

\$~3

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 2781/2022
SARVAN

..... Petitioner

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

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr.Yudhvir Singh Chauhan, APP for
the State with SI Udai Singh, PS
Saket.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

18.01.2023

%

1. Petitioner running in custody since 05.08.2021 - seeks regular bail in case FIR No.217/2021 under Section 20/25/29 of the NDPS Act registered at police station Saket, New Delhi.

2. As per the allegations, 76.4 KGs Ganja was recovered from cavity created in the car driven by the petitioner. Though, it is the defence of the petitioner he never knew about such cavity in the car since he was driver of co-accused Ramesh, who was allegedly dealing with the contraband, but the learned APP for the State submits at this stage, this defence at least cannot help the petitioner in seeking bail because of bar under Section 37 of the NDPS Act.

3. Nevertheless, the learned counsel for petitioner has referred to the seizure memo dated 05.08.2021 as also the copy the proceedings dated 14.08.2021 under Section 52A of the NDPS Act, annexed as annexure A2 in

the documents filed by the petitioner vide index No.46702/2023. It relates to the proceedings to the sampling of the contraband to be sent to the FSL for testing.

4. The learned counsel for petitioner is aggrieved of the fact the sampling was not done in accordance with the procedure laid down and in fact out of total six parcels containing Ganja in different packets of each parcel the sampling was done from only one packet out of many from each *Pullanda*, thus leaving in doubt as to whether other packets in six parcels contain contraband or not.

5. The proceedings under Section 52A of the NDPS Act are as under:-

All the above gunny bags have been found to bear the particulars i.e. DD No. 10A dt. 04.08.2021 u/s. 20/25/29 NDPS Act, Spl. Staff, South District, signatures of both accused persons namely Sarvan Kumar and Emon Ali, two witnesses i.e. HC Naresh No. 436/SD, ASI Ashok No. 221/SD and that of Intelligence Officer ASI Daya Nand as well as FIR No. 217/2021 of PS Saket has also been mentioned on each gunny bag. The same has also attested by SHO of PS Saket. All gunny bags are properly sealed by the two seals of AK.

Gunny bag having sl. no. 1 has been weighed and found to be 9.790 Kg. The gunny bag is opened, seal is opened in front of me. It contains six packets and out of one packet, the alleged contraband which is greenish brown having a grass like texture stated to be Ganja by the 10 has been taken out and put in a plastic transparent box which weighed 40 grms. After adding the contraband, same has been weighed and found to be 100 grm and same is Mark S-1. After taking the sample, six packets are put back in the gunny bag and same is found to weigh 9.710 Kg.

Likewise gunny bag having sl. no. 2 has been weighed and found to be 8.660 Kg. The gunny bag is opened, seal is opened in front of me. It contains four packets and out of one packet, the alleged contraband which is greenish brown having a grass like texture

stated to be Ganja by the 10 has been taken out and put in a plastic transparent box which weigh 40 grms. After adding the contraband, same has been weighed and found to be 100 grm and same is Mark S-2. After taking the sample, four packets are put back in the gunny bag and same is to 8.590 Kg.

*Likewise gunny bag having **sl. no. 3** has been weighed and found to be 8.590 Kg. The gunny bag is opened, seal is opened in front of me. It contains seven packets and out of one packet, the alleged contraband which is greenish brown having a grans like texture stated to be Ganja by the 10 has been taken out and put in a plastic transparent box which 40 grms, Afler adding the contraband, same has been weighed and found to be 100 grm and same is Mark S-3. After taking the sample, four packets are put back in the gunny bag and same is found to weigh 8.520 Kg.*

*Likewise gunny bag having **sl. no. 4** has been weighed and found to be 8.730 Kg The gunny bag is opened, seal is opened in of me. It contains seven packets and out of one packet, the alleged contraband which is greenish brown having a grass like texture stated to be Ganja by the 10 has been taken out and put in a plastic transparent box which weighs 40 grms. After adding the contraband, same has been weighed and found to be 100 grm and same is Mark S-4. After taking the sample, seven packets are put back in the gunny bag and same is found to weigh 8.650 Kg.*

*Likewise gunny bag having **sl. no. 5** has been weighed and found to be 20.450 Ke The gunny bag is opened, seal is opened in front of me. It contains 10 packets and out of one packet, the alleged contraband which is greenish brown having a grass like texture stated to be Ganja by the 10 has been taken out and put in a plastic transparent box which weighs 40 grms. After adding the same has been weighed and found to be 100 grm and same is Mark S-5. After taking the sample, 10 packets are put back in the gunny bag and same is found to weigh 20.370 Kg.*

*Likewise gunny bag having **sl. no. 6** has been weighed and found to be 21.760 Kg. The gunny bag is opened, seal is opened in front of me. It contains 20 packets and out of one packet, the alleged contraband which is greenish brown having a grass like texture stated to*

be Ganja by the IO has been taken out and put in a plastic transparent box which weighs 40 grms. After adding the contraband, same has been weighed and found to be 100 grm and same is Mark S-6. After taking the sample, four packets are put back in the gunny bag and same is found to weigh 21.670 Kg. The contents are verified as per the panchnama prepared by the IO ASI Daya Nand. The samples mark S1 to S6 and gunny bags having sl. no. 1 to 6 are now sealed with the seal impression of SS. The examination has been completed.

Videography of each and every article examined by the undersigned were taken at the time of proceeding.

6. The proceedings under Section 52A of the NDPS Act is infact in line of the objection raised by the learned counsel for petitioner viz. out of various packets in each parcel, the samples were not taken from each of the parcels in the six parcels leaving other packets in each of the six parcels untouched, hence raising apprehension as to if other packets in each of the gunny bags contain contraband or not. The apprehension, raised by the learned counsel for petitioner appears to be plausible. It is submitted it would rather satisfy the requirement under Section 37 NDPS Act as the weight of the packets from which samples were taken would not be all of commercial quantity, hence rigors would not apply.

7. I agree with the submission made by the learned counsel for petitioner in view of the facts narrated above. Thus, considering the period of custody of petitioner since 05.08.2021, I admit the petitioner 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 the learned Trial Court/Duty MM. The petitioner is also directed to provide his contact number/address to the SHO concerned as also he shall keep open his location application in his mobile at

all time.

8. The petition stands disposed of in above terms. Pending application, if any, also stands disposed of.

9. Copy of this order be sent electronically to the learned Trial Court / Jail Superintendent for information and compliance. Order *dasti*.

YOGESH KHANNA, J.

JANUARY 18, 2023

M