

B.A.No. 216/2023  
FIR No. 186/2020  
PS Crime Branch  
State v. Dinesh Kumar @ Dina  
U/s 20/25/29 NDPS Act

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(Sh. Sanjeev Kumar-II)  
Special Judge, (NDPS),-02,  
Central District, Court Room No. 222,  
Tis Hazari Courts, Delhi

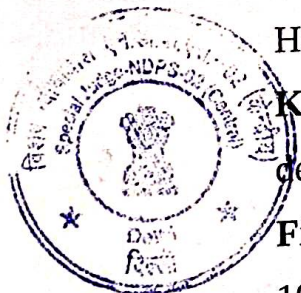
12.07.2023

Present: Dr. Sarita Rani, Additional Public Prosecutor for  
State.

Sh. Aditya Aggarwal, counsel for accused-applicant.

This is an application under section 439 Cr.P.C. for grant of bail moved on behalf of accused-applicant Dinesh Kumar is fixed for orders today.

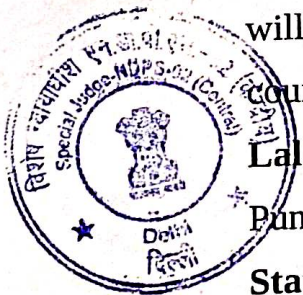
2. Learned counsel for the accused-applicant contended that accused has been falsely implicated in the present case. Accused is in JC since 03.12.2020. Co-accused Sachin has been granted bail by the Hon'ble High Court vide order dated 26.04.2023 while observing that the sampling was not done in accordance with law i.e. proceedings under Section 52A of NDPS Act because samples were not taken from each of the bundle which were alleged found in four kattas. The case of the accused-applicant is on similar footing as that of co-accused Sachin who has been granted bail by the Hon'ble High Court. Learned counsel has relied upon decision in **Sachin Kumar v. State (Govt. of NCT of Delhi)**, Bail Appln. 557/2023 decided by Hon'ble High Court of Delhi on 26.04.2023; **Edward Khimani Kamau v. The Narcotics Control Bureau**, CRL. A.1113/2011 decided by Hon'ble High Court of Delhi on 28.05.2015; **Amani Fidel Chris v. Narcotics Control Bureau**, Crl. Appeal 1027/2015 decided by Hon'ble High Court of Delhi on 13.03.2020; **Basant Rai v. State**, Crl. Appeal No.909/2005,



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decided by Hon'ble High Court of Delhi on 02.07.2012; **Naim Khan v. The State of Madhya Pradesh, Incharge Police Station, Noorabad, District Morena (Madhya Pradesh)**, Misc. Criminal Case No.56923 of 2022 decided by Hon'ble High Court of Madhya Pradesh at Gwalior on 05.12.2022; **State of West Bengal v. Rakesh Singh @ Rakesh Kumar Singh**, Crl. Appeal No.923 of 2022, decided by Hon'ble Supreme Court of India on 11.07.2022; **Paramjit Singh Gulati v. Directorate of Revenue Intelligence**, Bail Appln. 672/2022 decided by Hon'ble High Court of Delhi on 13.01.2023 and **Mumtaz v. State (NCT of Delhi) & Anr.**, Bail Appln. 3165/2022 decided by Hon'ble High Court of Delhi on 28.12.2022.

3. Learned counsel for the accused-applicant further submitted that there is no previous involvement of accused in any NDPS case and in most of the cases registered under other provisions of the law i.e. IPC etc., accused has been either acquitted or discharged or on bail. Learned counsel further submitted that even if the accused is declared proclaimed offender he can be granted bail. The accused-applicant could not surrender in time after interim bail due to his family problems. Learned counsel has assured this Court that accused-applicant will not misuse the liberty in future. In this regard, Learned counsel has relied upon decision in **Sandeep Kumar @ Lala @ Lal Chand v. State of Haryana**, CRM-M-1276-2021 decided by Punjab and Haryana High Court on 13.12.2021 and **Parveen v. State of Haryana**, CRM-M-47025 of 2019, decided by Punjab and Haryana High Court on 29.11.2019.





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4. Learned Substitute Additional Public Prosecutor has opposed the bail application. Accused-applicant does not have clean antecedents and has previous involvements. Further accused has misused the concession of interim bail granted to accused-applicant and he had been declared proclaimed offender in the present case and arrested later on.

5. Case pertains to the recovery of commercial quantity of contraband as 20.900 kgs and 21.200 kgs of Ganja from two kattas/ plastic bag which were found in possession of accused-applicant and Ganja weighing 21.250 kgs and 21.350 kgs were found two other kattas / plastic bags which was found in possession of co-accused Sachin Kumar while they were in scropio car. Each Katta/plastic bag was having four bundles each. Hence, in four kattas which were recovered, from the accused-applicant and co-accused Sachin Kumar there were total 16 bundles but Learned Magistrate during proceedings under Section 52A NDPS Act have taken two samples of 100 grams each from each kattas/ plastic bags and therefore total 8 samples have been taken from all four kattas which were having 16 bundles whereas as per law two samples from each bundle found in each kattas were required to be taken and therefore, total 32 samples were required to be taken but only total 8 samples were taken during proceedings under Section 52A of NDPS Act.

6. Co-accused Sachin Kumar has been granted bail by Hon'ble High Court observing that the proceedings under Section 52A of NDPS Act has not been conducted in accordance with law because during said proceedings, samples were not taken from



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each of the brown taped bundles which raises an apprehension that the brown taped bundles left over may not have contained the contraband and it was not clear from which of the different bundles lying in kattas the two samples were taken and it is not clear out from out of 16 bundles the samples were taken from which of the four kattas and hence rigors of Section 37 NDPS act would not apply as there exist a dispute qua the weight of the Ganja actually recovered from the person of the co-accused Sachin Kumar.

7. Accused-applicant has criminal antecedents but same are not under NDPS Act. Further, in most of the cases registered under other provisions of the law i.e. IPC etc., accused has been either acquitted or discharged or on bail, as submitted by Learned counsel for accused. In the present case earlier interim bail was granted to the accused but he has misused the liberty and had not surrendered on expiry of interim bail period and had been declared proclaimed person. In this regard, Learned counsel has submitted that the accused-applicant cannot be refused bail even if he has been declared proclaimed offender because said offence under Section 174A IPC falls in the other Act and not under NDPS Act and further he has submitted that in other cases accused was released on bail despite the fact he was declared proclaimed offender and in this regard he has referred to **Sandeep Kumar** (supra) and **Parveen** (supra). It is also pertinent to mention here that Hon'ble Delhi High Court while granting bail to co-accused Sachin Kumar in the present case has observed that rigors of Section 37 of NDPS Act would not apply





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as there exists a dispute qua the weight of the Ganja actually recovered from the person of the co-accused Sachin Kumar. Said observation will also be applicable with respect to applicant-accused in my view.

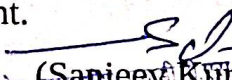
8. In view of the above, rigors of Section 37 of NDPS Act are satisfied in the present case. Hence, application is allowed and **accused-applicant Dinesh Kumar @ Dina is admitted to bail on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount** and subject to the following conditions that:-

- i) That accused-applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- ii) That accused-applicant shall not leave India without the previous permission of the Court; and
- iii) That accused-applicant shall not commit an offence similar to the offence of which he is accused.

Application stands disposed of.

9. Copy of order be given dasti to learned counsel for accused-applicant and be communicated to accused-applicant in Jail also through Jail Superintendent.



  
(Sanjeev Kumar-II)  
Special Judge (NDPS)-02  
Central District, Tis Hazari Courts,  
Delhi / 12.07.2023