

Lal Chand vs State (Nct Of Delhi) on 20 December, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 1823/2023
LAL CHAND

Throug

versus

STATE (NCT OF DELHI)

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CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

% 20.12.2023

1. By way of the present application under Section 439 of the Code of Criminal Procedure, 1973 [CrPC] the applicant seeks regular bail in case FIR No.273/2022 dated 28.08.2022 registered under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station:

Special Cell, Delhi.

2. As per FIR, secret information was received that the applicant, namely Lal Chand, a big supplier of illegal drugs, was planning to hand over supply a large consignment of illegal drugs in Delhi, and proceed to Haryana thereafter. A raiding party was formed which left for the spot as per the secret information. At around 06:35 PM, the applicant was seen coming with a blue and parrot green backpack, which he handed over to a bystander. Seeing this, the raiding team, at the directions of the sub-

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3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He further submits that investigation has been completed and continued incarceration of the applicant will not serve any purpose. He also submits that the Notice of Section 50 of the NDPS Act served upon the applicant is improper as the word „nearest“ is missing. In this regard he places reliance on a Co- ordinate Bench of this Court in judgment dated 28.03.2023 in BAIL APPLN.1725/2022 titled Mohd. Jabir vs. State of NCT of Delhi and in judgment dated 05.12.2023 in

BAIL APPLN.1156/2023 titled Aabid Khan vs. State Govt. of NCT of Delhi.

4. Notice was issued and the Status Report was called for. Latest Nominal Roll, as per which the conduct of the applicant is „Satisfactory and he is pending trial in one other FIR. was also called from the concerned Jail authorities.

5. Learned APP appearing for the State opposes the application in light of heinousness of the offence and severity of punishment. She submits that the applicant, who is part of a drug syndicate, is inextricably linked to the present offence. She also submits that a co-accused, who is said to be the intended buyer of the recovered contraband, is still to be apprehended. Moreover, presence of the applicant at the spot of crime, makes his role explicit and custodial interrogation of the applicant for unearthing the network quintessential. Lastly, she submits that in light of commercial quantity of contraband being recovered, Section 37 of the NDPS Act, embargo will also apply.

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6. This Court has heard the learned counsel for the applicant and the learned APP for the State and perused the documents on record including the Status Report and the judgments relied on by the counsel(s).

7. Under the circumstances involved herein, this Court has to outset consider the requirement and relevancy of the statutory Notice of Section 50 of the NDPS Act, more so, the same playing an integral part is of prime importance at this stage. As per the settled law, the provisions of Section 50 of the NDPS Act shall only come into operation in case of the bag being searched and not the person of the accused.

8. This is despite the Hon'ble Supreme Court (three-Judge Bench) in S.K. Raju@ Abdul Haque@ Jagga vs. State of West Bengal (2018) 9 SCC 708, while dealing with Section 50 of the NDPS Act, has specifically observed that the same would come into operation even in cases of there being a composite search i.e., both of the bag and of the person of the accused.

9. However, thereafter the Hon'ble Supreme Court (three-Judge Bench) in State of Punjab vs. Baljinder Singh (2019) 10 SCC 473, once again involving Section 50 of the NDPS Act as also dealing with the law laid down by the Hon'ble Supreme Court from time to time, held that the statutory mandate of serving a Notice of Section 50 of the NDPS Act on the accused would be applicable only to the search of the person of the accused and it cannot be extended to the search of bag, conveyance, etc. of the said accused person.

10. Earlier to that, the Hon'ble Supreme Court (three-Judge Bench) in State of Himachal Pradesh vs. Pawan Kumar (2005) 4 SCC 350 held that This is a digitally signed order.

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11. Lately, the Hon'ble Supreme Court has once again recently in *Than Kunwar v. State of Haryana* (2020) 5 SCC 260 (three-Judge Bench) has held as under:-

"22. Having regard to the judgment by the three-Judge Bench, which directly dealt with this issue, viz., the correctness of the view in *Dilip* (supra) reliance placed by the appellant on para 16 may not be available. As already noticed, we are not oblivious of the observation which has been made in the other three-Judge Bench judgment of this Court in *SK. Raju* (supra), which it appears, was not brought to the notice to the Bench which decided the case later in *Baljinder Singh* (supra). We notice however that the later decision draws inspiration from the Constitution Bench decision in *Baldev Singh* (supra). We also notice that this is not a case where anything was recovered on the alleged personal search. The recovery was effected from the bag for which it is settled law that compliance with Section 50 of the Act is not required."

12. Now, advertent to the merits of the case, admittedly, search of both, the bag carried by the co-accused and the person were conducted, and the contraband was recovered from both, the bag and pocket of the person. Thus, in view of the settled law as discussed hereinabove, it is clear that compliance with the provisions of Section 50 of the NDPS Act being not required is not called for.

13. Consequently, being mindful of the aforesaid situation on hand in the present proceedings, the issue qua the impropriety and ambiguity of the Notice under Section 50 of the NDPS Act served upon the applicant herein, does not require adjudication, especially as the said Notice under This is a digitally signed order.

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14. The facts herein disclose that the applicant is very much named in the FIR and a definite role has been attributed to him. Admittedly, he has also been arrested from the very spot of incident as well.

15. Even otherwise, no reasonable cause can be made out or deduced regarding the presence of the applicant on the date and time of the commission of the offence. Also, under the given circumstances the recovery of commercial quantity of the contraband from the applicant cannot be denied. Bearing in mind the aforesaid factor, and in the light of the fact that issuance of Notice of Section 50 of the NDPS Act was not required, its impropriety and ambiguity is insignificant, especially, at this stage, whence this Court is dealing with grant of bail.

16. Lastly, due to the recovery of commercial quantity of the contraband the embargo of Section 37 of the NDPS Act is very much applicable and it is one of the relevant factors for consideration by this Court at the time of granting bail to the applicant at this stage. Actually, the same is an extremely vital factor which is, in fact, sufficient in itself for denying the grant of bail to the applicant at this stage. Reliance is placed upon Narcotics Control Bureau vs. Mohit Agarwal 2022 SCC OnLine SC 891, wherein it is held as under:-

"18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are 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 23/12/2023 at 02:00:23 reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge- sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

17. One of the factors to be considered in a case for grant or refusal of bail is for the Court to look into the nature of the case, the seriousness thereof and the severity of the punishment involved, not to lose sight of the fact that the individual rights and interests has to be counter-balance with that of the rights and interests of the society at large.

18. This is primarily as this Court while granting bail to any accused has not only to take note of but also consider the essential factors laid down by the Hon'ble Supreme Court in Prasanta Kumar Sarkar vs Ashis Chatterjee (2010) 14 SCC 496, State of Uttar Pradesh vs Amaramani Tripathi (2005) 8 SCC 21 and Deepak Yadav vs State of Uttar Pradesh (2022) 8 SCC 559, wherein it has been held as under:-

a. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

- b. nature and gravity of the accusation;
- c. severity of the punishment in the event of conviction;
- d. danger of the accused absconding or fleeing;
- e. character, behaviour, means, position and other special circumstances of the accused;
- f. likelihood of the offence being repeated;
- g. reasonable apprehension of the witnesses being threatened;
- h. danger, of course, of justice being thwarted.

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19. Each of the factors are themselves sufficient for this Court to deny bail to the applicant at this stage.

20. Accordingly, considering the factual matrix and circumstances enumerated hereinabove as well as the legal position as it stands, the present application is dismissed.

21. Needless to say, the observation made, if any, on the merits of the matter are purely for the purposes of adjudicating the present application and shall not be construed as expressions on the merits of the matter.

SAURABH BANERJEE, J DECEMBER 20, 2023/Pt This is a digitally signed order.

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