

To Jail Subd A. Delh.

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10/01/23

गगनदीप सिंह
GAGANDEEP SINGH
जिला न्यायाधीश (एन टी पी एस) उत्तर
Special Judge (NDPS) North
रूम नं. 207, द्वितीय तल
Room No. 207, Second Floor
जिला न्यायालय रोहतासी, दिल्ली
District Court Rohm. Delhi

1A/3/22
SC No. 890/22
State Vs Pawan
FIR No. 152/22
PS Crime Branch
U/s 20/25/29 NDPS Act

09.01.2023

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

Sh. Aditya Aggarwal, Ld. Counsel for the applicant / accused Pawan.

IO SI Narender Singh is present.

Reply to the second application seeking regular bail filed on behalf of the applicant / accused is filed.

Arguments on the present application heard.

It is pleaded on behalf of the applicant that the accused/applicant has been falsely implicated in the present case and has been lying in Judicial Custody since 25.07.2022. It is further pleaded that there is no recovery of alleged contraband from the possession of the accused/applicant.

It is submitted that the accused/applicant was not present at the spot at the time of alleged raid. The accused/applicant has no concern with the alleged recovery and no recovery of any contraband has been effected from him.

It is further submitted on behalf of the applicant that at this stage, he is only pressing the non compliance of the provisions under section 52 A and the standing order no. 1/89 of Department of Revenue, Govt. of India. It is further submitted that previously the said issue was not raised nor has been

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discussed in the said order. It is further argued that as per the case of the prosecution, ten kattas in all were recovered alleged from the Tata truck no. PB03AT5233. Further as per the seizure memo, each of the said kattas were having separate packets, wrapped with the polythene and tape. The said wrapped polythene packets in said kattas were opened and thereafter, put into the same kattas whereby homogenizing the contents of the said separate packets. Later on, samples were drawn from each of the said homogenized contents of the said katta by the Ld. MM on 27.07.2022. Therefore, the said procedure adopted is against the well settled law and in this regard, the reliance is placed upon judgements of the Hon'ble Delhi High Court in *Laxman Thakur Vs State* in bail application no. 3233/2022 decided on 14.12.2022 ; *Basant Rai Vs State* in Crl Appeal no. 909/2005 decided on 02.07.2012 and *Amani Fidel Chris Vs Narcotics Control Bureau* in Crl Appeal 1027/2015 & Crl M.B. 511/19 & Crl M.A. 1660/2020 decided on 13.03.2020.

Reliance is also placed upon by the Ld. Counsel for the applicant upon judgment passed by the Hon'ble Allahabad High Court in case titled as *Mohd. Asageer Vs NCB passed in Crl Misc Bail Application no. 27291 of 2020 decided on 11.10.2022 on the issue of maintainability of second application*

In view of the aforesaid submissions, prayer is made for grant of regular bail to the accused/applicant.

Per contra, Ld. Addl. PP for the State has vehemently opposed the bail application stating that as per the

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reply filed by the IO, on 25.07.2022, on receipt of secret information accused Shabuddin, Mohd Ishrafeel @ Ramchander and Pal Ji Gautam were apprehended alongwith Tata Truck bearing No. PB03A T5233 with 250 KG Ganja recovered in 10 kattas from hidden cavity in fuel tank over the driver's cabin.

During the further investigation, arrested accused persons revealed that Ganja was provided by one Rabindra Nayak and truck was provided by accused/applicant herein. The source of the illegal contraband is absconding and has been declared P.O. Accused/applicant herein was arrested on 14.08.2022.

From the record of RTA, Tata Truck bearing No. PB03A T5233 from which the contraband was recovered is registered in the name of Surender Singh who on interrogation stated that he sold the said truck in 2020 to one Ram Mehar on power of attorney. The said Ram Mehar on interrogation stated that he had purchased the said truck from Surender (his uncle) but after lock down he was not able to pay its installment and get the permit, so, he asked Ajeet S/o Ram Kishan to pay the pending installments by using the said truck. The said Ajeet paid four installments and started using the said truck. On interrogation, Ajeet told that as he had to pay some money to accused/applicant, he gave the said truck to accused/applicant herein and hence accused was in possession of truck in question .

It is further submitted that as per the CDR analysis accused/applicant was in touch with three accused persons who were apprehended with commercial quantity of Ganja i.e 250 Kg. No other person who used or owned the truck in question was in

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touch with the said three accused persons. Investigation also revealed that accused/applicant got replaced the fuel tank with accused Ishrafeel @ Ram Chander from Transport Nagar, Panipat. Further, accused/applicant paid last two installments of the truck in question for the month of May and June 2022 with financier Indusind Bank. Bank statements of accused persons revealed that accused Pawan had received a sum of Rs.1,37,000/- in May and July from one Ram Kumar Tiwari.

Lastly, it is submitted by Ld. Addl PP for the State that there is no change of circumstances since the dismissal of previous bail application on 08.12.2022. The due procedure qua drawing of samples has been followed.

Heard and considered.

The accused herein has been chargesheeted being conspirator and owner of the truck in question.

There is evidence on record in form of CDRs which reflect that accused/applicant was in contact with accused persons namely Shabuddin, Mohd Ishrafeel @ Ramchander and Pal Ji Gautam who were apprehended with 250 KG of Ganja from Truck bearing No. PB03A T5233. Statement of witness Pawan who is truck mechanic has been recorded by the prosecution qua applicant's role in installation of concealed tank in which the huge quantity of contraband was being carried.

The issue herein which has been argued and pressed in the present second bail application is the manner of drawing of the samples and it being against the settled procedure of law as has been dealt in the abovenoted number of judgments by the

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Hon'ble Delhi High Court. The said issue requires to be dealt with as the same was not raised previously. The latest judgment of the Hon'ble Delhi High Court involving the ganja is *Laxman Thakur Vs State (supra)* and the relevant para no. 12 of the said judgment is reproduced herein below for reference :

"12. I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable."

In the present case in hand too, the contents of the chargesheet, seizure memo as well as the statements of recovery witnesses, all reflects that ten kattas were recovered from Tata Truck bearing No. PB03A T5233. The said kattas were having packets of different sizes and all the said packets were wrapped with a brown colour tape. The contents of different sizes of packets were opened and were poured back into the single katta weighing 25 kg. Similar manner was adopted qua the all said ten kattas. Therefore, the said process of homogenizing of the contents of the recovered material and thereafter drawing of the samples from the same is against the procedure of Standing Order no. 1/89 of Department of Revenue, Govt. of India. The same causes prejudice to the accused.

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In light of the abovesaid reasons, I am of the considered opinion that the accused / applicant Pawan is able to satisfy one of the twin conditions as laid down u/s 37 of NDPS Act.

Further the reply filed by the IO reflects that the accused / applicant is not having any other involvement of any other criminal case. Therefore, there can be no apprehension of him indulging again in the trafficking of the narcotics.

Keeping in view the above facts and circumstances of the case, the accused/applicant Pawan is admitted to bail subject to furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount on the following conditions:

- i) That the applicant/accused shall not leave Delhi without prior intimation to the IO/Court either by written intimation or through SMS to IO on mobile phone in advance;
- ii) That the applicant/accused will supply all numbers of his functioning phones/mobile phones to the IO as well as about his whereabouts.
- iii) That the applicant/accused shall not tamper with the evidence;
- iv) That the applicant/accused shall not try to contact in any manner or threat the prosecution witnesses;

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v) That in case of change of his residential address, he shall intimate the court about the same;

vi) That the applicant shall attend the Court on each and every date of hearing without fail.

vii) In case of involvement in any criminal case during bail period the bail shall be liable to be cancelled.

A copy of this order be sent to the Jail Superintendent concerned for further communication to the accused/applicant.



(Gagandeep Singh)
ASJ/Spl. Judge(NDPS)
North/Rohini Courts, Delhi
विशेष न्यायाधीश (स्पेशल जज) उत्तर
Special Judge (NDPS) North
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District Court Rohini, Delhi