Bail applications of applicants/accused Ajeet Kumar & Wasim @ Gabbar

FIR No.213/2022
PS: Crime Branch
U/s 20/27 (a) /29 NDPS Act

अति. सत्र न्यायाधीश-2, विशेष न्यायाधीश (एन.डी.पी.एस.) पूर्वी
ASJ-2+Spl. Judge (NDPS), East
कमरा नं. 311
Room No. 311
कड़कड़डूमा न्यायालय, दिल्ली
Karkardooma Courts, Delhi

04.01.2023

Present: Sh. Sunil Dutt, Ld. Addl. PP (Substitute) for the State.

Mr. Gaurav Kochar, Ld. Counsel for accused Wasim @ Gabbar.

Mr. Naveen Pawar, Ld. Counsle for accused Ajeet Kumar.

Submissions heard on the bail application moved on behalf of the accused persons.

The allegations relate to alleged recovery of an intermediate quantity of *ganja* i.e. 14 kgs from accused Ajeet Kumar while accused Wasim @ Gabbar allegedly financed the purchase of the said quantity.

The respective counsels have prayed for bail on the submission that with the filing of the chargesheet, there is no requirement of the accused persons being detained in custody and they are willing to furnish sureties.

The Ld. Counsel for accused Ajeet Kumar has additionally submitted that with the quantity not being a commercial quantity, the grant of bail is not barred by section 37 of the NDPS Act.

It is also submitted by the Ld. Counsel for accused Wasim that the allegations under section 27A NDPS Act are not sustainable or susceptible to the rigors of section 37 in as much as a singular alleged act of financing the purchase of drugs does not amount to engaging in illicit trafficking in narcotics. Reliance has been placed by the counsel on the decision of the Hon'ble Supreme Court in ***State of West Bengal vs Rakesh Singh @ Rakesh Kumar Singh 2022 Live Law (SC) 580*** to agitate that this offence is attracted only in cases of continuous transactions relating to financing of purchase or sale of narcotics.

The applications have been opposed by the Ld. Prosecutor on the submission that the trial is yet to commence and the complicity of the accused persons qua all offences in question can only be determined upon evidence being taken. A reference has been made to sections 29 and 27 A NDPS Act to submit that both accused acted in concert for the purchase and handling of the drugs in question.

The Court has considered the submissions.

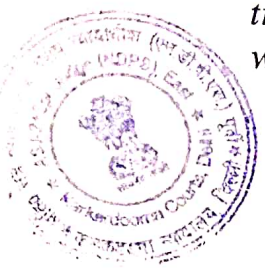
It is to be prima facie recorded that the recovery of an intermediate quantity of drugs i.e. *ganja* (14 kgs) is the centrality of the allegations. While the said quantity was recovered from accused Ajeet Kumar, co-accused Wasim @ Gabbar is ascribed the role of having paid Rs. 60,000/- for the purchase of this quantity (after having withdrawn it from an ATM at Visakhapatnam) from one Shekhar. Accused Wasim @ Gabbar also purportedly paid for the Air India flight by which he and Ajeet Kumar went to Visakhapatnam. Subsequently, accused Wasim @ Gabbar returned by a flight to Delhi while accused Ajeet Kumar came by

train.

The quantity in question is intermediate in nature and thus not subject to the rigors of section 37 of the NDPS Act. It would then be imprudent to condemn accused Ajeet Kumar to custody for the remainder of the trial when his presence can be secured during trial through a suitable surety in the event of bail being granted. Even co-accused Wasim @ Gabbar is essentially sought to be implicated as an abettor for the recovery from accused Ajeet Kumar under section 29 NDPS Act. The gravity of the allegations against him can therefore not assume a deeper hue than that ascribed to the carrier himself namely Ajeet Kumar. Accused Wasim @ Gabbar would also be entitled to bail on the principle of parity.

As to the question of section 27A being alleged against accused Wasim @ Gabbar, the Court would cite the following extract from the decision in ***Rakesh Singh (Supra)*** :

> *8. Fourthly, in so far as the offence under Section 27A of the NDPS Act is concerned, i.e. financing illicit trafficking and harbouring offenders, prima facie we do not find material evidence to support that charge. In our view, being involved in one solitary transaction concerning contraband items will not amount to financing illicit traffic in narcotics. The word "trafficking" connotes continuous flow. There has to be some degree of continuity and regularity in drug dealing before a person can be said to be trafficking in drugs. Similarly, financing illicit traffic would necessarily mean doing so on a regular or continuous basis. It is much more than purchasing or selling contraband items on one occasion. Such a solitary transaction would, in our prima facie opinion, not fall within the mischief of Section 27A of the NDPS Act.*



Much in consonance with the above explanation of illicit traffic in drugs, the allegations against accused Wasim @ Gabbar also indicate a one off engagement in financing the purchase of the drugs which were allegedly recovered from accused Ajeet Kumar. While the applicability of section 27A during trial would be a matter of evidence being recorded, the Court does prima facie find, for purpose of adjudicating the plea of Wasim @ Gabbar for bail, that the allegations are not of the continuous and regular nature of financing which is contemplated by section 27A. Consequently the allegations against both accused are amenable to be read chiefly qua sections 20 and 29 NDPS Act, the quantity being intermediate.

The Court deems it fit to admit both accused namely Ajeet Kumar and Wasim @ Gabbar to bail. Both accused are admitted to bail subject to furnishing of PB & SB in sum of Rs. 25,000 each. The sureties shall be local residents of Delhi. The accused are directed to inform the IO regarding their mobile phone numbers and address as well as any change in the same. The accused shall not contact, influence or coerce any witness/person connected with the present case.

Let a copy of this order be given dasti to the ld counsels for the applicants/accused and also be sent to the Superintendent, Central Jail.

Issue notice to the IO for assistance to the State on the aspect of charge on 31.01.2023.

- Sd -

(VISHAL GOGNE)
Special Judge NDPS/East/KKD/Delhi/04.01.2023
Addl. Sessions Judge-2
East District, KKD Courts, Delhi