

(2022) 04 DEL CK 0129
In the Delhi High Court
Case No : Bail Application No. 1941 Of 2021

Ravi Thakur

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 04-04-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20, 25, 29, 37, 37(1)
(b), 50

Citation : (2022) 04 DEL CK 0129

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : Nikhil Tyagi, Atul Agarwal, Rakesh Kumar Khare, Amit Chadha

Final Decision : Dismissed

Judgement

Subramonium Prasad, J

1. This petition has been filed under Section 439 Cr.P.C. seeking bail in FIR No. 368/2020 dated 24.10.2020 registered at P.S. Timarpur under Sections 20/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter, "NDPS Act").

2. The facts, in brief, leading up to the filing of both the petitions are as follows:

a) It is stated that information was received that one Ravi, Harbir and Sachin were supplying ganja in huge quantities at different places in Delhi and Uttar Pradesh by bringing it in from Malkangiri, Orissa. As per the information, on 24.10.2020, a supply of ganja would be brought between 5 to 6 P.M. in a white colour Mahindra Xylo driven by Harbir to Outer Ring Road from ISBT Kashmere Gate to Timarpur Nirmal Hriday near Wazirabad Flyover, Delhi.

b) It is stated that consequent to the secret information received, a raiding party was constituted and they reached at 4:35 P.M. at the Outer Ring Road Nirmal Hriday near Wazirabad Flyover, Delhi. At 5:00 P.M., a Mahindra Xylo car stopped

on the road going to Timarpur and two boys emerged from the said vehicle. After looking around, the two boys re-entered the vehicle. It was noticed by the police officials that a person was sitting on the driver's seat and on the seat beside him, a white coloured sacked was kept.

c) At this juncture, it is stated that the two persons were confined by the raiding party and it was found that the person sitting at the driver's seat was Harveer Giri and the person sitting at the back seat was one Ravi Thakur (the Petitioner herein). Both the apprehended persons were read their rights and they recorded their refusal for getting searched by a Gazetted Officer or a Magistrate under Section 50 of the NDPS Act.

d) Both Harveer Giri and Ravi Thakur (Petitioner herein) were searched and nothing was recovered from them. The white-coloured sack was retrieved from the car and another white-coloured heavy sack was found from the car. When these sacks were checked, total ten packets wrapped with khaki brown cello tape were found and they contained a stinky, damp green substance, which turned out to be ganja. The total weight of all the ten packets was 51.154 kg.

e) Consequently, the instant FIR was registered alleging that Harveer Giri and the Petitioner herein, in connivance with each other, intended to supply a total of 51.154 kg worth of ganja and had, therefore, committed offences under Sections 20/25/29 of the NDPS Act.

f) The Petitioner herein was arrested on 25.10.2020 and had filed a bail application which was dismissed by the Ld. Sessions Judge vide Order dated 28.11.2020. Chargesheet under Sections 20/29 of the NDPS Act was filed on 05.02.2021 against the Petitioner herein.

3. Mr. Nikhil Tyagi, the learned Counsel for the Petitioner, submits that the Petitioner herein has been falsely implicated in the instant matter and has never had anything to do with the selling of drugs. He submits that the date of the arrest of the Petitioner has been incorrectly indicated in the official records and that he was arrested one day prior to the incident as a result of which he was not produced before the Ld. Magistrate within 24 hours of being arrested.

4. The learned Counsel for the Petitioner argues that the requirements as provided under Section 50 of the NDPS Act have not been fulfilled by the State and that as a result, the instant case against the Petitioner stands vitiated. He states that any recovery from the person or the car/house of the accused requires Section 50 of the NDPS Act to be complied with. He further states that a perusal of the CDR provided with the chargesheet reveals that the CDR is only available till 22.10.2020 and that the CDR post the said date has not been supplied. Mr. Tyagi submits that if the CDR of the Petitioner for the dates of 23.10.2020 and 24.10.2020 are placed on record, it would reveal to this Court that the prosecution's version of the Petitioner being caught on 24.10.2020 with ganja will be found to be false.

5. Mr. Tyagi submits that the Petitioner is the sole bread winner of the family and has only been in contact with co-accused Harveer Giri on account of working at a car mechanic shop. He states that the case against the Petitioner has been falsely instituted and that the Petitioner has never been involved in the supply of drugs. He further submits to this Court that co-accused Satender Singh @ Sachin is out on bail. He, therefore, prays for regular bail on behalf of the Petitioner.

6. Per contra, Mr. Amit Chadha, learned APP for the State, vehemently opposes the instant bail application on the ground that the quantity of ganja that has been recovered is inordinate and that the Petitioner's custody is necessary to uncover the well-oiled machinery of supplying of drugs. He states that the Petitioner has categorically disclosed that he had been involved in the transport of ganja with the aid of one Satender Singh @ Sachin and would supply the same to a local drug peddler at Majnu Ka Tila, Delhi.

7. Mr. Chadha informs this Court that the said Satender Singh @ Sachin was apprehended from his house at the instance of the Petitioner and that during interrogation, he had revealed that he had purchased 235 kgs of ganja from one Sonu of Raipur, Chhattisgarh. Relying upon the CDRs placed before this Court, the learned APP submits that the same establishes the fact that the Petitioner was in contact with Satender Singh @ Sachin till the very moment of being apprehended by the raiding party.

8. The learned APP further argues that the Petitioner has committed a serious crime of supplying drugs and that the same is a menace to society. He states that the Petitioner played an important role and that the recovery of 51.154 kgs of ganja has activated the bar under Section 37 of the NDPS Act. He states that there is a high probability of the Petitioner committing the same crime again as well as absconding, and therefore, the instant bail application filed by the Petitioner is liable to be dismissed.

9. Heard Mr. Nikhil Tyagi, learned Counsel for the Petitioner, Mr. Amit Chadha, learned APP for the State, and perused the material on record.

10. When the bail application came up for hearing on 03.06.2021, it was contended by Mr. Tyagi that this Court should peruse the CDRs of the Petitioner which would substantiate his contention that he was picked a day prior to the date of arrest. Notice was issued on 03.06.2021 and Status Report was filed along with the CDRs. The Status Report indicates that the Petitioner was telephonically connected with the co-accused Satender Singh @ Sachin on 23.10.2020.

11. A perusal of the chargesheet reveals that the Petitioner had started supplying ganja at the behest of one Satender Singh @ Sachin who was arrested at the instance of the Petitioner. It states that Satender Singh @ Sachin revealed that 250 kgs of ganja had been bought from one Sonu of Raipur, Chhattisgarh and had been delivered by one Hidar in his truck. Satender Singh @ Sachin further disclosed that about 50 kgs of the ganja had been sent to the Petitioner herein

and Harveer Giri, 70 kgs to one Bhola of Ghaziabad, 35 kgs to one Pankaj of Haridwar, 30 kgs to Haidar, and 35 kgs to one Arjun of Muzaffarnagar. Chargesheet further reveals that the CDR of the five accused persons had been accessed and they were found to be connected with each other.

12. It is further contended by Mr. Tyagi that the main accused Satender Singh @ Sachin has been granted bail. The Petitioner herein cannot claim parity with Satender Singh @ Sachin for the simple reason that the Petitioner was apprehended at the spot with 51.154 kgs of ganja which is a commercial quantity.

13. Grant or refusal of bail, in a case involving commercial quantity of contraband substances under the NDPS Act, is governed by Section 37 of the NDPS Act. The same has been reproduced as under:

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

14. A reading of Section 37 of the NDPS Act indicates that while there is no bar as such on grant of bail, however, the same may be granted on when there are reasonable grounds for believing that the accused is not guilty of an offence and that he is not likely to commit any offence when released on bail. In *Collector of Customs v. Ahmadaliev Nodira*, (2004) 3 SCC 549, the Supreme Court discussed the parameters circumscribed by Section 37 of the NDPS Act and observed as under:

"6. As observed by this Court in *Union of India v. Thamisharasi* [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such

offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....." (emphasis supplied)

15. In *Union of India v. Rattan Malik*, (2009) 2 SCC 624, while considering an application for grant of bail under the NDPS Act, the Supreme Court had stated that the Court was not called upon to record a finding of "not guilty", but to see whether there were any reasonable grounds for believing that the accused was not guilty of the offence(s) that he was charged with and further that he was not likely to commit an offence under the said Act while on bail. The relevant portion of the aforementioned judgement reads as follows:

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of subsection (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide *Union of India v. Shiv Shanker Kesari* [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non

for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail." (emphasis supplied)

16. In the instant case, the Petitioner herein was found with two white-coloured sacks that contained a total of 51.145 kgs of ganja which is a commercial quantity. Chargesheet states that the Petitioner's role in the transport/supply of the drugs was not a mere chance, but it was a calculated attempt on the part of the Petitioner to supply the same at Majnu Ka Tila, New Delhi. Furthermore, the co-accused Satinder Singh @ Sachin was apprehended only on the basis of the disclosure of the Petitioner.

17. The deleterious impact of narcotic drugs on society has been elaborated by the Supreme Court time and again in various judgements. In *Gurdev Singh v. State of Punjab*, (2021) 6 SCC 558, the Supreme Court had observed how the menace of drug addiction did not only have the ability to destroy the life of just one individual, but had a debilitating impact on the lives of generations to come. The purpose of the NDPS Act was to curb this menace and deter not only consumption of such substances, but also ensure that the selling of such substances was put to end.

18. With this purpose in mind, this Court is of the opinion that the instant matter is not fit for grant of bail. The huge quantity of ganja found and the fact that the Petitioner had been in constant touch with the other co-accused (as is showcased from the CDR presented to this Court) while hatching the plan to supply these drugs indicates that there is in existence a well-oiled machinery for the supplying and buying of these drugs. There is, therefore, an apprehension that the Petitioner may commit these offences again if granted bail.

19. However, being cognizant of the fact that the Petitioner has been in custody since October 2020 and the trial is moving at a snail's pace, this Court directs Ld. Trial Court to hear and conclude the matter within a period of 6 months from the date of this Order.

20. With the above observations, the instant bail application is dismissed, along with pending application(s), if any.