

Bail Matter
State Vs. Bhairon Chaudhary
FIR No. 499/2023
U/s 20/61/85 NDPS Act
PS Maurya Enclave

05.02.2024

Present: Sh. K.D. Pachauri, Id. Addl. PP for the State.
Sh. Manvi Gupta, Id. Counsel for applicant/accused.
IO ASI Sukhbir Singh in person.

1. *This is an application under Section 439 Cr.P.C. for grant of regular bail, moved on behalf of applicant/accused Bhairon Chaudhary.*
2. Reply to application filed by IO.
3. Brief facts of the present case are that acting on a secret information, applicant/accused was apprehend alongwith 10 packets of ganja wrapped with brown colour tape and on weighing it was found 21.00 KG.
4. It is submitted by Id. Counsel that as per prosecution 10 packets wrapped with brown tape, which were confirmed to be ganja, were emptied into a big size white coloured transparent plastic polythene. It is submitted that the procedure adopted by prosecution for sampling the alleged recovered contraband is not in consonance with law laid down in Laxman Thaku Vs. State, Bail Appln. No. 3233/2022. It is further submitted that there is discrepancy in weight also as at the time of seizure the alleged recovered contraband was found to be 21 kg while during



proceedings under Section 52A NDPS Act it was found to be 20.956 kg.

5. Id. Counsel has also placed reliance on following judgments:

- (a) *Basant Rai Vs. State*, Crl. Appeal No. 909/2005;
- (b) *Edward Khimani Kamau Vs. The NCB*, MANU/DE/1748/2015;
- (c) *Gopal Das Vs. NCB*, Bail appln. No. 3491/2020;
- (d) *Amani Fidel Chris Vs. NCB*, Crl. Appeal 1027/2015;
- (e) *Jasbir @ Jassu Vs. The State*, Bail Appln. 471/2023;
- (f) *Ginkala Meddilety Vs. The State*, Bail Appln. 1133/2022;
- (g) *Sandeep @ Chiku Vs. State*, Bail Appln. 3016/2023;
- (h) *State Vs. Nikhil*, Bail Matter No. 13282023;
- (i) *Sanjay Prasad Vs. State*, Crl. Appeal No. 1074/2013;
- (j) *Mohd. Ramzan Vs. State (NCT of Delhi)*;
- (k) *Rajesh Jagdamab Avasthi Vs. State of Goa*, Crl. Appeal No. 1148/1999;
- (l) *Kadir Vs. State Govt. of NCT of Delhi*, Bail Appln. No. 553/2023;
- (m) *Sarvothaman Guhan @ Sarvo Vs. NCB*, Bail Appln. 2879/2022;
- (n) *Gaurav Chopra Vs. State Govt. of NCT of Delhi*, Bail Appln. No. 2715/2023;

6. Id. Addl. PP has opposed the bail application. It is submitted that quantity of recovered contraband from applicant/accused is of commercial quantity and therefore, there is bar of Section 37 NDPS Act. It is further submitted that applicant/accused may commit the same offence again, if released on bail.

7. The main contention of Id. Counsel is that there is violation of Standing Order no. 1/88 of NCB and judgment of Hon'ble Supreme Court in *UOI Vs. Bal Mukund*.



8. This act of IO of mixing the separate packets together in a polythene is in violation of standing order no. 1/88 dated 15.03.1988 passed by Narcotics Control Bureau. In UOI Vs. Bal Mukund & Ors. (2009) 12 SCC 161, it has been held by Hon'ble Supreme court that the standing order no. 1/88 is a requirement of law and sampling in violation of that law will go to the root of the case as the same is not permitted. Relying on Bal Mukund (Supra), Hon'ble High Court of Delhi in Laxman Thakur Vs. State Bail Application NO. 3233/2022 held that since the collection of sample itself is faulty, the rigor of Section 37 of NDPS Act will not be applicable.

9. There is no other involvement of applicant/accused. Nevertheless sampling is faulty. Investigation qua applicant/accused is already complete and charge sheet has been filed. Therefore, considering the facts and circumstances of case and that there is no previous involvement of accused in similar offence, the application is allowed. Applicant/accused is admitted to bail on furnishing personal bond in sum of Rs. 15,000/- with one surety of the like amount subject to the conditions :

i) That the applicant/accused will supply all numbers of her functioning phones/mobile phones to the IO as well as about her whereabouts;

ii) That in case of change of her residential address, she shall intimate the court about the same;

iii) That the applicant shall not try to contact complainant/witnesses of the present case in any manner;

iv) That the applicant shall not commit the same offence again;

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v) That the applicant shall appear on each and every date of hearing of case;

With these observations, application is disposed off.


VIKRAM

ASJ-II/SPECIAL JUDGE NDPS/
NORTH-WEST/ROHINI COURTS/
DELHI/05.02.2024