

Bail Matters 1402/2023
STATE Vs. MANOJ KUMAR SINGH
FIR No 95 /2019
PS (CRIME BRANCH-SOUTH EAST)

08.05.2023

Present: Sh. Wasi-Ur- Rahman, Ld. Addl. PP for the State.
Ms. Manvi Gupta, Ld. Counsel for accused.

ORDER ON REGULAR BAIL APPLICATION

1 Vide this order, this Court shall adjudicate upon the regular bail application filed on behalf of the applicant/accused Manoj Kumar Singh. Arguments were heard *in extenso*, the gist whereof is discussed hereunder.

2 Ld Counsel for accused submitted that the accused has been languishing in JC since 12.04.2019. Ld. Counsel for applicant/accused submitted the the sampling of the contraband item was done at the spot only, and not before the Ld. Magistrate. Thus, it was submitted that the sampling procedure is in violation of Section 52(A) of NDPS Act. It was further submitted that the samples were not taken out individually from each of the packets found in the katta, rather they were all mixed together and then only samples were taken out. To substantiate her contention, Ld. Counsel for accused placed reliance on ***Laxman Thakur Vs State Bail application no 3233/2022, Sachin Kumar Vs State Bail Application no 557/2023, Shakuntala Vs State Bail application no 286/2023, Santosh Vs State of Delhi Bail Appln No 4288/2021 and Ram Bharose Vs State (NCT Of Delhi)*** passed by Hon'ble High Court of Delhi. Ld. Counsel for accused submitted that accused has

incarcerated for more than 4 years. It was further submitted that co-accused Sayyed Alam@ Munna has already been granted bail by this court vide order dated 04.05.2023, and thus accused ought to be granted bail as he is ready to abide by all the terms and conditions imposed upon him by this Court.

3 *Per contra*, IO concerned, who has appeared before this Court also conceded that sampling was not done before Ld. Magistrate. IO further conceded that contraband recovered from the packets were all mixed together and then only the samples were drawn. However, Ld. Addl PP for State submitted that the objection taken by the accused herein is at belated stage. Ld. Addl PP for State submitted that commercial quantity of alleged contraband was recovered from the possession of accused and therefore he ought not to be granted bail as

4 Submissions heard.

5 At this juncture, it would be apposite to reproduce the relevant extract of ***Laxman Thakur (supra)*** wherein the Court ordained as thus:

“3As per the said seizure memo, the 12 Kg Ganja recovered from 6 packets in possession of Ajit Kumar were mixed and also 5 packets of 2 Kgs each found from the applicant were mixed and thereafter were sealed. Thereafter, the samples were taken.

8.I am of the view that as mandated by the Hon“ble Supreme Court in judgment of „Union of India vs. Bal Mukund & Ors.“ [(2009) 12 SCC 161], standing order 1/88 has been opined to be a “requirement of law”.

9. The 3 Bench judgment of Bal Mukund (supra) is binding on this Court.

10. Relevant portion of Standing order 1/88 reads as under:

“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.”

11. *The standing order 1/88 mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.*

12. *I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable.”*

6 Further, in ***Shakuntala (supra)*** the Court observed as thus:

“2 Mr. Singh, learned counsel for the applicant has drawn my attention to seizure memo dated 06.05.2021, wherein it has been stated that 10 packets were recovered from the applicant. All the 10 packets were opened and the contents of all packets were transferred in one big plastic bag and when weighed was 20.5 Kg. Thereafter, samples were drawn from the bag containing the mixed contraband.

5 I have already taken a view in BAIL APPL. 3233/2022 in Laxman Thakur vs. State (Govt. of NCT of Delhi) wherein it has been held that if instructions contained in standing order 1/88 have not been followed and the sample has been drawn after mixing with contents, the same causes serious prejudice to the case of the applicant.

6. I have further held that since the collection of sample itself is faulty, the rigorous of Section 37 of the NDPS Act will not be applicable.”

7 Under these circumstances, keeping in view the fact and the submissions made and also on grounds of parity as co-accused Sayyed Alam @ Munna has already been granted bail by this Court vide order dated 04.05.2023 this Court deems it fit to grant regular bail to accused Manoj Kumar Singh on his furnishing personal bond with surety bond of Rs.50,000/- with one surety in the like amount, subject to following conditions:

i) The accused is directed to reside in India till further orders

and the address shall be verified by the IO concerned at the time of acceptance of bail bonds.

ii) The accused shall report to the concerned Police Station once in a week, that is, on every Friday at 10:30 AM and the Police is directed to release him by 11:00 AM after recording his presence and completion of all the necessary formalities.

iii) The accused shall not leave territory of India without the prior permission of this Court,

iv) The accused is directed to give all his mobile numbers to the Investigating Officer and keep them operational all the times,

v) The accused shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner,

vi) In case it is established that the accused has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to accused shall stand cancelled forthwith.

8 Needless to say, the abovementioned observations are predicated solely on the facts as alleged, and brought forth at this juncture, and are not findings on merits, and would also have no bearing on the merits of the case. With these conditions, and observations, the regular bail application stands disposed of.

9 In compliance of ***Sanjay Singh Vs. State (Govt of N.C.T of Delhi) Writ Petition Criminal 974/2022***, copy of this order be sent to concerned Jail Superintendent to convey the order to inmate. Order be given dasti.

(ARUL VARMA)

ASJ-04 + Spl. Judge (NDPS) South East District,
Saket Court, New Delhi: 08.05.2023