

विक्रम  
VIKRAM  
बिरोध न्यायाधीश (एन.डी.पी.एस.)  
एन.डी.पी.एस. सत्र न्यायाधीश द्वितीय क्षेत्र-पश्चिम  
Addl. Sessions Judge-North-West District Judge (NDPS)  
District North-West  
कक्षा संख्या 409  
Room No. 409  
रोहिणी न्यायालय, दिल्ली  
Rohini Courts, Delhi

Bail Matter  
State Vs. Sithick  
FIR No. 87/2021  
U/s 20/25/29 NDPS Act  
Crime Branch

23.03.2023

Present: Sh. K.D. Pachauri, Ld. Addl. PP for the State.  
Ms. Kajol Garg, Id. Counsel for applicant/accused.  
IO ASI Mahesh Kumar in person.

*This is an application under Section 439 Cr.P.C.  
for grant of regular bail, moved on behalf of applicant/accused  
Sithick.*

It is submitted by Id. Counsel for applicant/accused that applicant/accused has been falsely implicated in the present case and is in JC since 06.05.2021. It is further submitted that investigation qua applicant/accused is complete and charge sheet has already been filed which is pending trial and next listed for 16.05.2023. It is further submitted that co-accused are on bail in this case and alleged recovery shown from co-accused persons is more than the recovery shown from the applicant/accused. It is further submitted that since co-accused are on bail, applicant/accused deserves parity. It is further submitted that applicant/accused have clean antecedents. It is further submitted that trial of the case will take long time and sine investigation qua applicant/accused is complete, no purpose would be served by keeping him behind the bars.

Ld. Counsel for applicant/accused while placing reliance on **Laxman Thakur vs. State** submitted that collection of sample in the present case is faulty and therefore, the rigours

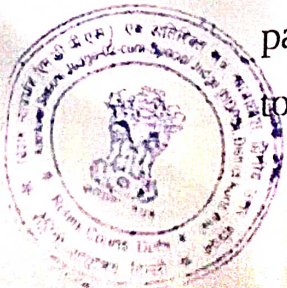


of Section 37 of NDPS Act will not be applicable in this case.

Per contra, Id. Addl. PP has opposed the bail application on the ground that bail should not be granted in cases of drugs. It is further submitted that applicant/accused may commit same offence again, if released on bail. It is further submitted that regular bail application of applicant/accused has also been dismissed by Hon'ble High Court vide order dated 20.09.2022.

As per prosecution, on 06.05.2021 on receipt of a secret information a raid was conducted at L-137, Phase-2, Vijay Vihar and accused Shakuntla, Sithick and Manikandan were apprehended and total 61.630 kg Ganja was recovered. On the said date accused Shakuntal was present at the above said address and keeping vigil while standing outside the door of the premises. After sometime, two persons i.e. accused Manikandan and Sithick came there from a taxi who were having trolley bag/hand bag in their hands. Thereafter, they were apprehended and proceedings were conducted. One of the accused namely Sheikh Mohammad was also to come at the spot but fled away on seeing the police at the spot. Said accused Sheikh Mohammad is real brother of applicant/accused and has been declared as proclaimed offender.

The prosecution is objecting the bail application on account of bar under Section 37 NDPS Act as the recovery in this case is commercial from the accused. However, seizure memo shows that police allegedly recovered nine packets from accused from two bags. There were five packets in one bag and four packets in another and the packets of respective bags were mixed together before taking samples. Therefore, there is clear cut





violation of standing order 1/88 which has been opined as a requirement of law by Hon'ble Supreme Court in UOI Vs. Balmukund & Others (2009) 12 SCC 161. Applying the law laid by Hon'ble Supreme Court Hon'ble High Court of Delhi in Bail Application no. 3223/22 tilted Laxman Thakur Vs. State held that the in case of violation of standing order 1/88 the bar of Section 37 NDPS Act shall not operate. This view has been followed by Hon'ble High Court of Delhi in subsequent orders in Bail Application no. 350/2023 Sarpreet Singh Vs. NCB and Bail Application no. 286/2023 Shakuntla Vs. State of NCT of Delhi. This bail application no. 286/2023 is of the co-accused Shakuntla in this case. Therefore, as against applicant also bar under Section 37 NDPS Act shall not operate.

The applicant/accused in custody since 06.05.2021 and there is no other criminal case against the applicant.

For the aforesaid reasons, I am inclined to allow the application and the applicant is entitled to be released on bail on the following terms and conditions:

1. The applicant shall furnish a personal bond and a surety bond in the sum of Rs. 25,000/- each;
2. The applicant shall appear before the Court as and when the matter is taken up for hearing;
3. The applicant shall join the investigation as and when called by the IO concerned;
4. The applicant shall provide his mobile number to the IO concerned, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to Court or IO concerned.
5. The applicant shall report to the local Police Station on the



first Monday of every month;

6. In case the applicant changes his address, he will inform the IO concerned and this Court also;

7. The applicant shall not leave the country during the bail period and surrender his passport, if any, at the time of release before the IO concerned;

8. The applicant shall not indulge in any criminal activity;

9. The applicant shall no communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.

Application stands disposed off .



Attested true copy  
Reader  
25.03.2023

sdr  
(Vikram)  
ASJ-02/Spl. Judge (NDPS),  
North West, Rohini Courts,  
Delhi/23.03.2023