

SC NO. 27/22
STATE VS. SARVAN & ORS.
FIR NO. 217/21
PS SAKET

23.01.2023

File taken up on an application moved by Id. Counsel for the accused seeking pre-ponement of the date of hearing of the bail application.

Present: Sh. Nischal Singh, Ld. Addl. PP for the State.

Ld. Counsel for the accused.

Heard on the pre-ponement application.

Considering that one of the co-accused has already secured bail and this accused is in JC since almost a year now the date of hearing of his pre-ponement to today.

Ld. Addl. PP for the State has no objection to the same.

Presence of the IO is not required as charge-sheet has already been filed.

Accordingly, the bail application of accused **Saroj Kumar Pattanayak** is taken up for hearing today itself.

Heard arguments on the bail application as advanced by both the sides.

Ld. Addl. PP for the State has argued that in this case the allegations against the accused are that he acted in conspiracy with the other co-accused from whose possession commercial quantity of Ganja was recovered, being carried in the car of which this applicant/accused is the registered owner. Ld. Addl. PP for the State argued that the allegations are grave and heinous in nature where the

rigours of Section 37 of NDPS Act are attracted, therefore, no ground is made out for releasing the accused on bail.

On the other hand, Ld. Counsel for the accused has confined his arguments to the short point that the co-accused from whose possession recovery was indeed made has already secured bail from the Hon'ble High court on the ground that the sampling u/s 52 A of NDPS Act in this matter does not even prima facie show that even the sampling was done of commercial quantity of contraband and therefore, this court has sufficient material to at least prima facie form an opinion that the accused is not guilty of the offence charged with.

Further, Ld. Counsel for the accused argued that the accused does not have any previous criminal involvement and there is no likelihood of him engaging in any other criminal activity if enlarged on bail.

The proceedings as were conducted before the Ld. Metropolitan Magistrate at the time of sampling u/s 52 A of NDPS Act (which are also re-produced in the bail order of the **co-accused Sarvan**, by the Hon'ble High Court) have been perused. These proceedings show that in total six gunny bags were recovered produced before the Ld. Metropolitan Magistrate which were allegedly recovered from the co-accused. Thereafter, each of these gunny bags were opened and the following was found inside each of the gunny bag :-

1. From gunny bag having serial No. 1 - six packets (in total weighing 9.790 kgs).

2. From gunny bag having serial No. 2 - four packets (in total weighing 8.660 kgs).

3. From gunny bag having serial No. 3 - seven packets (in total weighing 8.590 kgs).

4. From gunny bag having serial No. 4 - seven packets (in total weighing 8.730 kgs).

5. From gunny bag having serial No. 5 - ten packets (in total weighing 20.450 kgs).

6. From gunny bag having serial No. 6 - 20 packets (in total weighing 21.7 kgs).

Now, despite the fact that each gunny bag contained several packets and each packet was allegedly containing Ganja, samples were taken from only one packet each. Thus, only contents from one packet each was sent to FSL which has confirmed samples to be containing ganja. What are the contents of the remaining packets kept in each gunny bag is thus not clear.

The other packets were never even opened before the Ld. Metropolitan Magistrate and it is not even mentioned what was the substance inside those packets. Whether they contained blank papers, flowers, soil or contraband is for anyone to guess now.

Thus, the argument by the ld. defence counsel that whether the other packets contain ganja or not cannot be conclusively determined at this stage, indeed contains merit. Thus, the rigours of Section 37 of NDPS Act do not apply for the weight of the packets from which samples were taken because together they do

not weigh more than 20 kgs which is the prohibited commercial quantity.

The applicant/accused is already behind bars for around a year now. The evidence is not such as can be destroyed by him. The recovery witnesses are all police witnesses who cannot be intimidated. The co-accused Sarvan has already been granted bail by the Hon'ble High Court. The role of accused Sarvan was far more direct than this accused.

Accordingly, the accused **Saroj Kumar Pattnayak** is admitted to bail on his furnishing a personal bond in the sum of Rs. 25,000/- with two sureties of the like amount to the satisfaction of this court.

Dasti.

(Monika Saroha)
Special Judge-NDPS/ASJ (South)
Saket Courts/23.01.2023