

Hearing through Video Conferencing by Cisco Webex
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Darshan Singh Vs State

In re:-

CNR No. DLNE01-005265

SC No. 41/2018

FIR No. 169/2018

PS Crime Branch

09.06.2021

Present: Sh. Aditya Aggarwal, Ld. Counsel for applicant.
Sh. Masood Ahmad, Ld. Addl. PP for State.

Submissions on the application have already been heard.

The applicant is facing trial in the present case for the offences punishable under section 20 NDPS Act in custody and by way of present application he is praying for release on bail.

It is submitted that the first bail application of the applicant was dismissed wide order dated 19-11-2018 and being aggrieved by the said order the applicant approached the Hon'ble High Court of Delhi and during the pendency of the said bail application, the applicant has further filed an interim bail application for releasing him for the stipulated period of days which was allowed vide order dated 05/02/2020 and interim bail

was granted to the applicant as such the applicant has not pressed regular bail application which was dismissed as withdrawn. It is submitted that thereafter liberty to approach this court with the regular bail application was granted by the Hon'ble High Court to the applicant vide orders dated 25/03/2021.

It is submitted that after the completion of period of interim bail the applicant has surrendered before the jail authorities on 14/03/2021 as per the directions given by the Apex Court in a general order. It is submitted that the applicant has each and every ground to be released on regular bail. In the application the applicant claimed numerous grounds to release him on bail but during the submissions for the bail application, the learned counsel for the applicant stated that he is pressing the bail application only on two grounds namely non-compliance of provision of section 50 of NDPS Act and non-drawing of samples homogeneously as per procedure. It is submitted that as per the case of the prosecution the alleged recovered packets present in the respective bags were opened and the material therein were filled in the respective bag and thereafter the sample was collected. It is submitted that the process of drawing the sample is against the procedure established by law and also against the laid down by Hon'ble Delhi High Court in number of cases.

It is further submitted that the applicant after apprehension was not produced before a Magistrate or Gazetted officer as per requirement of section 50 of NDPS Act for his search. It is submitted that the search taken by the police officials without compliance of the law is not legal and the applicant is

entitled for release on bail. The applicant has placed reliance upon number of case laws.

On the other hand, the application is opposed with the submissions that 141.5 kg Ganja was recovered from the possession of applicant and co-accused and they were not having any license to possess the same. It is submitted that prior to search of the applicant notice was duly served upon him in requirement of the law and that the contraband was recovered from the vehicle in which the accused was travelling with his co-accused and not from the personal search of the applicant.

It is submitted that the samples were drawn as per procedure from the contraband recovered from the bags. It is submitted that samples drawn from the contraband recovered from the applicant have been opined as of ganja by the FSL and now percentage of the drug in the sample is not relevant as the substance as a whole is considered as the contraband thus the sample itself amount the contraband which was possessed by the applicant without having any license. It is submitted that the case laws relied upon by the applicant in support of his bail application are not applicable in the facts of the case as the present case was registered in 2018 whereas the cases are decided later on. It is submitted that the contraband recovered from the applicant is of commercial quantity and the applicant cannot be released on bail. Reliance is placed upon case of State of Rajasthan vs Sahi Ram MANU/SC/1342/2019 and Babubhai Odhavji Patel and Ors vs state of Gujrat MANU/SC/2504/2005 to oppose the bail application.

The facts of the case as per record are that pursuant to a secret information a raiding party was prepared on 21-06-2018 and

a white colour car bearing registration number HR06AL7239 was over taken and was got stopped on the pointing of the informer and the car was being driven by the applicant and co-accused was on the passenger seat. They both were apprehended and were told about the suspicion that they are having ganja and that they are to be searched and it is their legal right that they can take the search of police party and police vehicle prior to their search and that they can opt to be searched before a Magistrate or a Gazetted officer and that meaning of Magistrate and Gazetted officer was explained to them. They refused to take the search of police party and to be searched in the presence of Magistrate or a Gazetted officer. Thereafter notice as required by section 50 NDPS act was served upon them and the search was taken in which nothing incriminating was recovered. Thereafter the vehicle was searched in which two plastic bags on the back seat and one Plastic Bag of White Colour was found in dicky. The bags were opened and were checked. Smell of Ganja was coming from the bags which were given Mark A, B and C. The bag mark A and B were having 25 packets wrapped in khaki plastic tape each and whereas mark C was having 20 packets wrapped in khaki plastic tape. The packets were found containing green colour grass like leafy with seeds material having moisture which was found as ganja on the basis of smell and physical qualities. Each packet was of two KG in weight and the packets were opened and were emptied in the bags. Empty packets were also kept in the respective bags and 2 samples of 250 g each were drawn from each bag. Case was got registered and senior officers were informed and after completion of the investigation chargesheet was filed in the court.

In the case, relied upon by the applicant titled Ahmed Hassan Muhammed vs The Customs Bail Appl. 3076/2020 decided on 11-02-2021 by the Hon'ble High Court of Delhi there were 30 cartons and each carton was further having plastic packages of same type of dry leaves suspected to be Dry Chat leaves and representative samples were drawn and for drawl of the representative sample a small quantity of substance i.e Dry Chat leaves from each of the plastic packages was taken by the inspector and it was mixed thoroughly to make the mixture homogeneous. The Hon'ble High Court relying upon earlier case titled Basanti Rai held that the fact of the present case is that prosecution has mixed all the packets and thereafter, sent to FSL for examination, which is contrary to the procedure prescribed under the law and admitted the applicant on bail.

In the case of Akhilesh Bharti Vs State Bail Application No. 973/19 decided by the Hon'ble High Court of Delhi on 20.01.2020, upon consideration of case of Vijaysinh Chandubha Jadeja (2011) 1 SCC 609, case of Arif Khan AIR 2018 SC 2123 and case of S. K. Raju (2018) 9 SCC 708 the Hon'ble High Court of Delhi has come to the opinion that the provisions of Section 50 of NDPS Act have not been complied with as per law and has found the case to admit the accused on bail. Both the cases were of commercial quantity of contraband.

In the facts of the present case, in light of observation of Hon'ble High Court of Delhi in cases of Ahmed Hassan Muhammed (supra) and of Akhilesh Bharti (supra) where the accused has not been produced for his search before any Gazetted Officer or the Magistrate in compliance of Section 50 of the NDPS

Act and the samples were drawn in a manner contrary to the procedure prescribed, without opining on the merits of the case, I am of the view that the case is made out to admit the applicant on bail. As such application for grant of bail is allowed. Applicant Darshan Singh is admitted to bail on furnishing of bail bond in the sum of Rs. 50,000/- with one surety of the like amount. The bail bonds may be furnished before the Superintendent of jail also.

Copy of this order be provided to the parties and also sent to the Superintendent Jail concerned for compliance.

(SUNIL CHAUDHARY)
Special Judge (NDPS)/ASJ
North East/ Delhi 09.06.2021