

(2020) 01 DEL CK 0269

In the Delhi High Court

Case No : Bail Application No. 2566 Of 2019

Ishrar Ahmad @ Pahadi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-01-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 18, 29, 37, 50
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2020) 01 DEL CK 0269

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Vikas Gautam, Amit Ahlawat

Final Decision : Dismissed

Judgement

Rajnish Bhatnagar, J

CRL. M.A. 37877/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

BAIL APPLN. 2566/2019

1. This is an application filed under Section 439 Cr.P.C. for grant of bail to the petitioner in case FIR No. 25/2016 U/s 29 R/w section 18 NDPS Act, registered at Police Station-Special Cell, Delhi.

2. In brief the facts of the case are that an information was received about a drug trafficking interstate racket which used to transport drugs from Nagaland and other North-East States to Punjab via UP and Delhi. On 15.05.2016, a specific information was received that two persons namely Shariyat Ali @ Mulla and Gopal have reached with the contraband kept in a truck No. UP 15 CT 1252 in the area of Nand Nagari, Delhi and that 2-3 receivers have also reached Delhi

who will be receiving the contraband in the evening for further supply to Punjab.

3. On this information, a special team was formed which apprehended 4 accused persons and recovered 9 kg. of contraband (opium) from the possession of accused Sartaz Ali, 15 Kg. of contraband (opium) from the possession of one accused Javed Ahmed @ Raja and 45 Kg. contraband (opium) from behind the seat in driver's cabin i.e. total of 69 Kg. of high quality opium was recovered. During the interrogation accused Shariyat Ali @ Mulla disclosed that one packet out of 45 Kg. is to be delivered to petitioner Ishrar Ahmad who was in constant touch with Shariyat Ali. Thereafter on 17.05.2016 the petitioner was arrested.

4. It is alleged that some important conversations were intercepted on the server between Shariyat Ali , Javed Ahmed and petitioner with the main supplier Nizam. The voice samples matched and the petitioner disclosed that he used to take contraband from the main supplier Nizam through Shariyat Ali @ Mulla.

5. It is submitted by the Ld. counsel for the petitioner that no contraband was recovered and seized from the possession of the petitioner and no contraband was recovered at his instance. He further submitted that the voice calls as relied upon by the prosecution are between petitioner and co-accused Nizam only about deposit of money in the bank account of co-accused Nizam and withdrawal of the same from the bank of co-accused Nizam and there is no talk of supply of drugs in the said conversation. He further urged that there is no evidence about the deposit of money by the petitioner in the bank account of co-accused Nizam and the allegations are only of deposit of Rs. 2,80,000/- in cash and the deposit receipt is not in the hand writing of the petitioner. It is further urged that there is no evidence against the petitioner regarding his involvement in this case. It is submitted that no mobile phone has been recovered from the personal search of the petitioner. It is further urged that the petitioner has been implicated in this case only on the basis of the confessional statement of co-accused. It is further urged that the confessional statement of co-accused is not admissible against the petitioner. The Ld. counsel for the petitioner has relied upon :

(a) Chenna Boyanna Krishna Yadav Vs. State of Maharashtra, 2007 Cr.LJ 782.

(b) Desh Raj Vs. CBI, 2013 (1) RCR 346.

(c) Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence, Crl. Appeal No. 949 of 2018 dated 31.07.2018.

6. The state has filed the status report stating therein that some mobile numbers were on legal interception of persons who were suspected to be involved in drug trafficking i.e. 8473933249 which has been recovered at the time of arrest from Shariyat Ali @ Mulla Ji, mobile No. 8726284545 was recovered at the time of arrest from receiver Javed Ahmed @ Raja, mobile No. 8756347097 was recovered at the time of arrest from the petitioner and mobile No. 8415016400 was of the main supplier Nazir Hussain @ Nizam. It is further stated in the status report that during interception there was conversation

between accused Nazir Hussain @ Nizam who was the main supplier and the petitioner who is the receiver and Shariyat Ali @ Mulla who is the carrier in regard to the deal of 15 Kg. of contraband (opium) in coded language and an amount of Rs. 2,80,000/- was deposited in the account of Nazir Hussain @ Nizam on 09.05.2016. It is further stated that voice samples of the petitioner, Shariyat Ali @ Mulla, Javed Ahmed and Nazir Hussain @ Nizam were found identical in the FSL examination. It is further stated that the CDR of mobile No. 8756347097 which was recovered from the petitioner was separately seized through seizure memo, through which the petitioner was in continuous touch with the main supplier Nazir Hussain @ Nizam and with carrier Shariyat Ali @ Mulla.

7. It is argued by the Ld. APP for the state that the petitioner is a member of interstate syndicate drug cartel. He further stated that apart from the confessional statement of the co-accused there is other evidence also against the petitioner in the form of recorded conversation between the petitioner who is the receiver in this case, carrier Shariyat Ali and the main supplier Nazir Hussain @ Nizam. It is further urged that the deal was in regard to 15 Kg. of high quality opium and in order to get the possession of the contraband the petitioner has deposited a sum of Rs. 2,80,000/- in the account of the main supplier. It is further submitted by the Ld. APP that there is no reasonable ground at this stage, to believe that the petitioner has not committed the offence and there is a bar of section 37 of the NDPS Act.

8. As far as the contention of the Ld. counsel for the petitioner that apart from the confessional statement of the co-accused there is no evidence against the petitioner to connect him with the crime in question, in the instant case, the calls of the petitioner and other co-accused were intercepted and it has come on record that the voice of the petitioner and the co-accused was found to be identical in the FSL examination. The Ld. counsel for the petitioner has drawn the attention during the course of the arguments to the transcript of the intercepted conversation of the petitioner to bring home the point that the conversation between them is totally innocuous and cannot be linked with the crime in question.

9. The perusal of the transcript shows that it was not a simple conversation between the petitioner and co-accused Nazir Hussain @ Nizam. It is not that they were talking about wellbeing of each other or their family members. They were talking in coded language which could only be understood by them and during the course of the arguments, the IO of the case stated that the opium is called as kachcha which finds mentions in the intercepted conversation with the petitioner. The case of the prosecution is that the petitioner has deposited Rs. 2,80,000/- in the account of the main supplier i.e. Nazir Hussain @ Nizam which has been denied by the Ld. counsel for the petitioner and it has also been submitted by the counsel for the petitioner that the deposit receipt is not in the handwriting of the petitioner. In any case, this is not the question to be decided at this stage, even otherwise, the conversation between the petitioner and the

supplier talks about a sum of Rs. 2,80,000/- which was deposited from Shahjahanpur. The prosecution has also filed call record details which shows that the petitioner and the co-accused were in constant touch with each other over a considerable period of time prior to this incident.

10. The transaction details of the account of co-accused Nazir Hussain @ Nizam who according to the prosecution is the main supplier shows that a sum of Rs. 67 Lacs were transferred in his account from Shahjahanpur (UP) during the period 01.01.16 to 15.05.16 which is the place of residence of accused person Shariyat Ali and the petitioner. It has also come in the investigation that the truck number UP 15 CT 1252 was registered in the name of co-accused Shariyat Ali by which the contraband was being transported. It has also been argued by the counsel for the petitioner that in the personal search memo of the petitioner only recovery of notice U/s 50 has been shown and there is no recovery of mobile phone. But it has been stated by the Ld. APP that a separate seizure memo of the mobile phone was prepared which has already been filed with the charge sheet.

11. The petitioner according to the prosecution was using mobile number 8756347097 which was registered in the name of one Keher Singh of Khiri (U.P.) and this number which was in the possession of the petitioner was obtained on some forged ID. Therefore, in these circumstances, it cannot be said that the petitioner has only been arrested on the basis of the confessional statement of co-accused.

12. The judgment Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence (supra) is not applicable to the facts of the case as there are other connecting material against the petitioner apart from the disclosure/confessional statement. The judgment Chenna Boyanna Krishna Yadav Vs. State of Maharashtra (supra) is also not applicable in the facts and circumstances of the present case as in the instant case apart from the recorded conversation there is other material against the petitioner. Further the another judgment Desh Raj Vs. CBI (supra) is also not applicable as the same is differentiable on facts.

13. Looking into the facts and circumstances of the present case, there is no reasonable ground at this stage, to believe that the petitioner has not committed the offence and there is clear bar U/s 37 of the NDPS Act for grant of bail. Therefore, in view of the discussions mentioned hereinabove, the bail application is dismissed.

14. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.