

Sushil vs State on 17 February, 2023

Author: Swarana Kanta Sharma

Bench: Swarana Kanta Sharma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 3648/2022
SUSHIL

Through: Mr. Aditya Aggarwal, Ad
versus

STATE

Through: Mr. Manoj Pant, APP for
with SI Arvind Kumar, P
Branch.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA
ORDER

% 17.02.2023

1. The present bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter „Cr.P.C.) read with Section 36A(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter „NDPS Act) seeking grant of regular bail in FIR No. 0222/2021, under Sections 20/25 of NDPS Act, registered on 16.11.2021 at Police Station Crime Branch.

2. The case of prosecution is that on 15.11.2021at about 11:43 PM, a call was received by Constable Anuj Kumar posted at Narcotics Cell, Crime Branch from one Aakir Hussain, resident of Bareilly, Uttar Pradesh, who informed that he was the driver of Tata vehicle number UP-25-DT-2874 and was being accompanied by one helper namely Shahnwaz Khanand one other person namely Shahzeb. He informed that Shahzeb had driven his vehicle from Bareilly to Balangir, Odisha and loaded his truck with some gunny bags containing goods which seemed to be „Ganja . It was stated that his vehicle, at around 12.30 to 1.30 AM, will cross Majnu ka Tila and then will go towards Wazirabaad towards Burari, Delhi, where the goods would be unloaded. He also informed that some other persons had accompanied them to Balangir, Odisha in their car bearing number DL-9CAS/AC-1936 to bring the goods and were escorting his truck, and Shahzeb was in touch with these persons through mobile phone. He further stated that he had already informed about the same to his owner/employer, who had instructed him to call the police so that the wrongdoers can be apprehended. Thereafter, Constable Anuj gave the above-stated information to Sub-Inspector Lekhraj who took note of the same and accordingly informed the concerned Inspector as well as Assistant Commissioner of Police, Narcotics. The secret information was reduced into writing vide GD No, 0001A dated 16.11.2022, P.S. Crime Branch in compliance of Section 42 of NDPS Act. A raiding team led by S.I. Lekhraj was constituted and trap was laid at Ring Road after climbing down Wazirabad Flyover towards Burari, Delhi. At about 1:10 AM, the said Tata vehicle/truck was apprehended, and on enquiry, the driver of the said truck was found to be Aakir Hussain who was

accompanied by helper namely Shahnwaz Khan, and the third person revealed his identity as Shahzeb Chaudhary. Upon questioning about the goods loaded in the truck, Shahzeb could not give any satisfactory answer, and the driver and helper of the truck informed that Shahzeb and his associates had loaded „ganja in sacks from Odisha. During inspection, it was found that empty plastic crates were kept in the truck, and upon the search of same, ACP Narcotics Cell, was called. Notice under Section 50 NDPS Act in Hindi was given to Shahzeb, however, he refused to get searched before any Gazetted officer or Magistrate, and upon his personal search by SI Lekhraj, nothing was recovered. The concerned ACP reached the spot at around 1:55 AM, after which the vehicle was searched, and around 300 kgs of ganja in 12 white plastic/ bags was seized which was found hidden beneath the plastic crates. During investigation accused Shahzeb disclosed that applicant Sushil @ Sonu, co-accused Akram @ Raju and co-accused Mahesh had gone to Odisha on the direction of co-accused Abrar @ Bale and got loaded „ganja in the truck. It was also revealed that car no. DL- 9C-AS-1936 (Renault Quid Car) was used by the applicant Sushil for piloting and safety purpose of the truck. Thereafter, the applicant Sushil was interrogated and arrested under Sections 20/25/29 of NDPS Act on 18.11.2021 in the present case. The above-mentioned Renault Quid Car was also taken into police possession through seizure memo and ownership of the car was found registered in the name of the present applicant.

3. Learned counsel for present accused/applicant states that applicant has clean antecedents and he has been falsely implicated in the instant case. It is argued that neither the applicant was in contact with the any of the accused persons, nor anything was recovered from his possession. It is stated that as far as allegations regarding escorting the vehicle are concerned, the phone location of present applicant and the distance between him and co-accused Shehzeb, who was in the vehicle, would reveal that applicant could have not escorted the truck. It is also stated that there is no evidence on record to show that applicant had escorted the truck carrying contraband from Odisha to Delhi.

4. Per contra, learned APP for the State submits that all the mandatory provisions under Sections 42, 50, 55 and 57 of NDPS Act were duly complied with during the investigation of the case. It is stated around 300 kgs of contraband „ganja was recovered in the present case which is a commercial quantity. It is argued that the applicant is a part of syndicate and was in constant touch with accused persons as revealed by the Call Detail Records. It is also stated that informer/truck driver had disclosed the number of one car which was escorting the truck and the said car belongs to the present applicant. It is stated that present case is listed before the Trial Court for framing of charge.

5. I have heard the arguments advanced by both the sides and perused the material available on record.

6. In the present case, 300 kgs of contraband „ganja was recovered which is commercial quantity, thus, bar under Section 37 of NDPS Act is attracted. The well-settled law with respect to embargo under Section 37 for grant of bail has been explained by Hon ble Apex Court in State of Kerala v. Rajesh (2020) 12 SCC 122, wherein it was observed as under:

18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non bailable. It reads thus:

"37. Offences to be cognizable and non bailable - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."

7. It was held by the Hon ble Supreme Court in Union of India v. Prateek Shukla (2021) 5 SCC 430 that the provisions of Section 37 NDPS Act have to be applied strictly at the time of deciding bail application of an accused. In Mohit Aggarwal v. Union of India 2022 SCC OnLine SC 891, the Hon ble Apex Court has observed as under:

"...14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the

accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail."

8. A perusal of record reveals that upon receipt of information, a truck carrying contraband was intercepted and 300 kgs of „ganja i.e. commercial quantity was seized from the same. During investigation, the co-accused Shehzeb who was apprehended at the spot had revealed that his uncle Abrar@Bale had asked him to go to Odisha by hiring truck for transportation of contraband and he was further told by Abrar@Bale that his man Akram@Raju would also accompany him to Odisha in a separate car. It was further revealed that Akram@Raju had arrived in a Renault Quid car with one Mahesh and Sushil i.e. applicant herein, and thereafter Akram @ Raju had taken Shehzeb to a forest in Odisha where contraband was loaded in the truck. The FIR also records that the informer i.e. truck driver had told that one car had been escorting and piloting the truck and accused Shehzeb was in constant touch with the persons who were in the car. The alleged Renault Quid car, bearing no. DL-9C-AS-1936, admittedly, belongs to the present applicant. The Call Detail Records also reveal that the present applicant was in constant contact with Akram @ Raju and Mahesh and prima facie, a link has been shown through Call Detail Records among all the accused persons that they were in contact with each other at the time of commission of offence. There is no explanation regarding the presence of applicant, his car and his location at the place of incident. The applicant is stated to be a part of a syndicate which is involved in transportation of contraband across several states in the country.

9. Considering the seriousness of the allegations and the nature of recovery in the present case, and that charges are yet to be framed in the case, this Court is of the view that no case for grant of bail is made out at this stage.

10. Accordingly, the present bail application stands dismissed.

11. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J FEBRUARY 17, 2023/kss