

**IN THE COURT OF Ms. MONIKA SAROHA
SPECIAL JUDGE-NDPS/ASJ (SOUTH)
SAKET COURTS, NEW DELHI**

SC No. : 48/22

CNR No. : DLST01-001300-2022

STATE

Vs.

1. MD. ISRAEL

S/o Sh. Ali Hasan

R/o A-19, A Block,

New Ushmaan Pur,

New Delhi.

Permanent R/o Village Chandan Patti,

Ward No.10, PS Ghamdia,

Distt. Madhepura, Bihar.

2. SANJAY

S/o Sh. Ramji Shah

R/o H. No. 940, Gali No. 2,

1st Pushta, New Delhi.

Permanent R/o Village Mubarkpur,

Post Kabilpur, PS Kanti,

Distt. Muzafpur, Bihar.

.....Accused Persons

ORDER

Vide this common order, I shall decide the bail applications of the applicants/accused persons Md. Israel and Sanjay.

1. The material allegation against both the accused persons are similar and they both have been charged for the offence u/s 20 (b) (ii) (C) and Sec. 29 of the NDPS Act. The allegation is that accused Md. Israel and Sanjay were found in possession of commercial quantity of ganja (weighing 92.71 kg) which was being transported in the TSR No. DL1RP 5670 driven by accused Md. Israel while accused Sanjay and accused Ram Parvesh Prasad were sitting on the passenger seat of the said TSR. As accused Israel is the registered owner of the said TSR, he has also been charged for offence punishable u/s 25 NDPS Act besides the above mentioned offence.

2. Ld. Counsels for the accused have primarily argued that the sampling proceedings conducted before the Ld. MM in this case was not conducted in accordance with Sec. 52A NDPS Act and standing order no. 1/188 issued by the Narcotics Control Bureau, New Delhi, therefore, the accused are entitled to bail. For this view, reliance has been placed upon the order passed by Hon'ble High Court of Delhi in bail application no. 3233/2022 titled *Laxman Thakur Vs. State*, decided on 14.12.2022 and on the judgement passed by our own Hon'ble High Court in *Basant Rai Vs. State*, Crl. Appeal No. 909/2005, decided on 02.07.2012 .

3. On the other hand, Ld. Addl. PP had argued that as the accused have been charged for the offence of being in possession of commercial quantity of ganja, the rigors of Sec. 37 NDPS Act are indeed attracted in this case and the accused cannot be granted bail

liberally without recording the opinion of this court regarding their innocence.

4. The trial is midway and three witnesses have been examined. At this stage of deciding the bail application, the entire evidence cannot be minutely considered, however, as the investigation is complete, a bird's eye view of the entire case and material relied upon by the investigating agency, can certainly be taken.

5. No doubt the recovery in this case is of large commercial quantity of ganja and therefore, the rigors of Section 37 of NDPS Act will have to be met in this case. However, it must be kept in mind that Section 37 NDPS Act does not prohibit grant of bail and only lays down certain strict conditions which must be fulfilled before grant of bail.

6. The sampling proceedings as were conducted u/s 52A NDPS Act are before this court and have been seen. During the sampling proceedings, samples were taken out only from one packet each from the three pulandas, whereas, as per the prosecution case, each pulanda contained 15 packages which were each separately packed in brown colour tape. Thus, in total 45 packages packed in brown colour tape were recovered by the police. Now out of these 45 packages, samples have only been taken from three packages. Only three samples were sent for FSL examination which were found

positive for ganja. What were the contents of the remaining 42 packages is now for anyone to guess, since no samples were taken from these 42 packages. The remaining 42 packages may or may not contain any contraband substance.

7. In such circumstance, it remains doubtful whether commercial quantity of ganja was recovered from the accused. The process adopted for sampling creates suspicion regarding the quantity recovered from the accused and the benefit of such suspicion must be given to the accused only. At no point of time, either during recovery or during sampling were the 45 packages individually weighed. Thus, this court has no way of even ascertaining if the three packages from which samples were taken in themselves together weighed more than 20 kgs or not. In total around 92 kgs of ganja was recovered from 45 packages. Thus, it prima facie appears that each packet perhaps weighed around 02 kgs or little more than that (although this is pure guess work as no measurements qua the weight of each package is on record). For this view, reliance is also placed upon the view taken by our Hon'ble High Court while deciding the bail application no. 2781/22 titled *Sarwan Vs. State* decided on 18.01.2023. In the bail application of *Sarwan (supra)*, the Hon'ble High Court observed as follows:

“6. The proceedings under Section 52A of the NDPS Act is infact in line of the objection raised by the learned counsel for petitioner viz. Out of various packets in each parcel, the samples were not taken from each of the parcels in the six parcels leaving other packets in each of the six parcels untouched, hence raising apprehension as to if other packets

in each of the gunny bags contain contraband or not. The apprehension, raised by the learned counsel for petitioner appears to be plausible. It is submitted it would rather satisfy the requirement under Section 37 NDPS Act as the weight of the packets from which samples were taken would not be all of commercial quantity, hence rigors would not apply.”

8. The accused do not have any previous criminal involvement, therefore, there is no reason for this court to believe that they are likely to commit another offence if enlarged on bail. The complainant in this case is a police official and therefore, there is no possibility of these accused intimidating the complainant or any other official witness. The evidence is primarily documentary in nature which cannot be tampered with by the accused now.

9. However, there is no merit in the argument of the Ld. Counsels for the accused that mixing of the recovered substance was done in this case. From the chargesheet and the evidence recorded so far, it cannot be said that the contents of all the packages were ever mixed and converted into one separate package from which samples were then taken. There is no record that the contents were mixed either during recovery or during the sampling proceedings. Even during the evidence recorded before this court, it was not brought on record that the contents of the packages were ever mixed during recovery or sampling. To the contrary, from the sampling proceedings, it is clear that no mixing has taken place and the contents of one package were never mixed with the contents of any other package. The only doubt that is created is that since no samples

were taken from the other packages, there is nothing to presume that the other packages also contained contraband.

10. Thus, at this stage, this court is satisfied that there are reasonable grounds for allowing this bail application. Thus, considering the entire material on record, this appears to be a fit case for grant of bail to the applicant / accused Md. Israel and Sanjay.

11. Thus, **the applicant / accused Md. Israel and Sanjay are admitted to bail on their furnishing a personal bond in the sum of Rs. 1,00,000/- each with two sureties each in the like amount to the satisfaction of this court.**

Nothing mentioned hereinabove shall have any bearings on the merits of the case and cannot be relied upon during trial by the parties for the observations are for the specific purpose of bail only.

Both the bail applications stand disposed off accordingly as allowed.

Dasti.

**Announced in Open court
On this day 04.02.2023**

**(Monika Saroha)
Special Judge-NDPS/ASJ (South)
Saket Courts/04.02.2023**