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

+ **BAIL APPLN. 1623/2022 & CRL.M.A. 10429/2022**

**RAM BHAROSE**

..... Petitioner

Through: Mr. Aditya Aggarwal, Mr. Manas  
Aggarwal, Mr. Naveen Panwar,  
Advocates.

versus

**STATE (GOVT. OF NCT OF DELHI)**

..... Respondent

Through: Mr. Shoaib Haider, APP for State.

**CORAM:**

**HON'BLE MS. JUSTICE ANU MALHOTRA**

**ORDER**

**05.08.2022**

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**CRL.M.A. 10429/2022**

Exemption allowed subject to all just exceptions.

The application is disposed of accordingly.

**BAIL APPLN. 1623/2022**

The applicant vide the present application seeks the grant of bail in relation to FIR No.552/2021, PS Rajouri Garden, under Sections 20/29 of the NDPS Act, 1985, submitting to the effect that he has been falsely implicated in the instant case due to several complaints lodged by him against police officers. Inter alia, it has been submitted on behalf of applicant that he is aged about 70 years of age and that the status report that the State has submitted on record relates to the alleged implication of the applicant in cases i.e., FIR No.904/2014, PS Rajouri Garden, under Sections

323/324/341/34 of the Indian Penal Code, 1860, FIR No.327/2018, PS Rajouri Garden, under Sections 323/354/354B/451/506/34 of the Indian Penal Code, 1860 and FIR No.739/2018, PS Rajouri Garden, under Sections 380/411/34 of the Indian Penal Code, 1860 and not in relation to the offences punishable under the NDPS Act, 1985 as alleged in relation to FIR No.552/2021, PS Rajouri Garden, in which the application has now been filed. It is also submitted on behalf of the applicant that the applicant is on bail in those other three cases.

*Inter alia*, it has been submitted on behalf of the applicant that the samples that have been drawn in the instant case have not been drawn in accordance with law and reliance is placed on a catena of verdicts on behalf of the applicant i.e.,

1. A verdict of this Court in Bail Appln. 3076/2022 titled ***Ahmed Hassan Muhammed vs. The Customs*** dated 11.02.2021;
2. A verdict of this Court in Crl. Appeal 909/2005 titled ***Basant Rai vs. State*** dated 02.07.2012;
3. A verdict of this Court in Crl.A. titled ***Charlse Howell @ Abel Kom vs. NCB*** dated 13.08.2018;
4. A verdict of this Court in Crl.A. 1113/2011 titled ***Edward Khimani Kamau vs. The Narcotics Control Bureau*** dated 28.05.2015;
5. A verdict of this Court in Bail Appln. 3491/2020 titled ***Gopal Das vs. NCB*** dated 04.02.2021;
6. A verdict of this Court in Crl.A. 1027/2015 tiled ***Amani Fidel Chris vs. Narcotics Control Bureau*** dated 13.03.2020, the paragraph 33 thereof to the effect:-

***“33. Resultantly, this court is of the view that the samples sent to the CRCL were not the representative samples. Besides, by mixing the contents of all the 4 packets before drawing any sample not only the sanctity of the case property in the individual packet was lost but also the evidence as to how much each individual packet weighed. In reaching the aforesaid conclusion, I also draw support from the decisions in *Shajahan v. Inspector of Excise (DB)* reported as 2019 SCC On Line Ker 2685 *Kulwinder Kumar v. State of Punjab*, reported as 2018 SCC OnLine P&H 1754 and *Santosh Kumar v. The State of Bihar* passed in *Criminal Appeal (SJ) No.158/2016* decided on 30.08.2019.”***

7. A verdict in Crl. Misc. Bail Appln. 9660/2021 titled ***Om Prakash Verma vs. State of UP*** dated 11.03.2022;
8. A verdict of the Hon’ble Supreme Court in Crl. A. 1034/2008 titled ***Noor Aga vs. State of Punjab & Anr.*** dated 09.07.2008;
9. A verdict of the Hon’ble Supreme Court in Crl. A. 504/2020 titled ***Gangadhar @ Gangaram vs. The State of Madhya Pradesh*** dated 05.08.2020;
10. A verdict of this Court in Crl. A. 1363/2014 titled ***Ram Prakash vs. State*** dated 10.12.2014,

to contend to the effect that as per averments made in the FIR itself, the samples drawn from the allegedly recovered polythene packets from the applicant containing the contraband Ganja were mixed up together into a Katta K5 and from the same, the from the same the stated representative sample is alleged to have been drawn and sent for the chemical examination to contend to the effect that it contained Ganja to the extent of 1.500 Kgs of Ganja as allegedly recovered from the applicant, and that the Standing

Operating Procedure in drawing of the samples having not been followed, the applicant is entitled to be released on bail.

On behalf of the State, the learned APP for the State refutes the said submission and submits that the representative samples have been drawn in accordance with law and rather before the learned Magistrate as recorded vide proceedings dated 03.07.2021 in the instant case.

It is further submitted as has already been adverted to hereinabove on behalf of the State that apart from the instant FIR in which the application has been filed, there are three other cases against the applicant.

The averments in the FIR itself indicate the applicant to be of 70 years of age. As per the averments made in the FIR from the possession of the applicant a white polythene packet, and two boxes of Junior pre-rolled cone, 5 boxes of cannabis tubes, 2 boxes of No.1 King Perfect Roll, three boxes of Bongchie Perfect Roll and six boxes of Bongchie Rolling Paper were recovered and on checking the polythene it was found to contain several small small plastic placket pudias which were filled and on opening and checking the same they were found to contain leafy, seeded and stinky grass type of product which as per the smell and characteristics seem to be ganja and all the small small polythene packets were opened and their contents of ganja were put into a white plastic katta and were bound with a white cloth piece and sealed with the seal of 'RD' and a pulanda was prepared. It is also stated in the FIR that the white polythenes and the small small polythene packets were all put into a white plastic katta which was also tied with a white cloth and sealed with the seal of 'RD' and these kattas were given the marks of K5 and K6 respectively. As per the FIR, the recovered two boxes of the Junior Pre-rolled cone, five boxes of cannabis

tubes and two boxes of Number-1 King Perfect Roll, three boxes of Bongchie Perfect Roll and six boxes of Bongchie Rolling paper were all put into a separate white plastic Katta which was tied with a piece of white cloth and sealed with the seal of 'RD' and were given the mark of K7

It appears thus through the contents of the FIR that at the time of the putting together into the Kattas K5 all contents of allegedly recovered contraband in the form of ganja and were put into the Katta K5 and it is of this K5 that the alleged representative sample is stated to have been drawn on the date 03.07.2021 before the learned MM, West, Tis Hazari.

Prima facie, the said drawing of the samples as per the contents of the FIR does not appear to be in consonance with the Standing Operating Procedure in Standing Order 1/88 dated 15.3.1988 issued by the NCB required as detailed in *Amani Fidel Chris vs. Narcotics Control Bureau* (Supra) to the effect:

*"1.5 Place and time of drawal of sample. - Samples from the Narcotic Drugs and Psychotropic Substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug is recovered, and mention to this effect should invariably be made in the panchnama drawn on the spot.*

*1.6 Quantity of different drugs required in the sample - The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages/containers should be*

well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

**1.7 Number of samples to be drawn in each seizure case-**

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

(b) However, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect/the packages/container may be carefully bunched in lots of 10 packages/containers may be bunched in lots of 40 such packages such packages/containers. For each such lot of packages/containers, one sample in duplicate may be drawn.

(c) Where after making such lots, in the case of Hashish and Ganja, less than 20 packages/containers remains, and in case of other drugs less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

(d) If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish, one more sample in duplicate may be drawn for such remainder package/containers.

(e) While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

*(emphasis added)*

14. *Pari materia* with Standing Order 1/88 is the Standing Order No.1/89 dated 13.06.1989 issued under subsection (1) of Section 52A of NDPS Act by the Department of Revenue, Ministry of Finance, Government of India. Section (II) provides for general procedure for sampling, storage and reads as under:-

**“SECTION II- GENERAL PROCEDURE FOR SAMPLING, STORAGE ETC.**

2.1 All drugs shall be properly classified, carefully, weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witness (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in cases of opium, ganja and charas (hasish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages /containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

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 package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the content of each package

*given identical results on color test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of 10 packages/ containers/ except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.*

*2.6 Whereafter making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching will be necessary and no sample need to be drawn.*

*2.7 If such remainders are more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such a reminder package /container.*

*2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample are in equal quantity is taken from a package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.*

*2.9 The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should bear the S.No. of the package(s)/ containers from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope which should also be sealed and marked 'secret-drug sample/ Test memo' is to be sent to the chemical laboratory concerned.*

*3.0 The Seizing officers of the Central Government Departments, viz., Customs, Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, Directorate of Revenue Intelligence etc. should dispatch samples of the seized drugs to one of the Laboratories of the Central Revenues Control Laboratory nearest to their office depending upon the availability of test facilities. The other Central Agencies like BSF, CBI and other Central Police Organizations may send such sample to the Director, Central Forensic Laboratory, New Delhi. All State Enforcement Agencies may send samples of seized drugs to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.*

*3.1 After sampling, detailed inventory of such packages /containers shall be prepared for being enclosed to the panchanama. Original wrappers shall also be preserved for evidentiary purposes.”*

*(emphasis added)*

as has been observed by the Co-ordinate Bench of this Court vide paragraph 15,16,17,18, and 33 thereof to the effect:-

*“15. In view of the stringent provisions of the NDPS Act, the issue to be considered is whether the procedure specified under the Standing Orders can be flouted.*

*16. A combined reading of paras of the Standing Orders would show that where more than one container/package is found, the respondent is required to draw a sample from each of the individual container/package and test each of the sample with the ‘field testing kit’. It is further provided that if the container/packages are identical in shape, size and weight then lots of 10 or 40 containers/packages may be prepared and thereafter representativesamples from each container/package in a particular lot are to be drawn, mixed and sent for testing.*

*17. Mixing of the contents of container/package (in one lot) and then drawing the representative samples is not permissible*

*under the Standing Orders and rightly so since such a sample would cease to be a representative sample of the corresponding container/package.*

*18. In the present case, four packets containing suspicious powdery substance were found concealed in a 'stroller bag'. On testing with the 'field testing kit', the powder in each packet tested positive for heroin. The I.O., without weighing the contents of each individual packet, mixed the powder from all the 4 packets in one polythene bag and then drew the sample from the mixture.*

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***33. Resultantly, this court is of the view that the samples sent to the CRCL were not the representative samples. Besides, by mixing the contents of all the 4 packets before drawing any sample not only the sanctity of the case property in the individual packet was lost but also the evidence as to how much each individual packet weighed. In reaching the aforesaid conclusion, I also draw support from the decisions in *Shajahan v. Inspector of Excise (DB)* reported as 2019 SCC On Line Ker 2685 *Kulwinder Kumar v. State of Punjab*, reported as 2018 SCC OnLine P&H 1754 and *Santosh Kumar v. The State of Bihar* passed in *Criminal Appeal (SJ) No.158/2016* decided on 30.08.2019",***

In the facts and circumstances of the instant case, the applicant is allowed to be released on bail on filing a bail bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court with directions to the applicant to the effect that:-

- he shall not leave the country under any circumstances;
- he shall appear before the learned Trial Court as and when directed by the learned Trial Court;
- he shall keep his mobile phone on at all times;
- he shall drop a PIN on the google map to ensure that his location is

available to the Investigating Officer of the case;

- he shall commit no offence whatsoever during the period that he is on bail.

In the event of there being any FIR/ DD Entry/ Complaint lodged against the applicant, it would be open to the State to seek cancellation of bail, which application, if any, filed would be dealt on its own merits.

The application is disposed of.

**ANU MALHOTRA, J**

**AUGUST 5, 2022**

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