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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 3915/2023

DALAIRAMA RAJU @ RAJU

..... Applicant

Through: Mr. Aditya Aggarwal and Mr.
Manas Agarwal, Advocates

versus

STATE, GOVT OF NCT OF DELHI

..... Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC
for the State with Insp. Vijender
Singh, I/C AATS/ NW

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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06.12.2023

1. The present bail application has been filed by the applicant under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 [*CrPC*] seeking regular bail in FIR No.48/2021 dated 30.01.2021 under Section(s) 20 and 25 of the Narcotic drugs and Psychotropic Substances Act, 1985 [*NDPS Act*] at PS. Mahendra Park, Delhi.

2. As per FIR, secret information was received on 29.01.2021 at 07:50 PM that persons *namely* Badri Singh and Rohan, who were involved in the smuggling and supply of *ganja* in Delhi, were planning to supply *ganja* in large quantities on 30.01.2021 on Truck RJ-11-GB-4370. The same was entered in the Daily Diary vide DD No.10 dated 29.01.2021 and a raiding team was prepared and the same was dispatched.

3. The raiding team reached the spot as per the secret information and

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waited for the Truck to arrive. At around 4:00 AM, the truck arrived and the team apprehended two persons, *namely* Badri Singh and Rohan. Complying with the mandate of the NDPS Act, their respective searches were conducted before Sh. Manoj Pant, ACP.

4. Recovery of 26 packets was effected from the driver cabin roof of Truck No. RJ-11-GB-4370. The same added upto 52.70 Kgs *ganja*. Out of the 26 packets, 12 packets each were packed in 2 *kattas* and 2 packets were found loose.

5. The 26 packets recovered, were opened and a *smelly, seedy, leafy* and *silty green grassy* substance was present, which on checking on the basis of physical properties was found to be *ganja*. All 26 packets were packed in four *kattas* and samples were drawn and seizure memos in compliance of Section 52A of the NDPS Act were prepared. The applicant was arrested and the present FIR came to be registered.

6. Learned counsel for the applicant, restricting himself to the arguments below, submits that the FIR is based on false and frivolous allegations and is concocted by the Police in order to falsely incriminate the applicant in the case. He further submits that the Police opened all *kattas* as well as the packets inside them and later kept the *ganja* back in the *kattas*, thereby mixing the substance of all packets, and that the sample, for the FSL testing, was drawn from the same, which is in violation of the Standing Order no.1/88 dated 15.03.1998. In support of his contentions, the learned counsel places reliance upon ***Laxman Thakur v. State (NCT of Delhi)*** 2022 SCC OnLine Del 4427; order dated 05.08.2022 in BAIL APPLN. 1623/2022 titled ***Ram Bharose vs State (Govt. of NCT of Delhi)***; ***Gopal Das vs NCB*** 2021 SCC OnLine Del 329; ***BAIL APPLN. 3915/2023***

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Ahmed Hassan Muhammed vs Customs 2021 SCC OnLine Del 486 and order dated 25.01.2021 in BAIL APPLN. 4165/2020 titled ***Ashwani @ Sonu vs The State.***

7. Learned counsel for the applicant further submits that the fact that the applicant had multiple telephonic conversations with one of the co-accused, is of not much significance at this stage as the veracity of the same is yet to stand the test of trial. In this regard, he places reliance on judgement of a Co-ordinate Bench of this Court in ***Amit Ranjan vs. Narcotics Control Bureau*** 2022 SCC OnLine Del 1532.

8. Notice was issue and Status Report was called for.

9. Learned ASC appearing for the State opposes the application in light of heinousness nature of the offence and severity of punishment. She submits that the question of violation of the Standard Order No.1/88 is a question of trial and need not be discussed by the Court at this stage.

10. Learned ASC further submits that the applicant is also pending trial in FIR No.113/2016 under Section(s) 20(b)(1) read with 8(c) of the NDPS Act, at PS. Yelamanchili, Vishakhapatnam, and his release would have wide ramifications as the applicant is part of a large nexus of drugs operators, and his custodial interrogation is quintessential to unearth the drug racket.

11. This Court has heard the learned counsel for the applicant and the learned APP for the State and perused the Status Report as also the judgments and other documents on record.

12. Nominal Roll was also requisitioned. As per the Nominal Roll, the applicant has *satisfactory* jail conduct and is in continuous judicial custody since 07.10.2022 and has no previous involvements.

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13. The facts reveal that opening of all the *kattas* as well as the packets inside them only to keep them back later by the Police has led to mixing the substance(s) of all packets, which is in violation of the Standing Order no.1/88 dated 15.03.1998 issued by the Narcotics Control Bureau, Government of India, which is reproduced hereinunder:-

“2.4 In the case of Seizure of a single package/ container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each packet/container in case of seizure of more than one package/container.”

14. The said Standing Order no.1/88 dated 15.03.1998 is very clear and mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.

15. As on date, *admittedly*, the *kattas* were opened by the Police and after taking out all the packets from inside, they were again sealed later on by the Police as well. However, the same has led to mixing of the substance(s) of all packets involved. Today, it is difficult to determine the exact quantity of the seized contraband involved.

16. Coordinate Benches of this Court in ***Laxman Thakur*** (supra); ***Ram Bharose*** (supra); ***Gopal Das*** (supra); ***Ahmed Hassan Muhammed*** (supra); ***Ashwani @ Sonu*** (supra) while granting bail to the accused therein have taken the aforesaid factor as a relevant one and have held that mixing of the substance before drawing any sample vitiates the entire sample.

17. This Court is also cognizant of the fact that the recovered contraband is more than 2.5 times of the threshold for commercial quantity for *ganja*, thereby attracting the embargo of Section 37 of the NDPS Act. It is also *admitted* that a specific role has been ascertained to



the applicant, and he has also been named by the co-accused in his disclosure statement. However, till the final outcome of the proceedings emanating therefrom, the status of the applicant is merely that of a suspect as he is innocent till proven guilty. This Court finds able support qua the same from the various pronouncements of this Court and the Hon'ble Supreme Court as well [*Re.: Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar* (1980) 1 SCC 81; *Satender Kumar Antil vs. Central Bureau of Investigation* (2022) 10 SCC 51].

18. The call records *inter-se* the applicant and a co-accused require proper adjudication which can only be possible after the conclusion of trial and thus cannot be gone into at this stage when this Court is dealing with the present application for granting bail to the applicant. In fact, the same is of but little significance and so drawing any conclusion thereon will be too premature at this stage. So, the same cannot be the sole ground for this Court not granting bail to the applicant at this stage [*Re.: Amit Ranjan* (supra)].

19. Moreover, by and large the nature of offences/ charges involved being grave and serious and/ or pendency of other/ several criminal cases against an accused are/cannot be the only basis for rejection of bail to an accused and the Court has to take a holistic view of the facts and circumstances. Thus, under these circumstances the pendency of another FIR against the applicant is not going to act as an impediment for this Court granting bail to the applicant at this stage [*Re.: Prabhakar Tiwari vs. State of Uttar Pradesh*, (2020) 11 SCC 648].

20. Taking a holistic view of all the aforesaid factual position on hand and the deliberation made hereinabove as also the legal position as on
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date, the applicant has been able to make out a case for grant of bail.

21. Accordingly, the applicant is directed to be released on regular bail in FIR No.48/2021 dated 30.01.2021 under Section(s) 20 and 25 of the NDPS Act at PS. Mahendra Park, Delhi on him furnishing a personal bond in the sum of Rs.1,00,000/- (*Rupees One Lakh Only*) along with two sureties of the like amount by family member(s)/ friend(s) having no criminal case pending against them, subject to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. Applicant shall not leave Vishakhapatnam, Andhra Pradesh without prior permission of this Court and shall ordinarily reside at the address as per prison records. If he wishes to change his residential address he shall immediately intimate about the same to the Jail Superintendent by way of an affidavit.
- ii. Applicant shall surrender his passport to the Investigating Officer, within three days. If he does not possess the same, he shall file an affidavit before the I.O. to that effect within the stipulated time.
- iii. Applicant shall appear before the Court as and when the matter is taken up for hearing.
- iv. Applicant shall join investigation as and when called by the IO concerned. He shall not obstruct or hamper with the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.
- v. Applicant shall provide all his mobile numbers to the I.O. concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior



intimation to the I.O. concerned. The mobile location be kept on at all times.

vi. Applicant shall report to the I.O. at the local Police Station once in the first week of every month unless leave of every such absence is obtained from the learned Trial Court.

vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the victim or any member of the victim's family or tamper with the evidence of the case or try to dissuade them from disclosing such facts to the Court or to any police officials.

22. Copy of this order be forwarded to the concerned Jail Superintendent.

23. Accordingly, the present application is allowed in the aforesaid terms

24. Needless to say, the observations made, if any, are purely for the purposes of adjudication of the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J

DECEMBER 6, 2023/So