

(2023) 07 DEL CK 0217
In the Delhi High Court
Case No : Bail Application No. 445 Of 2023

Mumtaz

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Constitution of India, 1950 — Article 227
Code Of Criminal Procedure, 1973 — Section 82, 482
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21, 25, 29, 37

Citation : (2023) 07 DEL CK 0217

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Ravi Tikania, Shivendra Singh, Bikram Dwivedi, Amit Ahlawat

Final Decision : Dismissed

Judgement

Rajnish Bhatnagar, J

1. The present bail application has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No. 268/2022 under Sections 21/25/29 NDPS Act registered at Police Station Crime Branch, Delhi.

2. Briefly stated, the facts of the case are that on 19.11.2022, on the basis of a secret information, a raiding party was formed and accused Nazruddin was apprehended from UCMS, Gate No. 2, inside GTB Hospital, Delhi at about 04:25 p.m. Notice U/s 50 NDPS Act was served upon him but he declined the offer to be searched in the presence of a Gazetted officer or Magistrate and after compliance of provisions of NDPS Act, search of accused Nazruddin was taken and during his search, 301 grams heroin was recovered from his possession. Accordingly, the present FIR was registered at PS Crime Branch, Delhi.

3. During investigation, IO/SI Sudhir Kumar arrested accused Nazruddin in the present case and he disclosed that he had procured the recovered contraband from one Bazi R/o Mandsaur, MP. Further on 22.11.2022, at the instance of

accused Nazruddin, 600 gram heroin was recovered from his house. In his disclosure statement accused Nazruddin disclosed that after procuring heroin from Bazi, he supplies heroin to Bharti, Sumit and Mumtaz (petitioner herein). He further disclosed the mobile number of petitioner Mumtaz as 7579740805 which was also saved in the mobile phone of accused Nazruddin as "M.1" and he also disclosed that he used to talk to petitioner Mumtaz only on Whatsapp call regarding the supply of Heroin.

4. Accused Nazruddin led the police to the house of petitioner at Jhuggi, Shashi Garden, Trilok Puri, Delhi and also at 19-20, Block Kalyanpuri, Delhi but the house was found locked and she was not found there. During investigation of the case, three notices U/s 67 NDPS Act were affixed on both the said addresses of the petitioner to join the investigation but she failed to join the investigation and she also switched off her mobile phone to avoid her interrogation and kept on absconding.

5. On 05.12.2022, NBW was obtained against the petitioner and efforts were made to arrest her but she was not found at her addresses, therefore, NBW could not be executed. Thereafter, proclamation U/s 82 Cr.P.C. had been obtained against the petitioner.

6. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report and also perused the records of this case.

7. It is submitted by the Ld. counsel for the petitioner that the petitioner is being involved in this case on the basis of false and fabricated disclosure statement of co-accused Nazruddin. He further submitted that the petitioner has no nexus with the recovery of alleged contraband from the possession of co-accused Nazruddin and there is not even an iota of evidence against the petitioner in this regard. It is further submitted by the Ld. counsel for the petitioner that the mandatory provisions of NDPS Act have not been complied with. He further submitted that the petitioner never absconded and the NBWs and the subsequent proceedings were undertaken without any basis as the petitioner was always available at her address and ready to join the investigation.

8. On the other hand, Ld. APP for the State has vehemently opposed the bail application and at the outset it is contended that the proceedings U/s 82 Cr.P.C. have already been initiated against the petitioner. It is further submitted by the Ld. APP that this case involves commercial quantity as 901 Grams of Heroin was recovered from the possession of co-accused and he has disclosed that the contraband was to be supplied to the petitioner and he was also in constant touch with the petitioner through mobile phone. He further submitted that there is enough evidence against the petitioner and the petitioner was having a mobile No. 7579740805 which was saved by the co-accused Nazruddin as "M.1" in his mobile phone.

9. As per the case of the prosecution, the mobile No. 7579740805 was saved as "M.1" by co-accused Nazruddin in his mobile phone. The above number is in the

name of one Avad Hussain whose statement was recorded and he had stated that he was not aware as to who had purchased the above SIM in his name. During investigation, the connectivity of the phone No. 7579740805 was analyzed and after CDR analysis, it came to notice that one number 7678647343 having ownership of Aasif S/o Yunus R/o 274 Gurjar Bhawan, Mayur Vihar Phase-I Delhi was found to be the most connected number. Statement of Aasif was recorded and he stated that the above mentioned number 7579740805 has been saved as Baji and when enquired about Baji, he stated that he has another phone number 9654908050 saved as Parwej Kaliyad Puri in his mobile phone and both the numbers were being used by "Mumtaz". The said Parwej is the husband of petitioner Mumtaz. Therefore, petitioner cannot say that prima facie there is no evidence against her.

10. During investigation, it has come on record that the petitioner was in constant touch with co-accused person from whom recovery of commercial quantity of Heroin has been effected. Proceedings U/s 82 Cr.P.C have already been initiated against the petitioner. The quantity of the contraband involved is a commercial quantity, therefore, rigors of Section 37 NDPS Act applies. No ground for bail is made out, the bail application is, therefore, dismissed.

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