

IN THE COURT OF ASJ/SPECIAL JUDGE/NDPS  
PATIALA HOUSE COURTS, NEW DELHI

Presided by: Sudhir Kumar Sirohi, DHJS

FIR No. 91/2021

PS R K Puram

State Vs. Sharat Das

16.01.2024

Present: Sh. Ravindra Kumar, Ld. Additional PP for the State.  
Mr Aditya Agarwal, Ld counsel for  
applicant/accused Sharat Das.

Ld counsel for accused argued that in the present matter, the samples have been drawn before Ld Magistrate in violation of Standing order 1/88 and 1/89 NDPS Act. Ld counsel for accused argued that the samples were not properly drawn before Ld MM in this matter. Ld counsel for accused argued that in the present matter, 09 packets of 01kg ganja each were given S. No. A1 to A9 and were kept in one plastic katta given S. No. E1, 03 packets of 02kg of ganja each (B1 to B3) were kept in one plastic katta and were given S. No. E2, 05 packets containing 4.4kg ganja each (C1 to C5) were kept in one plastic katta and were given S. No. E3, 01 packet containing 05kg ganja (D1) was given S. No. E4. Ld counsel for accused argued that under section 52A NDPS Act proceedings, two samples of 100gm each were taken from packet A8 (weight 1.050kg) only from mark E1 and samples were not taken from A1 to A7 and A9. Ld counsel for accused argued that from mark E2, two samples of 100gm each were only taken from E3 (weight 2.160kg) and samples were not taken from B1 & B2. Ld counsel for accused argued



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that from mark E3, two samples of 100gm each were taken from C1 (weight 3.638kg) and samples were not taken from C2 to C5. Ld counsel for accused argued that two samples of 100gm each were taken from mark E4 (weight 5.07kg). Ld counsel for accused argued that the samples have already been taken from packet A8, B3, C1 and D1 and not from all the packets seized, the weight of packet A8, B3, C1 & D1 do not come within the commercial quantity of contraband (1kg +2kg+4kg+5kg). Ld counsel for accused argued that it is possible that remaining packets were not having contra-band, therefore, the samples sent to the FSL were not representative samples and prays for bail to accused. Ld counsel for accused relied upon the orders i.e. *Sarvan Vs State, BA No. 2781/2022 dated 18.01.2023 of Hon'ble High Court of Delhi, Sachin Kumar Vs State, BA No. 557/2023 dated 26.04.2023 of Hon'ble High Court of Delhi, Ginkala Meddilety Vs State, BA No. 1133/2022 dated 05.09.2023 of Hon'ble High Court of Delhi, Dalairama Raju @ Raju Vs State, BA No. 3915/2023 dated 06.12.2023 of Hon'ble High Court of Delhi and Jasbir @ Jassu Vs State, BA No. 471/2023 dated 24.08.2023 of Hon'ble High Court of Delhi.*

Ld Addl. PP for State on the other hand opposed the bail application and argued that in this matter, sampling has been done correctly before Ld MM and samples sent to FSL was found positive for ganja. It is further argued by Ld Addl. PP that there is recovery of commercial quantity of contra-band in this matter, therefore, there is bar u/s 37 NDPS Act in this matter and hence the bail may not be granted to accused.

Submissions of all parties heard. Judgment/orders

perused.



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Section 52A NDPS Act proceedings are reiterated  
for disposal of present bail application-

*"By way of this application, the IO seeks the following:-*

1. a) *To draw representative samples from pullanda Mark E1, E2, E3 & E4 (smaller packets brown in colour in the following manner: A1 to A9, B1 to B3, C1 to C5 and D1 respectively) containing contraband recovered from the possession of accused persons and the same was seized on 31.03.2021 and after the seizure, the said property was deposited in the malkhana of PS R. K. Puram.*  
b) *Permission to take photographs of the drug seized in the present case; and prepared samples.*  
c) *To re-prepare the pullandas and smaller brown packets and to also prepare samples A1, A2, B1, B2, C1, C2, D1, D2.*  
d) *To certify the photographs taken of the aforesaid proceedings by this Hon'ble Court. Along with the present application, one seizure memo now marked as Mark X is also annexed which contains the details of the seized contraband i.e. Ganja/Cannabis. The seizure memos mentions the detail as to the mode of packing, marks and number, identification and particulars of the drug.*
2. *At this stage, Ct. Sonu is directed to produce the case property which are four in number (already Mark E1, E2, E3, E4) i.e. cloth pullandas in white colour cloth and sealed with the seal of "SK" and the seal of*



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"RS" the particulars of Case FIR No. 91/2021 dated 31.03.2021, U/s 20, 25, 61, 85 NDPS Act, PS R.K. Puram which have been signed by first IO SI Surender Kumar, PS R. K. Puram, and signed by Rajesh Sharma, SHO, R. K. Puram on the above four Pullandas. The said contraband had been seized under NDPS Act. The seals on the pullandas are in intact condition.

3 (a). The cloth pullandas have been photographed. The weighting machine has been calliberated and now showing "0". All the pullandas E1, E2, E3, & E4 have been placed on weighting machine 1/1 and same weighs 9.134 Kg approx. 6.16 Kg approx. 19.536 Kg approx & 5.07 Kg approx. respectively alongwith pullandas. Let pullanda El be de-sealed and opened for the purpose of weighing seized contrabands and taking representative samples. The pullanda Mark El is opened and found weight 9.134 kg approx in which nine brown small packets were found inside pullanda and one of the packets i.e. A8 was taken for the purpose of sampling and certification and on weighing the same is found to be of 1.050 Kg. Further, from the said substance, two samples have been taken and same are marked A1 (100 Grams) and A2 (100 grams) after putting the same inside transparent Box. The weight of the samples and the remaining substance has been weighed on electronic machine brought by the IO. The photographs were taken while weighing the representative samples.



3 (b). After drawing the representative samples from pullanda E1, the remaining has been found to be of 8.900kg.

4. (a) Let pullanda E2 be de-sealed and opened for the purpose of weighing seized contrabands and taking representative samples. The pullanda Mark E2 is opened and found weight 6.16kg in which three brown packets are found inside pullanda. After opening the same, one of the packets i.e. B3 was taken for the purpose of sampling and certification and on weighing the same is found to be of 2.160Kg. Further, from the said substance, two samples have been taken and same are marked B1 (100 Grams) and B2 (100 grams) after putting the same inside transparent Box. The weight of the samples and the remaining substance has been weighed on electronic machine brought by the IO. The photographs were taken while weighing the representative samples.

4 (b). After drawing the representative samples from pullanda E2, the remaining has found to be 5.960 Kg.

5 (a) Let pullanda E3 be de-sealed and opened for the purpose of weighing seized contrabands and taking representative samples. The pullanda Mark E3 is opened and found weight 19.536kg in which five brown packets are found inside pullanda. After opening the same, one of the packets i.e. C1 was taken for the purpose of sampling and certification and on weighing the same is found to be of 3.638Kg. Further, from the said substance, two samples have been taken



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and same are marked C1 (100 Grams) and C2 (100 grams) after putting the same inside transparent Box. The weight of the samples and the remaining substance has been weighed on electronic machine brought by the IO. The photographs were taken while weighing the representative samples.

5 (b). After drawing the representative samples from pullanda E3, the remaining has been 19.330 Kg.

6 (a) Let pullanda E4 be de-sealed and opened for the purpose of weighing seized contrabands and taking representative samples. The pullanda Mark E4 is opened and found weight 5.07kg in which one brown packet is found inside pullanda. After opening the same, D1 was taken for the purpose of sampling and certification and on weighing the same is found to be of 5.07Kg. Further, from the said substance, two samples have been taken and same are marked D1 (100 Grams) and D2 (100 grams) after putting the same inside transparent Box. The weight of the samples and the remaining substance has been weighed on electronic machine brought by the IO. The photographs were taken while weighing the representative samples.

6 (b). After drawing the representative samples from pullanda E4, the remaining has been 4.870Kg.

7. The samples in Mark A1, A2, B1 and B2, C1, C2, D1, D2 which were initially kept in transparent boxes and then the same were put in white cloth separately and pullandas were prepared which are now sealed



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with the Court seal i.e. "HS" and bearing signatures of the undersigned. The said samples are already marked A1, A2, B1, B2, C1, C2, D1, & D2. Eight Court seals were affixed on the aforesaid samples.

8. The remaining substance of Pullanda Mark E1, E2, E3, & E4 are kept in the same cloth pullandas and the same are again sealed with the seal of i.e. "HS" which bears the signature of the undersigned.

9. The aforesaid case property and newly drawn samples mark A1, A2, B1 and B2, C1, C2, D1, D2 and sample seal of Court today in the Court are handed over to Head Ct. Ram Niwas and let separate statement of Head Ct. Ram Niwas be recorded to this effect.

At this stage, Head Ct. Ram Niwas has produced four pullandas. Four pullandas are sealed with the seal of "HS" and the particulars of the Case FIR No. 91/2021, PS R. K. Puram which have been signed by first IO SI Rajesh, PS R. K. Puram. The seals on the pullandas are in intact condition."

Perusal of section 52 NDPS Act proceeding shows that the samples were not taken from each packet of mark E1 (containing 09 packets), mark E2 (containing 03 packets), mark E3 (containing 05 packets). In the BA No. 2781/2022 titled as Sarvan Vs State (Govt of NCT of Delhi), it was held that-

"6. The proceedings u/s 52A NDPS Act is infact in line of the objection raised by Ld 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



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other packets in each of the gunny bags contain contraband or not. The apprehension, raised by Ld counsel for petitioner appears to be plausible. It is submitted it would rather satisfy the requirement u/s 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."

In the order of Sachin Kumar Vs State (Govt of NCT of Delhi), BA No. 557/2023 of Hon'ble High Court of Delhi, it was held as under:

"7. Considering the above facts where sampling was not done in accordance with law and the proceedings u/s 52A NDPS Act being in line to the objections raised by ld counsel for petitioner viz samples were not taken from each of the brown taped bundle, raises an apprehension that the brown taped bundles left over may not have contained the contra-band. From the proceedings it is also not clear from which of the different bundles lying in kattas the two samples were taken. It is not clear from out of 16 bundles the samples were taken from which of the four kattas and hence rigors of section 37 NDPS Act would not apply a there exist a dispute qua the weight of the ganja actually recovered from the person of the present applicant."

Therefore, in view of the abovesaid settled preposition of law by Hon'ble High Court of Delhi, the sampling was not done in accordance with law and proceedings u/s 52A NDPS Act are being in line to the objections raised by Ld counsel for accused/applicant, the samples were not taken from each packet and the samples which were taken from the selected packets did not jointly have the weight upto 20 kg as to bring the weight of packet from which the samples were drawn within commercial quantity, therefore, the rigors of section 37



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NDPS Act would not apply. Accordingly, applicant/accused Sharat Das is admitted to bail on furnishing personal bond and surety bond in the sum of Rs. 1 lakh each with two sureties in the like amount subject to the following conditions:-

1. he shall provide his mobile numbers to the IO;
2. he shall keep his mobile phone 'ON' at all times;
3. he shall keep his GPS location 'ON' all the time;
4. he will deposit his passport in the court during the period of bail and if he does not have passport then to file the affidavit in this regard in the court or in absence of passport, LOC be opened against accused.
5. he shall mark his attendance in the concerned police station on first Monday of every month till trial is completed;
6. he shall not leave the India under any circumstances without prior permission of trial court;
7. he shall not commit any offence whatsoever during the period that he is on bail in the instant case;
8. In the event of there being any FIR/DD Entry/complaint lodged against the applicant/accused it would be open to the State to seek cancellation of bail of the accused.

Accordingly, bail application of accused Sharat Das stands disposed off. Copy of this order be given dasti and be also sent to accused in jail for communication to the accused.

(Sudhir Kumar Sirohi)  
ASJ/Spl. Judge, NDPS/ND  
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