

1/5
**IN THE COURT OF ASJ/SPECIAL JUDGE/NDPS
PATIALA HOUSE COURTS, NEW DELHI**

Presided by: Sudhir Kumar Sirohi, DHJS

SUDHIR KUMAR SIROHI
Special Judge NDPS Act
Room No. 35, P. Building
Patiala House Courts,
New Delhi

**FIR No. 142/22
PS Crime Branch
State Vs. Firoz
U/s 18/25/29 NDPS Act.
05.07.2023**

Present: Mr. Shiv Kumar, Ld. Addl. PP for State.
Mr. Manas Aggarwal, Ld. Counsel for accused.
IO of the case SI Vikas.

Reply of the bail application has been filed. Copy supplied.

Arguments on bail application heard.

Ld. counsel for accused argued that in this matter there is recovery of 510 grm of opium from the bag of accused Firoz while from the bag of co-accused Zakir Hussain there is recovery of 2615 grams of opium, therefore, individually there is recovery of intermediate quantity of 510grams of opium from possession of accused Firoz and the quantity recovered from co-accused Zakir Hussain can not be added in order to bring the applicant Firoz within the preview of commercial quantity of contraband and to apply bar of Section 37 NDPS Act. It is further argued by Ld. counsel for accused that accused Firoz is in custody since 18.07.2022 and there is no previous involvement of accused on record, therefore, accused Firoz may be admitted to bail.

Ld. counsel for accused relied upon the following judgments:-



1. *Anita Vs. State (NCT of Delhi) BAIL APPLN. 1538/2022 dated 20.07.2022, it was held by Hon'ble High Court of Delhi.*
2. *Sunil Vs. State (NCT of Delhi Bail Application No. 495/2022 dated 28.07.2022 by Hon'ble High Court of Delhi.*
3. *Rehmatullah @ Arman Vs. State of Delhi Bail Appl. No. 2866/222 dated 24.11.2022 by Hon'ble High Court of Delhi.*
4. *Narsimman Vs. State (Govt of NCT of Delhi Bail Appl. No. 3863/2022 decided on 09.02.2023 by Hon'ble High Court of Delhi.*
5. *Gajender Bahadur Vs. The State Govt of NCT of Delhi Bail Appln. 3655/2022 decided on 31.01.2023 by Hon'ble High Court of Delhi.*
6. *Sumant Vs. State Bail Application No. 572/2022 decided on 31.03.2022 by Hon'ble High Court of Delhi.*

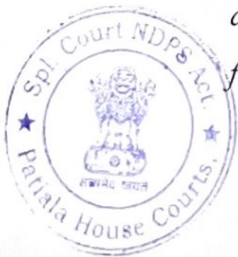
Ld. Addl. PP for State and IO on aother hand strongly opposed the bail application and submitted that there is recovery of about 3 kg of opium from accused Firoz and Zakir Hussain which commercial quantity therefore, there is bar of Section 37 NDPS Act. It is also submitted by Ld. Addl. PP for State that there is also CDR connectivity of the present accused with other co-accused persons, therefore, the bail may not be granted to the accused.

Submissions of all the parties heard. Judgment perused.

In the Anita Vs. State (NCT of Delhi) BAIL APPLN. 1538/2022 dated 20.07.2022, it was held by Hon'ble High Court of Delhi that:-

1. On 19.05.2022, this Court had enquired "Whether the recovery made from the co-accused can be added to the recovery made from the applicant?"

2. Mr. Kumar, learned counsel appearing for the applicant has drawn my attention to judgment dated 30.09.2021 passed in BAIL APPLN. 3351/2021 titled as Smt. Sachala Nayak vs. State of NCT of Delhi, where a Coordinate Bench of this Court has relied upon a judgment of Muthu Kumar & Ors. v. Station House Officer, Kottakkal Police Station[(2008) SCC OnLine Ker 100], specifically para 6 which reads as under:- "6. As far as this application is concerned, we are of the opinion that the question is mere academic. The applicants herein were charge-sheeted for offences punishable under section 20(b)(ii)(C). The allegations in the charge sheet prima facie show that out of the total quantity of 31.150 k. grams of ganja, the 1st accused was found carrying 15 kg. and 50 grams folded in his waste, the 2nd accused was found in carrying 6 kgms. in a bag and 5 kgm in a suit case and 50 grams in his waste and 3rd accused was carrying 5 kg. and 50 grams in his waste. If that be so, even though total quantity as above is a commercial quantity, each of the accused was in possession of only a lesser than the commercial quantity. If the accused were not in possession of the commercial quantity, Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act will not apply. It is reported that the accused were in prison from 26-10-2007 and they had undergone 167 days imprisonment and the charge sheet was already filed. Considering the facts and circumstances of the case, we are



of the opinion that this is a fit case for granting bail on stringent conditions.”

4/5

3. He further draws my attention to another judgment of the Coordinate Bench passed in BAIL APPLN. 44/2020 titled as *Raju Diwakar @ Pappu v. The State* and more particularly, para 10 which reads as under:- “10. Similar issue came before High Court of Punjab & Haryana at Chandigarh in *Vicky Kaur vs. State of Punjab*, wherein while citing case of *Law Suit (P&H) Amar Singh Ramji Bhai Barot vs. State of Gujarat (2005) 7 SCC 550* held that quantity of contraband carried by both accused could not be added to bring it within the meaning of commercial quantity and Section 29 will not be attracted.”

4. ***In this view of the matter, I am of the view that the recovery made from the co-accused cannot be added to the quantity recovered from the applicant.***

Accordingly, as per the abovesaid law laid down by Hon'ble High Court of Delhi, recovery made from co-accused can not be added to the recovery from other accused. In the present case there is recovery of 510 grams of opium from the accused Firoz which is intermediate quantity and the bar of Section 37 NDPS Act is not applicable in this matter, chargesheet has already been filed, accused is in custody since 18.07.2022 and is no more required for further custodial interrogation hence accused Firoz is admitted to bail on furnishing personal bond and surety bond in the sum of rs. 50,000/- and subject to the following conditions:-

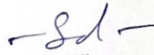
1. he will provide his mobile number to the IO.
2. he will keep his mobile phone on at all times.

3. he will deposit his passport in the court during the period of bail and if he does not have passport then to file the affidavit in this regard in the court.

5/5

4. he will inform the IO about change of his residence/address, if any
5. he will mark his attendance in office of NCB every first Monday of month till trial is completed.
6. he will not leave India under any circumstances without prior permission of trial court.
7. he will not commit any offence whatsoever during the period that he is on bail in the instant case.
8. In the event of there being any FIR/DD Entry/complaint lodged against the applicant/accused it would be open to the State to seek cancellation of bail of the accused.

Accordingly, bail application of accused Firoz stands disposed off. Copy of this order be given dasti and be also sent to accused in Jail.


(Sudhir Kumar Sirohi)
ASJ/Spl. Judge, NDPS/N. Delhi
05.07.2023

Special Judge NDPS Act
Room No. 35, P. Building
Patiala House Courts,
New Delhi

