



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

Date of decision: 31.05.2024

+ BAIL APPLN. 3204/2023

KALYAN RAM

..... Petitioner

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

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Amol Sinha, ASC (CrI.) for State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Ms. Chavi Lazarus, Advocates with SI Kartar Singh, Narcotics Cell, Outer North District.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. Second application under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for grant of regular bail in FIR No. 0177/2022, under Sections 21/29 NDPS Act, registered at P.S.: Narela.

2. In brief, as per the case of the prosecution, on the basis of secret information received on 14.04.2022, a raiding team was constituted and at the instance of secret informer, accused Ravi and Aamna were apprehended. On cursory search, 100 grams of Heroin was recovered from Ravi and 400



grams of Heroin was recovered from Aamna. Aamna further disclosed that she procured the said Heroin from one Imran @ Imu.

3. On the basis of secret information and at pointing out of informer, Imran @ Imu was apprehended on 05.05.2022 with his scooty bearing Registration No. DL-8S-CV-3351. On search of scooty, a black colour polythene packet was recovered from dicky of the scooty containing 500 grams of Heroin. During the course of further investigation on 08.05.2022, at instance of Imran @ Imu, accused Kalyan Ram (petitioner) and Sameem Khan were arrested from Bareilly, Uttar Pradesh with a Swift Car bearing Registration No. UP-16-AR-0507 driven by co-accused Sameem Khan and petitioner was sitting on the passenger seat. On search of the said car which was found to be registered in the name of co-accused Sameem Khan, 700 grams of Heroin, was recovered from the dicky of the car. The recovered heroin was kept in a transparent polythene bag which was then kept in a black polythene bag and further kept in a transparent box which was marked as 'E'. The pulanda was also sealed and marked as 'PK'. On interrogation, Sameem Khan and petitioner made disclosure that the contraband recovered from them was handed over by one Sarvesh and was meant to be delivered to Raju. Chargesheet was accordingly filed against the accused under Sections 21/25/29 NDPS Act.

4. Learned counsel for petitioner urged that the samples were collected on 09.05.2022 but were sent to FSL on 26.05.2022 after a delay of 17 days in violation of Standing Order 1/88 dated 15.03.1988 which provides that the samples should be sent to FSL within 72 hours. He further submitted that the petitioner was not in the conscious possession of the contraband as the same was recovered from the dicky of the said car which is registered in the name



of co-accused Sameem and was also driven by Sameem. It is emphasized that petitioner was merely sitting on the passenger seat and was unaware of presence of contraband. It is also contended that petitioner had no contact or any transaction with any of the co-accused. The earlier bail application preferred by petitioner is stated to have been dismissed as withdrawn vide order dated 16.08.2023 and the case of the petitioner is stated to be at parity with co-accused Ravi, Imran and Aamna who have been granted bail by the learned trial court. Reliance is further placed upon *Sukhchain Singh @ Jagga v. State of Punjab*, High Court of Punjab and Haryana, CRA-5-1829-SB of 2010 & others decided 28.01.2015, *Union Of India v. Lalthaglianthagtei*, High Court of Gauhati, Criminal Appeal No. 190 of 1996 decided on 13.03.2002, *Valsala v. State Of Kerala*, 1994 AIR SC 117, *Rishi Dev @ Onkar Singh v. State*, 2008 ILR DEL 17 776, *Satnam Singh Sattu v. State of Punjab*, 2017 SCC OnLine P&H 1216, *Om Parkash v. State of Punjab*, 2010 SCC OnLine 2630, *Ramji Singh v. State of Haryana*, 2007 RCR CRIMINAL 3452, *Avtar Singh v. State of Punjab*, 2002 SCC CRI 1769, *Sukhdev Singh @ Sukh v. State of Punjab*, High Court of Punjab and Haryana, CRM-M-984-2021 decided on 19.04.2022, *Kishore Bira v. State of Odisha*, High Court of Orissa , Bail application no. 9629/2021, decided on 11.07.2022, *Maphiue v. State of Punjab*, 2020 SCC OnLine P&H 273, *Galiv Hussain v. State*, High Court of Delhi, Bail application No. 3425/2022 decided on 25.04.2023, and *Mohd Muslim@ Hussain vs. State(NCT of Delhi)*, Hon'ble Supreme Court, SLP (CRL.) NO(S). 915 of 2023, decided on 28.03.2023.

5. Learned ASC for State vehemently opposes the bail application and submits that contraband was recovered from the car that was driven by co-



accused Sameem and petitioner was seated on the passenger seat. He further submits that petitioner was aware of presence of contraband in the car and the name of petitioner was also disclosed in disclosure of co-accused Imran being one of the carriers for supply of heroin. It is further pointed out that recovery was made on 08.05.2022 and the case property for inventory and sampling was produced before the Ld. MM on 09.05.2022. As such, there is no possibility of tampering the samples. Further case of petitioner is stated to be not on parity with co-accused Ravi who has been granted bail by learned trial court, since the contraband recovered from him was of intermediate quantity and other co-accused have been granted the benefit of bail on the ground of defect in notice under Section 50 NDPS Act wherein recovery was made from him. Further Section 50 NDPS Act is not applicable in the present case as it applies to personal search and not to search of vehicles or bags. It is submitted that cartel was revealed and accused were arrested on the basis of disclosure made by co-accused during the course of investigation. Reliance is further placed upon *Mohan Lal v State of Punjab*, (2015) 6 SCC 222, *Hardip Singh v. State of Punjab*, (2008) 8 SCC 557, *State of Punjab v Lakhwinder Singh*, 2010 SCC OnLine SC 441, *Union of India v. Mohd. Nawaz Khan*, (2021) 10 SCC 100 , *Union of India v. Rattan Mallik*, (2009) 2 SCC 624, *Ranjan Kumar Chadha v. State of Himachal Pradesh*, 2023 SCC OnLine SC 1262, *State of Punjab v. Baljinder Singh*, (2019) 10 SCC 473 , *Dharampal Singh v. State of Punjab*, (2010) 9 SCC 608, *Mukesh Singh v. State (NCT of Delhi)*, (2020) 10 SCC 120, *Chidi Berr Nwayoga v. State*, 2022 SCC OnLine Del 2558 , *Stephen v. State*, 2022 SCC OnLine Del 1883 and *Manas Krishna T.K. v. State*, 2021 SCC OnLine Bom 2955. Written submissions have also been filed on record.



6. I have given considered thought to the contentions raised. The principles of law as referred in the judgments relied by petitioner and respondent are well settled and not disputed.

7. Under Section 37(1)(b)(ii) of NDPS Act, the limitations on the grant of bail for offences involving a commercial quantity are:

- (i) The Prosecutor must be given an opportunity to oppose the application for bail; and
- (ii) There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

Based upon the precedents, the test which this Court is required to apply while granting bail is whether there are reasonable grounds to believe that accused is not guilty of such an offence and whether he is likely to commit any offence while on bail.

8. The knowledge of the possession of contraband has to be gleaned from the facts and circumstances of a case. This Court is cautious of the fact that physical possession means physical possession with animus, exercise of dominion and control as a result of concealment or personal knowledge as to existence of the contraband and the intention based on this knowledge.

9. It is well settled that merely on account of absence of possession of contraband on the person of the petitioner does not absolve him of the level of scrutiny required under Section 37(1)(b)(ii) of NDPS Act. The name of the petitioner along with co-accused was only disclosed during the course of investigation, whereupon both the accused were apprehended while



travelling in a private car. The quantity of the contraband, which was recovered from the dicky of car, is of commercial quantity. There is no reasonable explanation which has come on record qua the presence of petitioner with the co-accused. Merely because the petitioner was not driving the vehicle, does not lead to an inference that he was not in conscious possession of contraband. The same needs to be suitably explained during the course of evidence. At this stage, it is difficult to presume that the petitioner Kalyan Ram was unaware of the concealment of contraband in the dicky of the car.

10. In *Dharampal Singh vs. State of Punjab*, (2010) 9 SCC 608, the search of dicky of car led to recovery of gunny bag containing 65 Kg. of opium. The driver of the car along with co-traveler was prosecuted for possession of contraband under NDPS Act. Taking note of Sections 18, 35 and 54 of NDPS Act and after referring to *Madan Lal vs. State of Himachal Pradesh*, (2003) 7 SCC 465, it was observed that once possession is established in a vehicle, which is not a public transport vehicle, the person who claims that he was not in conscious possession, has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the NDPS Act gives a statutory recognition of this position because of presumption available in law. It was also observed that 'possession' is a mental state and Section 35 of the Act gives statutory recognition of culpable mental state. Reliance may also be placed upon *Union of India vs. Mohd. Nawaz Khan (supra)*.

Further no prejudice can be presumed merely on account of delay in forwarding the samples to FSL and the same can be looked into after the



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concerned witness is examined on record, since there is nothing to show if the seals of the samples were tampered prior to forwarding of samples to FSL.

For the foregoing reasons and considering the facts and circumstances of the case, no grounds for bail are made out.

Application is accordingly dismissed. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

MAY 31, 2024/R