

(2003) 08 DEL CK 0092
In the Delhi High Court
Case No : Criminal M. (M) No. 913 of 2003

Md. Ahshan

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439, 482

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 2, 20, 42, 50

Citation : (2004) 112 DLT 207 : (2003) 71 DRJ 552 : (2004) 1 JCC 13

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Rakesh Kumar, for the Appellant; Sunil Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Agarwal, J.—By this petition under Sections 439/482, Cr.P.C., petitioner is seeking bail in case FIR No.276/2002 u/s 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act"), P.S. Patel Nagar.

2. Prosecution allegations in brief are that on the night of 7/8th June, 2002, on receipt of information, police reached house No.B-404, Pandav Nagar, Delhi and recovered two bags from the petitioner and co-accused Irfan. These bags were found to contain 34 kgs. of ganja, which is a commercial quantity. After investigation challan has been filed, cognizance has been taken and the matter is pending trial. Learned counsel for petitioner argued that the petitioner has been falsely involved in the case and that mandatory provisions of Sections 42 and 50 of the NDPS Act have not been followed. Learned counsel further argued that the samples were tampered with. In support of his submissions, learned counsel argued that the parcels were sent to FSL Laboratory by the police vide letter dated 8.8.2002 and they were received on the same date. Learned counsel for the petitioner referring to the report No.FSL 2002/C-1994 Bio No.550/2002 dated 31.10.2002 of the Biological Division and the letter dated 15.11.2002 written by the Senior Scientific Officer to the police enclosing the biological report and the

result of the Chemical examination argued that the samples could not be sealed, with the seal "DS". To say the least this cannot be appreciated at this stage. The detailed evaluation of argument at this state may prejudice either the prosecution or the defense during the trial.

3. Learned counsel referring to sub-clause (3) of Section 2 of the NDPS Act defining ganja argued that seeds and leaves are expressly excluded. Learned counsel also referred to the textbook "Economic Botany in the Tropics" by K.C.Kochhar (pages 33 and 311) argued that the opinion of the Chemical Analyst to the effect that "on Chemical examination, exhibits "1", "2" & "3" gave positive tests for Tetrahydrocannabinol which is main constituents of Cannabis Plant" cannot be accepted to show that it was ganja and at best it would be bhang. Reliance is placed on the judgment of the Rajasthan High Court in *Severam v. The State* (1993) CCR 763. Learned APP for the State argued to the contrary.

4. The issues being raised by the petitioner are the questions of fact which can be appreciated only after evidence is recorded and not otherwise. As of now, the FSL report cannot be ignored.

5. In view of the above, no case for bail is made out. Dismissed.