

(2022) 04 DEL CK 0098

In the Delhi High Court

Case No : Bail Application No. 3463 Of 2021, Criminal Miscellaneous Application
No. 14856 Of 2021

Mohd. Akil

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 29, 37, 42, 50

Citation : (2022) 04 DEL CK 0098

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Kundan Kumar, Rajni Gupta

Final Decision : Disposed Of

Judgement

Rajnish Bhatnagar, J

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No. 124/2017 under Sections 21/29 NDPS Act registered at Police Station Crime Branch (West), Delhi.

2. In brief the facts of the case are that on 27/07/2017, SI Vinod Kumar of Narcotics Cell, Crime Branch received secret information that two persons namely Nabi Alam @ Abbas and Md. Akil (present petitioner) both R/o Badaiyun, UP, are engaged in the supply of Heroin in Delhi and they would be coming at Red Light, Chanakya Place, near transformer, on the road leading towards Uttam Nagar, Delhi between 02:00 PM to 02:30 PM for delivery of Heroin. The secret information was conveyed to the Inspector and ACP/N.Cell, Crime Branch and reduced into writing vide DD No. 12 dated 27/07/2017 and complied with the mandates of Section 42 NDPS Act. Thereafter, a raiding team was constituted and trap was laid near Red Light, Chankya Place, Uttam Nagar, Delhi. At about 02:30 PM, two persons, namely Nabi Alam @ Abbas and Md. Akil (present petitioner), were apprehended at the instance of the secret informer. Notices

under Section 50 NDPS Act were duly served upon them and they were made aware about their legal rights but both the persons refused to avail their legal rights i.e. to be searched before any Gazetted Officer or Magistrate. Therefore, cursory search of Nabi Alam @ Abbas was conducted first during which 250 grams Heroin was recovered from the pant worn by him, while 50 grams Heroin was recovered from the pant of the present petitioner. The recovered Heroin was seized after taking out samples as per due process and FIR No. 124/17, under Section 21/29 NDPS Act was registered at PS Crime Branch and investigation was entrusted to Inspector RajniKant Sharma, who arrested the present petitioner and the co-accused.

3. I have heard learned counsel for the petitioner and learned APP for the State and perused the status report filed on behalf of the State.

4. It is submitted by counsel for petitioner that petitioner is in JC since 27.07.2017. It is further submitted that quantity recovered from the petitioner is intermediate quantity and not commercial quantity so, the rigors of Section 37 NDPS Act is not applicable. It is further submitted that the petitioner was arrested on the disclosure statement of the co-accused and has been falsely implicated. It is further submitted that petitioner has deep roots in the society and has family to support. Learned counsel for the petitioner further submitted that as per the allegations in the complaint, the element of conspiracy with the other co-accused person is missing. He further submits that chargesheet has been filed and petitioner is no more required for the investigation purposes. It is also submitted that petitioner is not involved in any other case except the present FIR.

5. Learned counsel for the petitioner has placed reliance on the following judgments:-

i. Arvind Kumar Saxena Vs. State of NCT of Delhi, High Court of Delhi on 14.03.2018, Bail Application No. 2238/2017.

ii. Raju Diwakar @ Pappu Vs. State, High Court of Delhi on 13.02.2020, Bail Application No. 44/2020.

iii. Amar Singh RamjiBhai Barot Vs. State of Gujarat, Supreme Court of India on 19.09.2005, Criminal Appeal No. 1218 of 2005.

iv. Toofan Singh Vs. State of Tamil Nadu, Supreme Court of India, Criminal Appeal No. 152/2013 dated 29.10.2020.

6. On the other hand, learned APP has argued on the lines of status report and while opposing the present bail application submitted that allegations against the petitioner are serious in nature. It is further submitted by learned APP that contraband of commercial quantity has been recovered from both the accused persons. It is further submitted that chargesheet has been filed and 7 PW's have been examined and trial is almost half completed, also he may indulge in crime of similar nature if granted bail. It is further submitted that if bail is granted to

the petitioner at this stage it may hamper the trial and petitioner may flee from justice. It is further submitted by the learned APP that regular bail application of co-accused has already been dismissed by Delhi High Court vide order dated 06.07.2021.

7. In the instant case, the investigation has been completed and the chargesheet has been filed. Moreover, no recovery is to be effected from the petitioner and he is no longer required for investigation purposes. The trial would take a long time to conclude and no fruitful purpose would be served by keeping him detained in prison. Bail application of co-accused was dismissed on the ground that there was a recovery of commercial quantity and there was the bar of Section 37 NDPS Act but as far as the present petitioner is concerned there is a recovery of 50 grams of heroin which is an intermediate quantity, nothing has been brought on record to show that he has bad antecedents.

8. Therefore, in view of the submissions mentioned hereinabove and considering the period of incarceration as the petitioner is in JC since 27.07.2017 and the fact that recovery was of intermediate quantity, the bail application stands allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of concerned trial court subject to the following conditions:

(i) The petitioner shall provide his mobile phone number to the Investigating Officer (IO) concerned – at the time of release, which shall be kept in working condition at all times. The petitioner shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail;

(ii) The petitioner shall provide his residential address to the Investigating Officer (IO) concerned – at the time of release. The petitioner shall not change the same without prior intimation to the IO concerned, during the period of bail;

(iii) The petitioner shall mark his attendance to the SHO/IO concerned and keep him informed of his whereabouts every Friday between 11:00 A.M. to 11:30 A.M. and between 5:00 P.M. to 6:00 P.M. through video call and if a video call is not possible, he may send SMS apropos his whereabouts, as well as “drop-a-pin” on location app to indicate his location. The IO’s telephone number shall be provided to the learned counsel for the petitioner;

(iv) The petitioner shall not leave the NCT of Delhi without the prior permission of the concerned trial court;

(v) The petitioner shall not indulge in any criminal activity during the bail period.

9. The bail application stands disposed of in the aforesaid terms. Pending applications, if any, are also disposed of accordingly.

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

11. Copy of this order be electronically transmitted to Jail Authorities as well as

the concerned Trial Court.