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

+ **BAIL APPLN. 572/2022**

SUMANT

..... Petitioner

Through: Mr. Aditya Aggarwal, Mr. Ankit
Mutreja and Mr. Naveen Panwar,
Advocates

versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

31.03.2022

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1. The instant petition has been filed under Section 439 of the Code of Criminal Procedure (hereinafter, Cr.P.C.) seeking regular bail. The petitioner is charge-sheeted under Section 20/29 of Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter "NDPS Act").

2. As per the prosecution, the facts of the case are that the petitioner was apprehended on the disclosure of the co-accused namely Gagandeep Singh who was apprehended on 24th September 2021 on the basis of secret information received by police officials of police station Samaypur Badli. Thereafter, the police officials constituted a raiding party and apprehended Gagandeep Singh along with a recovery of 23.720 kgs of Ganja from the main accused. The present petitioner was also apprehended on 25th September, 2021 and a recovery of 2.050 kg of Ganja was affected from the

place of Petitioner. The police had already filed the chargesheet on 14th December, 2021 and the concerned Special Court i.e., learned ASJ has already taken the cognizance in the present case.

3. Learned counsel for the petitioner submitted that the recovery made from the petitioner is not of commercial quantity, the present petitioner is being falsely implicated, is not named in the present FIR and there is no evidence against him on record. Learned counsel also submitted that Section 29 of the NDPS Act is not attracted in the present case as the prosecution is only relying on the CDR details which are not enough to establish such a connection.

4. Learned counsel for the petitioner further submitted that there were no independent witnesses present at the time of recovery had taken place twice in the instant FIR. The prosecution had not taken a photograph or made any video at the time of recovery on both occasions. It is also submitted that the present petitioner has clean antecedents and does not have any previous criminal involvement.

5. It is also submitted that the wife of the Petitioner is suffering from “Lumbar spondylosis of L2-L5 vertebrae with Spinal muscle Spasm”. It is further submitted that the petitioner has one daughter of 6 years of age and the petitioner is sole bread earner in his family. It is further submitted that the Petitioner has clean antecedents and has good roots in society. It is further submitted that the trial will take its time as there were 17 prosecution witnesses arrayed in the chargesheet by the prosecution and in the entire list of prosecution witnesses there is no independent witness. Therefore, under the said circumstances there are no chances of influencing any witness. Furthermore, there are no chances of hampering the investigation since all

the evidence is documentary in nature which are already in custody of the investigation agency.

6. *Per contra*, learned APP appearing for State vehemently opposed the present bail application and submitted that because of disclosure statement of the main accused, the present petitioner was apprehended and both the accused are hands-in-gloves with each other. Learned APP also submitted that the CDR between both the accused, clearly establishes a link between them. Learned APP also stated that recovery from petitioner is of 2.050 Kgs of 'Ganja'. However, the learned APP has not contradicted the fact that the petitioner has clean antecedents.

7. Heard the learned counsels and perused the record including the FIR, averments in the petition as well as the Status Report.

8. Time and again, the apex court has stated that bails is the general rule and jail the exception. Additionally, it has been held in a plethora of judgments that bail should not be rejected in a mechanical manner and the courts should consider each case on the basis of facts of the matter. In the instant case, neither the Status Report on record, nor the learned APP in the course of arguments, has cited the previous involvement of the petitioner in any other criminal cases, and as such the petitioner has clean antecedents, as evident from material on record. Even the investigation has been completed and the chargesheet has also been filed. In the present case, the recovery of contraband from petitioner's place as alleged by the State is slightly more than small quantity and much less than commercial quantity. Hence, the rigours of Section 37 of the NDPS Act are not attracted.

9. Keeping in view the contentions made, arguments advanced by the learned counsel for the parties, and material on record, this Court is inclined

to grant regular bail to the petitioner. Let the petitioner be released on regular bail on his furnishing of personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) with two solvent sureties of like amount to the satisfaction of the Jail Superintendent/Trial Court, subject to the conditions as follows:-

- (a) he shall surrender his passport, if any, before the Trial Court and shall under no circumstances leave India without prior permission of the Court concerned;
- (b) he shall cooperate in the trial and appear before the Trial Court of the case as and when required;
- (c) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- (d) he shall provide his mobile number(s) and keep it operational at all times;
- (e) he shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer;
- (f) he shall commit no offence whatsoever during the period he is on bail; and
- (g) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/Court concerned by way of an affidavit.

10. With the above directions, the application is allowed and stands disposed of accordingly.

11. It is made clear that above observations made by this Court while allowing the instant application shall have no effect on the proceedings

pending before the Trial Court.

12. Copy of this order be sent to Superintendent Jail for compliance.

CHANDRA DHARI SINGH, J

MARCH 31, 2022

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