on 11th October 2023)

1] This is an application under Section 439 of the Code of Criminal Procedure for release on bail. I have heard learned Advocate for the accused, learned APP and perused charge-sheet.

2] Briefly stated the prosecution case against eight accused and one Juvenile in conflict with law is that on 08/06/2022 the police of RPF were checking New Delhi Andra Pradesh Express, below berth No.1 to 12 in coach No.S-5 they found bag kept from which pungent smell was coming and when they asked lady accused Sonam, she has not given satisfactory answer and in the bags kept under berth No.1 to 12 they found the accused were travelling by keeping Ganja in their bags and eight bags of the accused were checked in presence of panchas and Gazetted officer i.e. Tahsildar and total 106.807 Kg. Ganja was found, panchnama was prepared, photographs were taken, from the accused mobiles, railway tickets were also seized. At that time the accused No.8 Sonu Thakur i.e. the present applicant had run away so he was caught later on. The Juvenile in conflict with law was produced before the Juvenile Justice Board, charge-sheet has been filed against remaining accused for the offences under Section 20(B) II (C), 29 of NDPS Act.

3] As per the applicant/accused he has been falsely implicated. The alleged quantity of Ganja was individually seized from the accused persons. His signatures are not on the sealed packet. There is no name of the accused in the inventory certificate. He does not have criminal antecedents. He will not misuse the liberty. He is sole earning member of the family. It is the first case under NDPS Act against him. Therefore, bail be granted.

4] Learned APP opposed the application and submitted that all the accused were caught together more than 100 Kg. Ganja was seized from their bangs. There is prima facie proof against the accused persons that they were carrying contraband drug. The accused have also committed criminal conspiracy by aiding and abetting each other. Still some accused are absconding. Bar of Section 37 of the NDPS Act is applicable. If released on bail he will help the absconding accused to avoid arrest.

5] Perusal of the charge-sheet prima facie indicates that there is substance in submission of the Learned APP. It appears that this accused was travelling along with other accused from Visakhapatnam to New Delhi. The electronic record indicate presence of the accused persons. The charge-sheet not only show possession of Ganja but also criminal conspiracy. The quantity

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involved is commercial. The photographs of seizure of Ganja from the accused persons and also photographs filed along with inventory certificate do support allegations of seizure of commercial quantity of Ganja. Since bar of Section 37 of the NDPS Act is applicable and considering documents filed along with charge-sheet this Court cannot record satisfaction with the accused cannot be convicted. The application liable to be rejected. Hence, I pass the following order.

ORDER

The application is hereby rejected.

Date : 11/10/2023

(P.Y.Ladekar)
Special Judge (NDPS
Court) and A.S.J.-4,Nagpur