

Javed Siddiqui vs The State (Govt. Of Nct Of Delhi) on 24 November, 2020

Author: Anu Malhotra

Bench: Anu Malhotra

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IN THE HIGH COURT OF DELHI AT NEW DELHI

BAIL APPLN. 2397/2020

JAVED SIDDIQUI

..... Petitioner

Through: Mr. Kundan Kumar, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for

State with ASI Sudhir Kumar.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 24.11.2020 (through video conferencing) Vide the present application, the applicant seeks grant of bail in relation to the FIR No.140/2018, PS Crime Branch (North) in which the applicant has been arrested for the alleged commission of offences punishable under Sections 20/25/29 of the NDPS Act, 1985 with allegations levelled against the applicant to the effect that 175 Kg. of ganja, a commercial quantity was being transported in his vehicle i.e. truck bearing No.UP74T 4877 and that as stated through the status report dated 23.11.2020, the applicant's brother Mohd. Tahir was arrested at the spot with the said contraband ganja and that Mohd. Tahir had disclosed that he used to indulge in trafficking of ganja in truck with his brother and they were earning Rs.500/- per kilogram by illicit trafficking of ganja. Inter alia the status report submitted by the State states to the effect that the other accused Mujibur Rahman arrested in this case had disclosed that he had Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.11.2020 15:34:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

supplied 45Kg ganja to the applicant. The other accused Mujibur Rahman was found using mobile no.9583402047 and the applicant was using mobile no.8181818136 with there being 106 calls between them during the period 01.05.2018 to 17.07.2018 with the date of the alleged commission of offence in the instant case being 26.05.2018.

It has been submitted on behalf of the State that as per the record of the Transport Authority, the applicant is the registered owner of the truck which was being used for transportation of ganja and that the applicant had played an active role in the trafficking of huge quantity of ganja in his truck with it having submitted on behalf of the State that the recovered ganja being of a commercial

quantity, the embargo of Section 37 of the NDPS Act, 1985 would apply.

On behalf of the applicant it has been submitted that in view of the verdict of the Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu in Crl.A.125/2020, a verdict dated 29.10.2020, the disclosure statement recorded under Section 67 of the NDPS Act, 1985 cannot be used as a confessional statement in the trial of an offence under the NDPS Act, 1985 and it has been submitted on behalf of the applicant that pursuant to the alleged disclosure statement made in the instant case, there is no recovery of any kind from the present applicant of any contraband which is a contraband in terms of the NDPS Act, 1985. Inter alia it has been submitted on behalf of the applicant placing reliance on the factum that the State has sought to place on record the disclosure statement of Mohd. Tahir, the brother of the applicant apprehended with the 175 Kg of ganja whilst transporting it in the vehicle belonging to the applicant, that he had procured 175 kg of ganja at the behest of Amit Kumar and Navroj Khan from Odisha Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:25.11.2020 15:34:08 This file is digitally signed by PS to HMJ ANU MALHOTRA.

from one Babali and Neeru and it has been submitted that as per the alleged disclosure statement of the present applicant recorded by the Investigating Agency as late as on 03.08.2018, the applicant herein allegedly purchased 175 kg of ganja from Babali and Neeru and Jatin apparently directly. It has been submitted on behalf of the applicant that even the alleged disclosure statements that the State seeks to place on record are inherently contradictory apart from submitting to the effect that the disclosure statement made by the co-accused persons and the accused herein also in terms of the verdict of the Hon'ble Supreme Court in Tofan Singh (supra) cannot be read in evidence against the applicant. Inter alia reliance is sought to be placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in Bhola Singh Vs. State of Punjab in Crl.A.448/2006 to submit that the requisite presumption under Section 25 NDPS Act, 1985 cannot be drawn in the instant case as there is nothing to indicate that the applicant had knowledge that his vehicle i.e. the truck in question was being used for transportation of commercial quantity of contraband.

On a consideration of the rival submissions that have been made on behalf of either side, taking into account the provisions of Section 25 of the NDPS Act, 1985 and Section 35 thereof, taking into account the variant disclosure statements that have been recorded by the Investigating Agency, without any observations on the merits or demerits of the trial that would take place, at this stage, without the evidence being led on the record, the alleged mens rea of the applicant is yet to be gauged on trial, in the circumstances, it is considered appropriate to release the applicant on bail in the instant case on filing a bail bond of Rs.1 lac with two sureties of the like amount to the satisfaction of the learned trial Court with directions that:

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- he shall not leave the country under any circumstance and intimation to this effect be sent to FRRO;
- he shall keep his mobile phone on at all times;
- he shall drop a pin on the Google map to ensure that his location is available to the Investigating

Officer; • he shall commit no offence during the pendency of the appeal and in the event of there being any FIR/DD Entry/complaint lodged against the applicant, the State shall bring it to the notice of the Court forthwith. The application is disposed of.

ANU MALHOTRA, J NOVEMBER 24, 2020 vm Signature Not Verified Digitally
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