
(2019) 01 DEL CK 0173

In the Delhi High Court

Case No : Bail Application No. 2292 Of 2018

Narotam Pradhan

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 18-01-2019

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20, 25, 29, 37

Citation : (2019) 257 DLT 37 : (2019) 3 AD(Delhi) 540

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Kundan Kumar, Meenakshi Dahiya

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J

1. Petitioner seeks regular bail in FIR No. 140/2018 under Sections 20, 25, 29 of the NDPS Act registered at Police Station Crime Branch.
2. Allegations in the FIR are that secret information was received that one person would be bringing a truck load of ganja for supply in Delhi. A raiding party was prepared. At the designated spot, one truck was found. When the truck was intercepted by the raiding party, 175 Kgs of ganja was found.
3. The role ascribed to the petitioner is that petitioner had facilitated the transaction between the supplier and the buyer. As per the prosecution the co accused has disclosed that the petitioner had facilitated the transaction and that the amount for purchase of the ganja was deposited in the account in the name of one Prasanna Kumar Behera. The account details were allegedly provided by the petitioner.
4. Learned counsel for the petitioner submits that petitioner has been falsely implicated. He submits that apart from the mere disclosure statement of the co accused and the alleged confessional statement of the petitioner, there is no

evidence to connect the petitioner with the subject offence.

5. Learned counsel submits that the prosecution has not been able to establish any connection between the petitioner and the subject account in which the money was deposited. He further submits that no connection has been found between the petitioner and the other co accused. The prosecution has not been able to establish any telephonic conversation between the petitioner and the other co accused.

6. Learned counsel relies on the judgment of the Supreme Court in Surinder Kumar Khanna vs. Directorate of Revenue Intelligence, 2018 8 SC 271 to contend that mere confessional statement or a disclosure statement cannot be taken as a substantive piece of evidence.

7. Fresh status report has been filed. Same is taken on record.

8. The Status report filed by the prosecution on record ascribing a role to the petitioner is based on the alleged disclosure statement of the co accused and disclosure statement of the petitioner. Apart from the confessional and disclosure statement, there is no material to connect the petitioner with the account in which the money has been deposited or with the subject offence.

9. The Supreme Court in Surinder Kumar Khanna (Supra) has held that a confessional statement of a co accused cannot by itself be taken as a substantive piece of evidence against another co accused and can at best be used or utilized to lend assurance to the Court and in the absence of any substantive evidence it would be inappropriate to base the conviction solely on the statement of a co accused.

10. The Court has to first examine the material collected by the prosecution to form an opinion and as to whether there is any incriminating material against the petitioner or not. Only once the Court, based on independent material, is of the view that material collected is incriminating and establishes the role of the accused, the Court can then look at the confessional statement to lend assurance to the Court that the opinion formed is correct.

11. Admittedly no recovery has been made from the petitioner. Further even as per the prosecution the confessional/disclosure statement of either the petitioner or the co accused has not led to the recovery of any incriminating material. Accordingly, at the present stage there are missing links between the petitioner and the commission of the subject offence.

12. Petitioner has been in custody since 08.08.2018 and investigation is complete and chargesheet has already been filed.

13. I am prima facie of the view that petitioner satisfies the exceptions carved out by Section 37 of the NDPS Act and there are reasonable grounds to believe that petitioner is not guilty of the subject offence. Further it is not the case of the prosecution that any material has been found to show that petitioner is earlier

involved in any such activity or is shown to be involved in any case of similar nature. Accordingly, it cannot be held that there is likelihood of the petitioner committing any offence while on bail.

14. In view of the above and on perusal of the record, I am satisfied that petitioner has made out a case for grant of regular bail.

15. Accordingly, on petitioner furnishing a bail bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Trial Court. Petitioner shall be released on bail, if not required in any other case. Petitioner shall not do anything which may prejudice either the trial or the prosecution witnesses. Petitioner shall not leave the country without the permission of the Trial Court

16. The petition is allowed in the above terms.

17. Order Dasti under signatures of the Court Master.