

(2023) 02 DEL CK 0061

In the Delhi High Court

Case No : Bail Application No. 2510 Of 2022

Lal Vedant Nath Shah Deo

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 08-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 201

Code Of Criminal Procedure, 1973 — Section 82, 439

Narcotics Drugs and Psychotropic Substances Act, 1985 — Section 2(vii)(a), 2(xxii)(a),
20, 29, 35, 37, 50, 54, 61, 85

Citation : (2023) 02 DEL CK 0061

Hon'ble Judges : Amit Sharma, J

Bench : Single Bench

**Advocate : Abhir Dutt, Anurag Rawal, Debayan Gangopadhyay, Nandita Rao,
Amit Peswano**

Final Decision : Disposed Of

Judgement

Amit Sharma, J

1. The present application under Section 439 of the Code of Criminal Procedure ('CrPC') filed on behalf of Lal Vedant Nath Shah Deo, the applicant, seeks grant of regular bail in case FIR No. 171/2022 dated 25.03.2022 under Sections 20/29/61/85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') and Section 201 of the Indian Penal Code, 1860 ('IPC'), registered at PS Kotla Mubarakpur.

2. Briefly stated, the facts relevant for adjudication of the present application are as under:

i. On 24.03.2022, secret information was received by Sub-Inspector Gajendra Singh posted at PS Kotla Mubarakpur that a person who was stated to be actively involved in peddling drugs would arrive at Kidwai Nagar to deliver a consignment of drugs. Acting upon the said information, a team of police personnel reached

Nala Pulia, towards Kidwai Nagar, Near Gurjar Chowk, Kotla Mubarakpur, Delhi. At around 11:20 PM, the team spotted a boy who arrived on a grey scooty bearing registration number DL 3SE0Y 7846. The team apprehended him and served a notice under Section 50 of the NDPS Act upon him.

ii. One brown brick wrapped in brown tape was recovered from the right-side pocket of his trouser. The substance in the said packet was tested with a field testing kit and the same was found to be charas. The substance recovered from him weighed 334 grams.

iii. On enquiry, the person who was apprehended revealed his identity as one Raghav Mandal, aged 23 years and a resident of H. No. 114, Savitri Nagar, Malviya Nagar, New Delhi. Subsequently, the present FIR was registered, initially under Sections 20/61/85 of the NDPS Act and Raghav Mandal was arrested on 25.03.2022.

iv. During the course of investigation, Raghav Mandal disclosed that he knew one Himanshu Singh, i.e., the co-accused from the last 7-8 years and that the latter used to allegedly supply charas in Delhi at the instance of the applicant. Raghav Mandal further disclosed that the charas which was recovered from him was also allegedly supplied by Himanshu Singh for delivery to someone in Kidwai Nagar. He stated that he used to get paid about Rs. 500/- to Rs. 1000/- for every delivery.

v. During search, Raghav Mandal's mobile phone of make MIUI, colour metallic, having SIM No. 9958673379 was also recovered.

vi. Based on Raghav Mandal's disclosure, a raid was conducted at the residence of Himanshu Singh but he was not found there. However, after some time, he surrendered before the police and was arrested in the present case on 25.03.2022. At the time of surrender, Himanshu Singh also produced his mobile phone of make OnePlus, colour green having two SIM cards bearing numbers 8851795202 and 7703029094. When the said phone was checked, it was allegedly found to have been intentionally formatted by the applicant before his surrender.

vii. During interrogation, Himanshu Singh disclosed that the applicant was his classmate and he allegedly used to purchase charas and other narcotic substances from online sources and used to sell them at higher rates in Delhi and Noida. It was further disclosed that Himanshu Singh also got involved with the said activity with the applicant and used to pay him for the charas and other narcotic substances via PayTM or cash. Himanshu Singh further stated that his PayTM account is linked with his mobile number 8851795202 and the applicant's PayTM account is linked with the mobile number 7982583347.

viii. The applicant also disclosed that Raghav Mandal, who was arrested earlier had also started supplying drugs at his instance only and that the recovered charas was also supplied to the applicant by Lal Vedant Nath Shah Deo and the

applicant handed it over to Raghav Mandal for delivery.

ix. Based on Himanshu Singh's disclosure, a team of police personnel reached the stated address of the applicant - Flat No. 101, First Floor, Tower A, Provview Techno City Apartments, Sector CHI-FI, Greater Noida, Uttar Pradesh. The said address was found locked. Non-Bailable Warrant ('NBW') was issued against the applicant, however, the same could not be executed. Proceedings under Section 82 of the CrPC were issued against him on 27.04.2022 by the learned Special Judge (NDPS Act), Saket for his production on 05.07.2022. The applicant surrendered on 26.05.2022.

3. The present FIR was initially registered against Raghav Mandal on 25.03.2022 under Sections 20/61/85 of the NDPS Act. Subsequently, a chargesheet was filed on 20.05.2022 under Section 20/61/85/29 of the NDPS Act, arraying Himanshu Singh as accused, in addition to Raghav Mandal. The applicant was chargesheeted by way of a supplementary chargesheet filed on 23.05.2022.

4. Learned counsel appearing on behalf of the applicant submitted that the applicant has been in judicial custody since 26.05.2022. The investigation in the present case is complete and the chargesheet stands filed. It was further submitted that the applicant was not initially named in the FIR, nor was he apprehended from the spot where the raid was initially conducted. No recovery of any incriminating material has been effected from him either. Nevertheless, it was pointed out that the recovery effected from co-accused Raghav Mandal in the present case is of an intermediate quantity and therefore, the rigors of Section 37 of the NDPS Act will not be applicable.

5. It was further submitted that the presumptions contained in Section 35 and 54 of the NDPS Act come into play only in cases where there is conscious and intelligible possession and the law in that regard is well settled to that the presumptions do not apply when no contraband has been recovered from the accused. It was submitted that since no recovery has been effected from the applicant, Sections 35 and 54 of the NDPS Act will not apply in the present case.

6. Learned counsel submitted that the only allegations against the applicant are based on the disclosures of co-accused Himanshu Singh and Raghav Mandal and the same cannot be used against the applicant.

7. Learned Additional Standing Counsel (Criminal) ('ASC') appearing on behalf of the State has placed on record, a status report dated 16.09.2022, authored by Inspector Vinay Kumar Tyagi, SHO PS Kotla Mubarakpur, wherein it has been stated that a notice was sent to PayTM to provide the details and statements of the accounts linked with mobile numbers 8851795202 and 798253347. The required details were provided by PayTM and a perusal of the reply received showed that Himanshu Singh had credited a total sum of Rs. 4,70,390/- (Rupees Four Lakh Seventy Thousand Three Hundred and Ninety) between 25.06.2021 and 22.03.2022 to the account of the applicant. It was also found that a total sum of Rs. 28,03,561.11/- (Rupees Twenty-Eight Lakh Three Thousand Five

Hundred and Sixty-One Rupees and Eleven Paise) was credited to the account of the applicant between 29.04.2021 to 24.03.2022. It was submitted that there was no plausible reason for college students to carry out transactions of the stated amounts and this pointed to their involvement in the alleged offences.

8. Learned ASC submitted that the applicant was absconding and proceedings under Section 82 of the CrPC were initiated against him, before he finally surrendered on 26.05.2022. It was further submitted that in attempt to destroy evidence, the applicant had formatted his phone and thus, Section 201 of the IPC was also invoked for causing disappearance of evidence.

9. In rebuttal, learned counsel appearing on behalf of the applicant submitted that the alleged PayTM transaction, in itself, is not sufficient evidence to hold the applicant liable. As far as the alleged calls between the applicant and the other co-accused are concerned, it was submitted that since they studied at the same college, such calls do not point towards their involvement in the commission of the alleged offences. It was further submitted that the veracity and purpose of the said transactions and the relevance of the Call Detail Records are all matters to be adjudicated upon by the learned Trial Court and are not sufficient grounds for denial of bail at this stage.

10. As far as his abscondence is concerned, learned counsel submitted that the applicant's application for grant of anticipatory bail was dismissed by the learned trial Court vide order dated 23.04.2022. Thereafter, he filed an application seeking anticipatory bail before this Court, which was dismissed as withdrawn, vide order dated 09.05.2022. In view thereof, it was submitted that the applicant surrendered on 26.05.2022, after exhausting his legal remedies in terms of anticipatory bail applications.

11. Heard learned counsel for the parties.

12. As per the notification being S.O. 1055(E) dated 19.10.2001 published in the Gazette of India, Extra, Pt. II, Sec. 3(ii) issued in the exercise of powers contained in Section 2(vii)(a) and Section 2(xxii)(a), the commercial quantity of charas (cannabis) is 1 kg. The present case relates to a recovery of 334 grams of charas which is admittedly an intermediate quantity and therefore, the rigors of Section 37 of the NDPS Act would not be applicable to the facts of the present case. The present applicant has been chargesheeted in the present FIR on the basis of disclosure statements of Raghav Mandal and Himanshu Singh and no recovery has been effected from him.

13. Learned ASC also strenuously relied upon the fact that total sum of Rs. Rs. 4,70,390/- (Rupees Four Lakh Seventy Thousand Three Hundred and Ninety) was credited into the PayTM account of the applicant by Himanshu Singh and that a total sum of Rs. 28,03,561.11/- (Rupees Twenty-Eight Lakh Three Thousand Five Hundred and Sixty-One Rupees and Eleven Paise) was credited to the account of the applicant. In that regard, it is argued that the said transaction shows that the present applicant was involved in buying and selling drugs, as

there is no plausible reason for a college student to carry out such transactions. It is pertinent to note that there is no evidence on record to indicate that the transaction, as mentioned above relates to the recovery in the present case or to any other offence of a similar nature under the NDPS Act. In absence of any evidence, it cannot be presumed that the said transactions related to the present recovery. Admittedly, the present applicant is not involved in any other offence punishable under the NDPS Act.

14. Since, as aforesaid, the rigors of Section 37 of the NDPS Act will not be applicable in the present case, the present application for bail should be considered as per general principles of law that hold the field regarding the law on bail, as laid down by judicial precedents, from time to time.

15. The Hon'ble Supreme Court, in Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40 has held as under:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

16. As discussed above, no recovery has been effected from the present applicant and chargesheet stands filed, the applicant is not required for any further investigation. The applicant is a young 23 year old student, studying law at Amity University. He has been in judicial custody since 26.05.2022. No useful purpose will be served by keeping the applicant in custody any further.

17. In view of the facts and circumstances of the present case, the application is allowed.

18. The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 50,000/- alongwith two sureties of like amount to the satisfaction of the learned trial Court/Link Court, further subject to the following conditions:

i. The memo of parties shows that the applicant is residing at Flat No. A-101, Provieu Techno City Apartment, Sector Chi-5, Greater Noida, Uttar Pradesh. In case of any change of address, the applicant is directed to inform the same to the learned Trial Court and the Investigating Officer.

ii. The applicant shall not leave India without the prior permission of the learned Trial Court.

iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.

iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witnesses in any manner.

v. The applicant shall join the investigation, as and when required by the Investigating Officer.

vi. In case it is established that the applicant tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.

19. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.

20. The application stands disposed of along with all the pending application(s), if any.

21. Let a copy of this order be communicated to the concerned Jail Superintendent.