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Regd. No. 815-2021
State Vs. Sonu Chouhan & Ors.
FIR NO. 276/2021
PS: Chhawla
u/s 20/25 of NDPS Act
CNR No. DLSW01-012058-2021

10.11.2022

Present: Sh. Brijesh Kumar, Ld. Addl. PP for the State.

Sh. Naveen Panwar, Ld. Counsel for the applicant.

An application under Section 439 Cr.P.C moved on behalf of applicant Sonu Chauhan for grant of bail is pending for disposal.

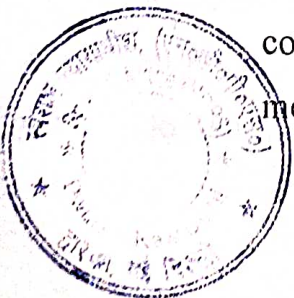
IO has already filed the reply.

Ld counsel for the applicant has filed written arguments.

Arguments heard.

Record perused.

It is submitted by Ld. Counsel for accused that applicant has been falsely implicated in the present case. It is further submitted by Ld counsel for applicant that applicant is in custody since 17.06.2021. It is further submitted by Ld. Counsel for applicant that as per prosecution story, the present applicant with co-accused persons were apprehended along with 90 Kgs of Ganja in a Weagon-R car. It is further submitted by Ld counsel for applicant that 40 Kgs of Ganja was in 48 packets was found on the back seat of the car and remaining 48 Kgs of Ganja which was therein 84 packets measuring 500 Grams each was found in dikky of the said car. It is further submitted by Ld counsel for applicant that as per FIR as well in charge-sheet / seizure memo, prosecution have opened all the packets ie 48 packets of 1 Kg

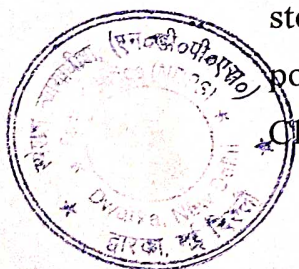


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each and 84 packets of 500 grams each which were wrapped in a cardboard box / gatta and they have opened all the packets and then kept the ganja in six different sacs / kattas and marked them as A,B,C,,D, E and F and thus, the raiding team while mixing the entire quantity without taking the samples from each packet have gone contrary to the procedure established by Hon'ble High Court of Delhi. It is further submitted by Ld. Counsel for applicant that investigation is complete and no purpose would be served by keeping the applicant in judicial custody and it is requested that applicant Sonu Chouhan be granted bail. Ld. Counsel for the applicant has relied upon various judgments which are part of the present application.

On the other hand, Ld. Addl. PP for the State for the state has argued on the present bail application and strongly opposed the same on the ground that total recovery in the present case is 90 kgs of ganja and hence, it is requested that bail application of applicant be dismissed.

The record reveals that a secret information received that three persons were coming from Orissa by Weagon-R car with illegal ganja and accordingly, at about 8:20pm, one Weagon-R car was stopped and three persons sitting in the car were overpowered by the police and their names were disclosed as Narayan Singh, Sonu Chouhan ie present applicant and Sanjay Singh. During the search of



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the car, 48 packets (1 Kg of packing) wrapped in khaki colour tape and 84 packets (500 grams of packing) wrapped in khaki colour tape were found in diggi of the car and weight of total recovered ganja was 90 Kgs. The record further reveals that as per seizure memo, all the packets were opened. The police official by seeing and smelling found it to be ganja. The record further reveals that the entire ganja was kept in six plastic kattas and kattas were marked as A,B,C,D,E and F and 48 packet (1 Kg of packing) and 84 packets (500 grams of packing) and cardbox were kept in plastic kattas and marked as G and H. The proceedings under Section 52A of NDPS Act for drawing samples were done before Ld. MM, Dwarka on 19.06.2021 which reflects that samples were taken from Mark A,B,C,D,E and F. From the record, prima facie it appears that the contraband was mixed together in six kattas and samples were not taken separately from each packets. Hence, in this case, conduct of the prosecution of not drawing individual sample from each packet recovered appears to be contrary to the procedure prescribed.

At this stage, it would be relevant to go through the judgment titled as **"Basant Rai vs. State"** in **Crl. Appeal No. 909/2005**, passed by Hon'ble High Court of Delhi on 02.07.2012. The Hon'ble High Court of Delhi has dealt with the procedure of samples in para nos. 27, 28 & 29 of the judgment as under:-



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27. For example, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed, without that the results would be negative.

28. In view of the above discussion, instant appeal is allowed.

29. Consequently, impugned judgment dated 18.10.2005 and order on sentence dated 21.10.2015 are hereby set aside. Appellant is acquitted from the charges.

In the above mentioned case, solely on this ground, the appellant was acquitted and it was observed by the Hon'ble High Court of Delhi that it does not matter the quantity and proper procedure has to be followed, without that results would be negative.

In another judgment titled as "Ahmed Hassan Muhammed vs. The Customs" in bail application No. 3076/2020,



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passed by Hon'ble High Court of Delhi on 11.02.2021, the Hon'ble High Court of Delhi has relied upon the above said judgment i.e **Basant Rai vs. State (supra)** with the procedure of samples in para no. 17 of the judgment as under:-

17. In Basanti Rai (Supra), while dealing with a case where accused was found carrying a polythene bag containing 8 similar polythene bags having brown colour substance and Investigating Officer took small pieces of charas from each packet, mixed the same and drew two sample parcels which were sent to FSL for analysis, I had allowed the appeal while holding as under:-

25. After hearing both the learned counsel for parties and going through the Trial Court record, I find force in the submission of learned counsel for appellant. Admittedly, the samples were drawn after breaking small pieces from 08 of the polythene bags which were allegedly kept in a green coloured bag by the appellant in his right hand. The IO prepared two samples of 25 grams each after taking a small quantity from each of the slabs.

26. Though the settled law is that if it is not practicable to send the entire quantity then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination. Otherwise, result thereon, may be doubted.

27. For example, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any



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contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed, without that the result would negative”.

In the above mentioned case also, the bail application of the accused was allowed by the Hon'ble High Court of Delhi and the accused was released on bail, who was involved in commercial quantity case.

In the present case also as discussed above, ganja was taken from all packets and thereafter, ganja was put into six plastic kattas and the IO without weighing the contents of each individual packet, mixed the recovered substance from all packets in six kattas. Hence, it appears that police officials have mixed the ganja taken from all the packets into six kattas which were marked as A,B,C,D,E and F and samples were taken from these kattas and were sent to FSL for examination, which is contrary to the procedure prescribed under the law.

It is a matter of record that earlier the bail application of present applicant was dismissed by this Court on 19.01.2022 as the above facts / mixing of samples were not brought into the knowledge



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of the Court.

In view of the submissions made above and law discussed above and keeping in view the facts and circumstances of the case and the fact that accused in custody since long time, investigation is complete, charge-sheet has already been filed and six witnesses have already been examined and no purpose would be served by keeping accused in custody, the present application **stands allowed**. Applicant **Sonu Chauhan** is granted bail on furnishing personal bond in sum of Rs. 30,000/- with one surety of like amount to the satisfaction of this Court. Nothing stated herein which shall tantamount to expression of opinion on merits of case and whatever has been stated is only for the purpose of deciding the present bail applications.

Bail application stands disposed of accordingly.

Copy of this order be given to Ld. Counsel for accused, as prayed for.

Copy of this order be also sent to concerned Jail Superintendent for information and compliance.

Re-notify the matter on date already fixed ie **09.01.2023**

for PE.



ATTESTED

10/11/2022
Clerk

Reader

Spl. Judge (NDPS)/Dwarka Courts/SW

New Delhi/10-11-2022

(Deepak Wason)

Special Judge (NDPS)
Dwarka Courts, New Delhi