

IA/6/23
SC No. 315/22
State Vs Arshad Khan
FIR No. 781/21
PS Bhalswa Dairy
U/s 21/25/29 NDPS Act

17.08.2023

This is the third application seeking bail filed under section 439 Cr. PC on behalf of the applicant / accused.

Present: Ms. Promila Singh, Ld. Addl PP for the State.
Sh. Aditya Aggarwal, Ld. Counsel for the applicant /
accused.

IO is present with case file.

Reply to the application is filed.

Arguments heard on the application under Section 439 Cr.P.C for grant of regular bail to accused / applicant.

It is submitted on behalf of the applicant that the accused is lying in JC since 09.11.2021. It is submitted that notice under section 50 NDPS Act is defective in this case as word 'nearest' has not been used by the IO in the notice and same is fatal for the prosecution in view of judgment of Hon'ble High Court in case titled as **Mohd. Jabir Vs State of NCT of Delhi in bail application no. 1725 of 2022 decided on 28.03.2023 passed by the Hon'ble High Court of Delhi.**

Moreover, it is argued that investigation in this case is complete and charge-sheet has been filed. Therefore, no useful purpose would be served by keeping the accused in custody as

Contd....

conclusion of trial shall take considerable long time. It is further submitted that the accused is ready to abide by the conditions imposed by the court while granting bail.

Ld. Addl PP for the State has vehemently opposed the present bail application stating that co-accused was found in possession of 1 KG of heroin and present accused was driving the car from where co-accused persons were apprehended and therefore, all of them were in conscious possession of contraband which is a commercial quantity, therefore, the present bail application is liable to be dismissed by virtue of Section 37 of the Act. It is further argued that accused may commit further similar kind of offences if released on bail.

Arguments heard. Record perused.

I have gone through the judgments cited by Ld. Counsel for the applicant and the present case is squarely covered by the ratio laid down by the Hon'ble High Court in Mohd. Jabir (supra). IO has not used word 'nearest' in serving notice under section 50 NDPS Act and the bar under section 37 of the Act is also ineffective due to defective notice under section 50 NDPS Act. Considering the facts and circumstances of this case, the present application is allowed. **Accused Arshad Khan is admitted to bail on his furnishing personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount to the satisfaction on the following conditions :**

- i) **That the applicant/accused will supply all his mobile number to the IO of the case;**

Contd.....

- ii) That the mobile numbers should be always working for 24 hours and keeps google map on so that he can be traced at any time;
- iii) That he will not leave India without prior permission of the court;
- iv) That he will not commit any crime/offence or anti- social activity during the trial of the case;
- v) That he will not threaten the complainant or any other witness or tamper with the prosecution evidence;
- vi) That he will appear on each and every date of hearing before the court and ;
- vii) That there should not be any future involvement of the accused in any criminal case.

Nothing stated above herein shall tantamount to any expression on the merits of this case.

Application stands disposed of.

A copy of this order be sent to the Jail Superintendent concerned for further communication to the accused/applicant. Copy of this order be also forwarded to Jail Superintendent concerned through E-Mail.

(Dhirendra Rana)
ASJ/Spcl. Judge(NDPS)
North/Rohini Courts/17.08.2023