

Santosh Kumar Pandit vs State Through Sho Ps Crime Branch on 21 March, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 2731/2023 and CRL.M.A. 6238/
SANTOSH KUMAR PANDIT

STATE THROUGH SHO PS CRIME BRANCH

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH
ORDER

% 21.03.2024

1. This application has been preferred on behalf of the Applicant Santosh Kumar Pandit S/o Shri Barahdev Pandit under Section 439 Cr.P.C. seeking regular bail in case FIR No.49/2020 dated 18.02.2020 under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') registered at P.S.: Crime Branch.

2. It is the case of the prosecution that a secret information was received on 18.02.2020 at Crime Branch office that a person Surjeet who lives in R.K. Puram deals in ganja and his driver Santosh (Applicant herein), who is a resident of Bihar used to bring ganja from Odisha to Delhi in sumo car having registration number of Chhattisgarh and on the said day, Applicant was likely to deliver the consignment to Surjeet near Munirka flyover between 03:00 PM to 03:30 PM. Information was shared with the senior This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:18 officers and reduced into writing in daily diary. Copy of DD entry was forwarded for compliance of Section 42 of NDPS Act. Raiding team was constituted and a trap was laid at the place of information. At the instance of secret informer, Applicant and Surjeet were apprehended in Tata sumo car and notices under Section 50 of NDPS Act were served upon them. Search of the vehicle led to recovery of 200 kg ganja from a total of 09 kattas. Seizure memo was prepared and seized material was deposited in the malkhana. Case was registered and investigation was initiated.

3. During interrogation, Applicant disclosed that he procured ganja from Odisha and supplied the same to Surjeet in Delhi. Surjeet also confessed to his dealings in ganja for the last 05 to 06 months. CDR analysis of the mobile phones revealed that both were in direct touch with each other. The car was found to be registered in the name of the brother of Surjeet. FSL result of the seized material confirms the presence of ganja.

4. Learned counsel for the Applicant primarily and inter alia urges that Applicant is innocent and has been falsely implicated. There are serious procedural violations in the sampling procedure followed by the prosecution as laid down in Standing Order No.1/89 dated 13.06.1989 issued by the Ministry of Finance, Government of India. According to the prosecution, 09 kattas were recovered from the car and each had small packets inside though it is not mentioned as to how many packets were recovered nor was it mentioned as to what is the quantity and/or weight of the alleged ganja in each of these packets. Prior to taking the sample from each packet, the Police officials mixed them to make a homogenous mixture which is not permissible under the Standing Order. Neither Form 29 nor CFSL form were filled at the spot by the SHO or the Magistrate. Sampling was in the absence of a Standing Order. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:18 by the Applicant and moreover, application regarding drawing of samples was moved by the IO on 03.03.2020 i.e. after a delay of 14 days. Samples were sent to FSL after unexplained delay of 02 days and the same remained with the IO for the said period. FSL report indicates that no seal or CFSL form were received by the FSL and the report is silent on which seal was intact and which was broken when the samples were received by the FSL. In a nutshell, the argument is that there is a complete go by to the Standing Order for the purpose of sampling as a result of which it cannot be ascertained whether the recovered substance was a contraband or not.

5. It is further urged that the provisions of Standing Order No. 1/89 are mandatory. Section 52A of NDPS Act requires the seizing officer to prepare an inventory on the spot and draw the representative samples before the Magistrate, none of which was done and all samples were arbitrarily mixed. Reliance is placed on the judgments of this Court in Sandeep v. State (NCT of Delhi), 2024 SCC OnLine Del 451, Amina v. State NCT of Delhi, 2023 SCC OnLine Del 3491, and Laxman Thakur v. State (Govt. of NCT of Delhi), 2022 SCC OnLine Del 4427, where the Courts have held that where the mandatory procedure of the Standing Orders with respect to sampling has not been followed, accused persons will be entitled to bail. Applicant has been in judicial custody since 22.02.2020 and has suffered a long incarceration period. His antecedents are clean and jail conduct is 'satisfactory'.

6. Per contra, learned APP argues that commercial quantity has been recovered from the Applicant and therefore, the rigours of Section 37 of the NDPS Act would apply and the Applicant will have to satisfy this Court that there are reasonable grounds for believing that the accused is not guilty of the offence. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:19 such offence and is not likely to commit any offence while on bail. It is further submitted that Section 52A of the NDPS Act is inapplicable to the procedure of sampling and only deals with procedure for disposal of seized narcotic drugs and psychotropic substances. Moreover, Standing Orders are only Executive and Administrative Instructions and are merely recommendatory and advisory and cannot have a binding effect and therefore, alleged non-compliance of Standing Order No. 1/89 cannot entitle the Applicant to bail. The allegations are serious and material witnesses are yet to be examined.

7. I have heard learned counsel for the Applicant and the learned APP and examined the rival contentions.

8. Amongst other grounds, the main plank of the argument of the Applicant is that there is total non-compliance of the mandatory procedure laid down in Standing Order No. 1/89 dated 13.06.1989 issued by Ministry of Finance, Government of India which prescribes a procedure for sampling of narcotic drugs and psychotropic substances. Before proceeding to examine the contentions of the parties, it would be relevant to examine the applicable provisions of the NDPS Act and look at the judicial precedents on the issue. Section 52 of the NDPS Act deals with measures that are required to be taken by an Officer for disposal of persons arrested and articles seized. Section 52A NDPS Act provides the procedure for disposal of seized narcotic drugs and psychotropic substances including the procedure for sampling. For ready reference, Section 52A is extracted hereunder:-

"52A. Disposal of seized narcotic drugs and psychotropic substances.--

(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:21 drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer- in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in subsection (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such

other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of such drugs, substances or conveyances. and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under subsection (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Criminal Procedure Code, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under sub- section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

9. Procedure for drawing a sample of a substance allegedly recovered as a narcotic substance, has been laid down elaborately in Standing Order This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:23 No.1/89. This Standing Order was issued by the Central Government in exercise of powers conferred by sub-section (1) of Section 52A of NDPS Act. Relevant extracts of the Standing Order are set out below:

"2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witness (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.

xxx xxx xxx 2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container."

10. The Supreme Court in *Union of India v. Bal Mukund and Others*, (2009) 12 SCC 161 has held that provisions of these Standing Orders are mandatory in law and have to be complied with in letter and spirit. In *Amina (supra)*, this Court relying on the judgments of the Supreme Court in *Noor Aga v. State of Punjab and Another*, (2008) 16 SCC 417 and *Bal Mukund and Others (supra)* as well as of this Court in *Laxman Thakur (supra)*, observed as follows:-

"27. From a careful assessment of the decisions cited above and the perusal of the Standing Orders, this Court is of the considered opinion that the Standing Orders have to serve a certain purpose having been issued by the Narcotics Control Bureau, Government of India and cannot be rendered optional for compliance to the investigating agencies. The procedures prescribed in the said orders are based upon a certain logic which ought to be respected, or else it would be a worthless piece of paper. Notwithstanding that Courts in the decisions cited above have accepted it as a mandatory directive [refer to *Noor Aga (supra)*, *Bal Mukund (supra)*, *Basant Rai (supra)*, *Santini Simone (supra)* and finally *Amani Fidel (supra)*], even the Hon'ble Supreme Court while taking a view that Section 52 & Section 57 NDPS were directory in *Gurbax Singh (supra)* said that "the IO cannot totally ignore these provisions". Even *Balbir Singh (supra)* states that non-compliance does This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:24 not render the trial initiate "the officers, however, cannot totally ignore these provisions". Therefore, in this Court's view, the Standing Orders ought to be respected by the investigating agencies and non-compliance of those Standing Orders may naturally invoke a reasonable doubt relating to the process of sampling which is the most critical procedure to be carried out in order to ascertain the nature of the substance and its quantity. In fact, the Field Officers Handbook issued by the Narcotics Control Bureau for Drug Law Enforcement also reiterates these procedures prescribed under the Standing Orders.

28. As a side-wind, it is worth mentioning that post the decision in *Mohanlal (supra)*, the discussion has also veered towards whether the sampling has to be done mandatorily before the Magistrate in compliance of Section 52A NDPS Act. Recently, a Coordinate Bench of this Court in *Kashif v. Narcotics Control Bureau*, 2023 SCC OnLine Del 2881 while granting relief to the accused has taken the view that the compliance of Section 52A is mandatory and cannot be delayed or ignored. Moreover, there is a recent Standing Order issued dated 23rd December 2022 by the Ministry of Finance in exercise of powers conferred by Section 76 r/w Section 52 A of NDPS Act wherein procedure for seizure and storage of seized material and sampling and disposal has been provided in detail and which directs sampling to be done in front of the magistrate. Therefore, as per this view, the sampling ought to be done in compliance of Section 52A and not at the time of seizure. However, this has not been the scope of the discussion during the arguments addressed by the learned counsels

in this matter and therefore is not being deliberated in detail. The only purpose why this is being adverted to, is to emphasize that in this case the samples were drawn at the time of seizure and that too not in compliance with the Standing Orders.

29. The adherence to strict process under the NDPS Act has certain important function and purpose. The Hon'ble Supreme Court has often reemphasized that considering the provisions of the NDPS Act are stringent in nature and provide twin conditions as a threshold for granting bail under Section 37 of the Act, compliance by the investigating agencies has to be necessarily precise and not ad hoc or half-hearted or truncated in nature.

30. The lack of compliance of these provisions necessarily imports an element of "doubt", moreover a "reasonable doubt". This, therefore will segway into the issue of proving guilt, considering that the guilt of any accused has to be proved beyond reasonable doubt. It would therefore not be enough to contend, as is done by the prosecution that issues of non-compliance were to be considered at the time of trial and what prejudice is caused to the accused, had to be shown by the accused. Even This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:24 if that may be so, if such non-compliance provides reasonable ground for acquittal of an accused [depending on the nature of the evidence led, as it was in the case of Amani Fidel (supra)], a fortiori at the stage of granting bail, it would be even more important to consider this possibility, even if it is just a possibility. At the stage of granting bail, the accused is still not proved as guilty and is under trial and therefore deserves the benefit of doubt.

31. Pursuant to appreciation of contentions of the parties as well as documents on record, this Court is of the considered opinion that the petitioner is entitled to be enlarged on bail subject to certain conditions.

32. The fact that the contraband which was seized contained in 2000 pudiyas 100 each in 20 bags, were all emptied together in a plastic jar, was prima facie not in compliance with the process envisaged under the SO 1/88 and 1/89, as adverted to above. The procedure, in compliance with the standing orders, could have been adopted, inter alia to make lots of a bunch of pudiyas together, as envisaged in the SO. By mixing all the pudiyas together, the sample was not a true representative sample and the composition of the mix would therefore, would be at a serious variance. Even though these are issues which would have to be considered at the point of trial, it would still import an element of reasonable doubt in the sampling procedure undertaken."

11. In Noor Aga (supra), dealing with a case where the alleged recovery was of 1.4 kgs heroin from a cardboard container, the Supreme Court observed as under:-

"87. Preservance of original wrappers, thus, comes within the purview of the direction issued in terms of Section 3.1 of Standing Order 1 of 1989. Contravention of such guidelines could not be said to be an error which in a case of this nature can conveniently be overlooked by the court. We are not oblivious of a decision of this Court in South Central Railway v. G. Ratnam [(2007) 8 SCC 212 : (2007) 2 SCC (L&S) 851] relating to disciplinary proceedings, wherein such guidelines were held not necessary to be complied with, but therein also this Court stated:

(SCC p. 222, para 23) "23. In the cases on hand, no proceedings for commission of penal offences were proposed to be lodged against the respondents by the investigating officers."

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89. Guidelines issued should not only be substantially complied with, but also in a case involving penal proceedings, vis-à-vis a departmental This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:26 proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

90. Recently, this Court in State of Kerala v. Kurian Abraham (P) Ltd. [(2008) 3 SCC 582] , following the earlier decision of this Court in Union of India v. Azadi Bachao Andolan [(2004) 10 SCC 1] held that statutory instructions are mandatory in nature.

91. The logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance with these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution."

12. In this context, it would be relevant to refer to another judgment of this Court in Amani Fidel Chris v. Narcotics Control Bureau, 2020 SCC OnLine Del 2080, relevant passages of which are as under:-

"32. In the opinion of this court, the procedure adopted by the respondent in the present case for drawing samples neither conforms to the procedure prescribed under Section 52A of NDPS Act nor under the Standing Orders. At the cost of repetition, the respondent neither filed any application before the Magistrate for drawing the samples under his supervision nor followed the procedure of drawing a representative sample outlined in paras 2.4 or 2.5 read with 2.8 of the Standing Order 1/89.

33. Resultantly, this court is of the view that the samples sent to the CRCL were not the representative samples. Besides, by mixing the contents of all the 4 packets before drawing any sample not only the sanctity of the case property in the individual packet was lost but also the evidence as to how much each individual packet weighed. In reaching the aforesaid conclusion, I also draw support from the decisions in *Shajahan v. Inspector of Excise (DB)* reported as 2019 SCC OnLine Ker 3685 *Kulwinder Kumar v. State of Punjab*, reported as 2018 SCC OnLine P&H 1754 and *Santosh Kumar v. The State of Bihar* passed in Criminal Appeal (SJ) No. 158/2016 decided on 30.08.2019."

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13. In *Laxman Thakur (supra)*, a Co-ordinate Bench of this Court reiterated that compliance with the procedure laid down in Standing Order 1/88 is mandatory and relevant observations are as follows:-

"11. The standing order 1/88 mandates that the transferring of content of all packets into one and then drawing a sample from the mixture is not permitted.

12. I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of the NDPS Act will not be applicable."

14. In *Sandeep (supra)*, this Court was once again called upon to decide the issue of entitlement of an accused to bail on the ground that sampling procedure adopted by the Investigating Officer was not in consonance with the Standing Orders and the judgments on the subject. Relying on several judicial precedents, Court held as under:-

"18. A reading of the Standing Order No. 1/89 would show that all packages/containers are to be serially numbered and kept in lots for sampling. In cases where more than one package/container is seized, it is advisable to draw one

sample (in duplicate) from each of such packets/containers. Clause 2.5 of the Standing Order, however, states that where the packages/containers seized together are identical in size and weight, bearing identical marking, and the content of each packets gives identical result on colour testing by Drug Identification Kit, conclusively indicating that the packages/containers are identical in all respects, the packages/containers may be bunched together in lots of 10 packages/containers (in case of ganja and hashish lots of 40 packages/containers) and for each of such lots of packages/containers, one sample (in duplicate) may be drawn. Clause 2.8 states that, while drawing the samples from a particular lot, it must be ensured that representative samples in equal quantity are taken from a package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot. Therefore, the identity of the packages/containers including their contents has to be preserved while drawing the samples. They cannot all be mixed together to thereafter draw samples. The Standing Order only allows that where the lots of such This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 12:09:27 packages/containers are prepared, samples in equal quantity are taken from each packages/containers of that lot, mixed together, and thereafter sample drawn from such composite whole of samples.

19. In the present case, the above procedure has been completely violated and not adhered to by the prosecution. As noted hereinabove, the prosecution emptied all the packages that were recovered from the trolley bag of the accused persons into one composite whole and thereafter, samples from such composite whole were drawn before the learned Metropolitan Magistrate. Similar exercise was done for the packages recovered from the backpacks carried by the accused. This is clearly is not in compliance with the Standing Orders.

20. In similar circumstances, in *Laxman Thakur (supra)*, this Court, placing reliance on the judgment of the Supreme Court in *Union of India v. Bal Mukund*, (2009) 12 SCC 161, and the judgment of this Court in *Santini Simone v. Department of Customs*, 2020 SCC OnLine Del 2128, which in turn had considered the earlier judgment of the Supreme Court in *Sumit Tomar v. State of Punjab*, (2013) 1 SCC 395, and of this Court in *Amani Fidel Chris (supra)*; *Basant Rai v. State*, 2012 SCC OnLine Del 3319; *Edward Khimani Kamau v. The Narcotics Control Bureau*, 2015 SCC OnLine Del 9860; *Charlse Howell @ Abel Kom v. The Narcotics Control Bureau*, 2018 SCC OnLine Del 10564, held as under:

"12. I am of the view that in the present case, the instructions in 1/88 has not been followed and the sample has been drawn after mixing the contents of various packets into one container. The same has caused serious prejudice to the case of the applicant. Since the collection of sample itself is faulty, the rigours of Section 37 of

the NDPS Act will not be applicable."

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28. In the present case, prima facie the sampling procedure followed by the prosecution was not in conformity with the terms of the Standing Orders no. 1/88 and 1/89. There is also no prior history of any prosecution being pending against the accused persons herein. The accused have already been in custody for more than a year. Both the accused are aged around 20 years and the trial is likely to take long.

29. In my view, therefore, the applicants have been able to meet the test laid down in Section 37 of the NDPS Act and of being enlarged on bail."

15. In *Betty Rame* (supra), the Court was dealing with the question as to whether the issue of faulty sampling can be gone into at the stage of seeking This is a digitally signed order.

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"25. As a side-wind, it is worth mentioning that post the decision in *Mohanlal* (supra), the discussion has also veered towards whether the sampling has to be done mandatorily before the Magistrate in compliance of Section 52A NDPS Act. Recently, a Coordinate Bench of this Court in *Kashif v. Narcotics Control Bureau*, 2023 SCC OnLine Del 2881 while granting relief to the accused has taken the view that the compliance of Section 52A is mandatory and cannot be delayed or ignored. Moreover, there is a recent Standing Order issued dated 23rd December 2022 by the Ministry of Finance in exercise of powers conferred by Section 76 r/w Section 52 A of NDPS Act wherein procedure for seizure and storage of seized material and sampling and disposal has been provided in detail and which directs sampling to be done in front of the magistrate. Therefore, as per this view, the sampling ought to be done in compliance of Section 52A and not at the time of seizure. However, this has not been the scope of the discussion during the arguments addressed by the learned counsels in this matter and therefore is not being deliberated in detail. The only purpose why this is being adverted to, is to emphasize that in this case the samples were drawn at the time of seizure and that too not in compliance with the Standing Orders.

26. The adherence to strict process under the NDPS Act has certain important function and purpose. The Hon'ble Supreme Court has often reemphasized that considering the provisions of the NDPS Act are stringent in nature and provide twin conditions as a threshold for granting bail under Section 37 of the Act, compliance by the investigating agencies has to be necessarily precise and not ad hoc or half-hearted or truncated in nature.

27. The lack of compliance of these provisions necessarily imports an element of "doubt", moreover a "reasonable doubt". This therefore will segway into the issue of proving guilt, considering that the guilt of any accused has to be proved beyond reasonable doubt. It would therefore not be enough to contend, as is done by the prosecution that issues of non-compliance were to be considered at the time of trial and that what prejudice is caused to the accused, had to be shown by the accused. Even if that may be so, if such non-compliance provides reasonable ground for acquittal of an accused [depending on the nature of the evidence led, as it was in the case of Amani Fidel (supra)], a fortiori at the stage of granting bail, it would be even more important to consider this possibility, even if it is just a possibility."

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16. Coming back to the facts of the case and the contentions raised by the Applicant and analysing them in light of the Standing Order No. 1/89, it prima facie emerges that there is non-compliance of the procedure laid down therein. From a bare reading of the FIR, it emerges that 09 kattas were recovered allegedly from the car of the Applicant which in turn contained the contraband substance packed in khaki coloured packing material. The packets were opened and on the basis of the character of the seeds and the leaves etc., it appeared that it was ganja. Each packet was opened and the contents of the packets were randomly mixed and distributed in the 09 kattas. Without ascertaining the content, size and weight etc. of each packet, all the contents were mixed together. Therefore, the sampling process is not in consonance with the Standing Order and the argument that the Applicant is not entitled to bail on account of the rigours of Section 37 of the NDPS Act and/or allegations being serious may not rescue the prosecution in light of the aforementioned judgments. Applicant is in judicial custody since 22.02.2020. His jail record is 'satisfactory' and his antecedents are clean. Trial is likely to take long time and Applicant cannot be kept under incarceration indefinitely.

17. For the foregoing reasons, the application is allowed and the Applicant is directed to be released on bail upon furnishing a personal bond in the sum of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court, of which one surety will be by a person who is permanent resident of Delhi. Release on bail will be further subject to the following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;

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without prior intimation to the IO and the Trial Court; iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;

iv. He shall appear before the Trial Court as and when the matter is taken up for hearing;

v. He shall not indulge in any criminal activity or communicate with or come in contact directly or indirectly with any prosecution witness. In case the Applicant is found involved in any other case or violates any bail condition, it would be open to the prosecution to file an appropriate application seeking cancellation of the bail; and vi. Applicant shall report to the IO on every third Monday at 11:00 AM.

18. Needless to state that any observation in the present order will not tantamount to expression of opinion on the merits of the case.

19. Bail Application stands disposed of along with pending application.

20. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J MARCH 21, 2024 B.S. Rohella/shivam This is a digitally signed order.

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