
(2022) 03 DEL CK 0088
In the Delhi High Court
Case No : Bail Application No. 4293 Of 2021

Vikas Kumar

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 83, 161, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 15, 15(b), 15(c),
19, 24, 27A, 29, 37, 37(b)(i), 37(1)(b)(ii), 37(b)(ii), 61, 85
Indian Penal Code, 1860 — Section 174A

Citation : (2022) 03 DEL CK 0088

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Manish Kumar Chaudhary, Kusum Dhalla

Final Decision : Dismissed

Judgement

Chandra Dhari Singh, J

1. The present application has been preferred under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") for seeking regular bail in FIR bearing No. 27/2019 under Sections 15, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act") registered at Police Station Wazirabad, Delhi.

2. The factual matrix in the instant case, as submitted by the prosecution, is as under:

a. On 5th February 2019, Ct. Robin Malik along with Ct. Kamaljit and Ct. Naushad was on patrolling duty in Wazirabad and at around 6 p.m. while they were near Sangam Vihar roundabout, two persons on a Splendor motorcycle bearing no. DL 8SVL 8959 of black and silver colour were seen with one blackish-grey plastic bag placed in between them, coming from the side of Jagatpur village. The two individuals upon sighting the police party tried to escape by

taking a U-turn and were intercepted by the police officials and asked to show the contents of the plastic katta.

b. The katta was in a sealed condition which upon being torn was found to contain poppy husk. The person driving the motorcycle was identified to be Sunny Sharma and the pillion rider was Vijay Kumar. Information of the chance recovery was transmitted to the Police Station, upon which police team arrived at the spot.

c. The accused were informed of their rights, and the recovered katta was found to weigh 25 kgs, samples were drawn, and the two accused from whose possession intermediate quantity of poppy husk was recovered were arrested.

d. In the course of investigation, the two accused apprehended with the poppy husk, in custody, made disclosure naming the accused-applicant as the source of the contraband and divulged details of the godown situated at Khasra No 1001, Gail No 26, Village Jagatpur, Delhi where the poppy straw was stored by the supplier.

e. In pursuance thereto one raiding team including the SHO, reached at the disclosed address, where two rooms were found locked which were broken open and from one room one weighing machine, one grinding machine, were taken into police possession and from the other room 975.5 Kilograms of Poppy straw was seized which was found lying on the ground and was filled into 39 plastic gunny bags of 25kgs each, samples were drawn and sent to FSL.

f. After investigation of the case, Final Report was submitted in the Hon'ble Court against accused Vijay Kumar and Sunny Sharma. Supplementary chargesheet dated 25th September 2019 was filed in the Court with the FSL Report as well as the statement of the owner of the premises from where commercial quantity of contraband was recovered.

g. As per the statement of Chander Deep, Jyoti being the wife of Vikas had befriended his wife, and were living in the same locality for past two years. Jyoti had asked his wife for taking the premises in question on rent as her husband was in the masala business and needed some place to set up a grinding machine. Due to past acquaintance, he had agreed, and the premises were let out on 1st February 2019 for a monthly rent of Rs.5000/- and that he had to go out of station being a driver by profession due to which the rent agreement had not yet been drawn up.

h. During the course of investigation, the accused Vikas Kumar S/o Sh Ramesh Kumar R/o Village Mubarikhpur, Ward No 9, Tehsil Farrukhnagar, Distt Gurugram, Haryana was declared proclaimed offender in the present case on 7th June 2019. Subsequently, on 20th March 2021, the applicant surrendered in the Hon'ble Court and was arrested after taking necessary permission from the Hon'ble Court.

i. After investigation, supplementary charge sheet qua the Applicant Vikas Kumar under Section 15/29 of the NDPS Act & Section 174A of the IPC was filed in the

concerned Court. On 15th December 2021, charge under Section 15 (b)/15 (c) & 29 of NDPS Act has been framed against the applicant from the Hon'ble Court of Special Judge, NDPS Court, Tees Hazari Courts, Delhi.

3. Mr. Manish Kumar Chaudhary, learned counsel for the Applicant made the following submissions:

a. Firstly, in the present case, the Applicant has no nexus/connection with the alleged offence and there is no incriminating evidence on record against him except disclosure statement of two co-accused and statement of the owner of the houses from where recovery has been made under Section 161 of the Code. Both these pieces of evidence are inadmissible as per law. No recovery at all has been made from the Applicant.

b. Secondly, the Applicant was evading arrest due to false implication in the present case after lodging of FIR and was availing his legal rights and in this process, police got him declared as proclaimed offender after issuance of NBW and initiating proceedings under Section 82/83 of the Code. The Applicant surrendered on his own before Court. It is not the case that the Applicant has been declared PO after misusing the liberty of bail or any concession granted to him.

c. Thirdly, the bail should be granted on the ground of parity with two of the co-accused from whom recovery has been made and have already been granted regular bail. The Applicant is alleged to be tenant in the house from where the alleged recovery was made but no documents in support thereof were placed on record, nor any statement of a neighbour was recorded by police and hence Applicant cannot be even remotely related with alleged offence.

d. Fourthly, the investigation is completed, chargesheet has already been filed and no purpose is served by keeping the Applicant behind bar and Applicant is entitled to grant of regular bail.

e. Lastly, the Applicant has deep social roots in society and has no criminal antecedents at all. The Hon'ble Court may impose strict conditions while granting bail.

4. Ms. Kusum Dhalla, learned APP for State vehemently opposed the instant Bail Application. Learned APP reiterated the contents of the Status Reports dated 3rd January 2022 and 3rd February 2022 and submitted the facts of the prosecution as already mentioned in the foregoing paragraphs.

5. With reference to the confessional statement of the co-accused, it is submitted that the said statement was not statement simpliciter but rather led to the recovery of the large quantity of the contraband from the premises of the Applicant, and thus is admissible.

6. On the ground of parity, it is argued that the other co-accused who were released on bail were caught with intermediate quantities. On the other hand,

the Applicant was in possession of the premises from which the large quantity of the contraband was recovered. These circumstances prima facie establish the role of the Applicant in the said offence.

7. It is further submitted that the Applicant Vikas Kumar had surrendered before the Trial Court on 20th March 2021, and he was arrested in the case after having been declared proclaimed offender, he had refused to participate in the TIP proceedings and the public witnesses being the landlord of the premises and his wife are yet to be examined in the case. Therefore, there is high probability that the applicant might influence the witnesses if enlarged on bail.

8. During the course of arguments, learned APP also placed reliance on the Order dated 22nd July 2021 passed by Special Judge-02, NDPS/ASJ, (Central), THC vide which the Bail Application of the applicant was dismissed:

"That there is no written rent agreement in itself is not sufficient to record the satisfaction in favour of the accused-applicant that the accused has not committed the offence. There is evidence to show that the accused-applicant was in possession of the premises from where commercial quantity of the contraband is recovered, which recovery is occasioned in pursuance to disclosure made by the co-accused apprehended with intermediate quantity of contraband. The case of the accused applicant for grant of bail would not rest on the same footing as the contraband recovered from the premises shown to be in possession of the accused-applicant is commercial in nature and hence the rigours of section 37 of the NDPS Act would be attracted in his case. There is nothing at this stage before the Court to arrive at a satisfaction that the accused-applicant has not committed the offence and is not likely to commit similar offence if released on bail and accordingly the present application is dismissed."

In light of the aforesaid as well as taking into consideration the mandate of the NDPS Act, it is therefore submitted that the applicant is not entitled to bail as being prayed for.

9. Heard learned counsels for the parties and perused the record, specifically the averments made in the Application, the contents of the FIR, and the Status Reports filed by the State.

10. In light of the aforesaid, it is pertinent to refer and analyze the provisions and objective of the NDPS Act. Section 37 of the Act reads 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.

11. In view of the gravity of the consequences of drug trafficking, the offences under the Act have been made cognizable and non-bailable. The Section does not allow granting bail for offences punishable under Section 19 or Section 24 or Section 27A and for offences involving commercial quantity unless the twin conditions prescribed under the Section have been met. The conditions include:

a. hearing the Public Prosecutor; and

b. satisfaction of the Court based on reasonable grounds that the accused is not guilty of the offence and that he is likely to not commit an offence of a similar nature.

12. The fetters on the power to grant bail do not end here, they are over and above the consideration of relevant factors that must be done while considering the question of granting bail. The court also needs to be satisfied before grant of bail about the scheme of Section 439 of the Code. Thus, it is evident that the present section limits the discretion of the court in matters of bail by placing certain additional factors over and above, what has been prescribed under the Code.

13. The contours of Section 37 of the NDPS Act have been analysed by the Hon'ble Supreme Court in the case of Union of India v. Ram Samujh (1999) 9 SCC 429. In this case, the Apex Court was required to adjudge the validity of the order on bail granted by the High Court in a case registered under the Act. The Hon'ble Court extracted the Statement of Objects and Reasons for the introduction of amended Section 37 of the Act through Bill No. 125 of 1988. It is relevant to extract those for the present analysis, which reads as:

"6. The aforesaid section is incorporated to achieve the object as mentioned in the Statement of Objects and Reasons for introducing Bill No. 125 of 1988 thus:

"Even though the major offences are non-bailable by virtue of the level of punishments, on technical grounds, drug offenders were being released on bail. In the light of certain difficulties faced in the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, the need to amend the law to further strengthen it, has been felt."(emphasis supplied)

7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are

dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95 : 1990 SCC (Cri) 65] as under: (SCC p. 104, para 24)

"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."

14. Thus, what is evident from the above is that the offences prescribed under the Act are not only a menace to a particular individual but to the entire society especially, the youth of the country. Such offences have a cascading effect and are in vogue these days, thus destroying the capabilities and lives of a big chunk of the population and trend has been growing over the years. Therefore, in order to prevent the devastating impact on the people of the nation, Parliament in its wisdom deemed it fit to introduce stringent conditions for grant of bail under the Act. The Court has to stay mindful of the legislative intent and mandate of the Act while granting bail in such matters.

15. As far as condition under Section 37(b)(i) is concerned, there is no ambiguity in its interpretation. It is merely a manifestation of the doctrine of *audi alteram partem*. Since the crime is an act against the society, the legislature has contemplated that the Public Prosecutor must be given an opportunity to oppose a Bail Application under the Act. Additionally, under Section 37(b)(ii) of the NDPS Act, the Court is not required to be merely satisfied about the dual conditions i.e., *prima facie* opinion of the innocence of the accused and that the accused will not commit a similar offence while on bail, but the court must have 'reasonable grounds' for such satisfaction.

16. The term 'reasonable grounds' under Section 37(b)(ii) has been interpreted by the Hon'ble Supreme Court in the case of *Union of India v. Shiv Shanker Kesari*, (2007) 7 SCC 798. It was a case where an appeal was preferred against the order granting bail under the NDPS Act by the High Court. The prosecution alleged that the raiding party seized nearly 400 kgs of poppy straw from the

possession of the accused therein. The Special Court rejected the bail while the High Court granted the bail on the ground that the recovery was not from the exclusive possession of the accused but other family members were also involved. The Supreme Court set aside the order granting bail. In this context, it interpreted 'reasonable grounds' under Section 37 of the Act, as under:

"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

17. Thus, the term 'reasonable grounds' is not capable of any rigid definition, but its meaning and scope will be determined based on the surrounding facts and circumstances of each case. What may be reasonable in one set of facts may not be reasonable in another set of facts. However, the standard of satisfaction in such cases is more than mere satisfaction on a prima facie opinion. Thus, the Court before exercising its discretion for granting the bail must record the reasonable grounds before granting bail to the accused.

18. The Hon'ble Supreme Court recently in the case of Union of India v. Md. Nawaz Khan (2021) 10 SCC 100 has reiterated the position of law with respect to Section 37 of the Act. After analysing its previous decisions, the Court prescribed the following test for granting bail under Section 37 of the Act:

"20. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed."

19. Thus, the Court must be conscious about the mischief that is sought to be curbed by the Act and the consequences that might ensue if the person accused of the offence under the Act is released on bail. The Court must be satisfied on the basis of reasonable grounds discernible from the facts and circumstances that the Applicant is not prima facie guilty of offences that the accused is charged with.

20. Additionally, the Court also needs to be satisfied that the person so released will not commit the offence while being on bail. Both the conditions are interlinked because the Parliament in its wisdom, intends that in cases where

there is a possibility of commission of this grave offence under the Act, the person need not be released. It is so because if the person is released, he is most likely to repeat the offence, thus impacting the society at large. Thus, to not give any leeway to the accused, the Court must be satisfied about the dual conditions on reasonable grounds.

21. Considering the backdrop of the facts of the case, the reasoning mentioned hereinabove as well as the large commercial quantity of contraband that has been recovered from the premises, which is under the possession of the Applicant, the gravity of the allegations levelled as well as the serious objections raised by the learned APP to grant of bail to the Applicant, this Court does not find any merit in the instant application. The reasons for the same are mentioned below:

a. firstly, mere absence of a written rent agreement is not enough to discharge the allegations against the applicant rather the factum of the possession of the said premises is sufficient to implicate the applicant in the instant case. This is a property from where, on inputs by the co-accused, a substantially large amount of contraband was received.

b. secondly, as far as the question of parity while granting bail with respect to other co-accused is concerned, the two cannot be treated equally for the reason that there is a big difference in the quantum of the recovery made in their cases respectively – the contraband recovered from the premises shown to be in possession of the accused is commercial in nature and hence the rigours of Section 37 of the NDPS Act are attracted in his case.

c. thirdly, the applicant is stated to have surrendered before the Trial Court on 20th March 2021 and was arrested in the case after having been declared a proclaimed offender.

d. fourthly, he is also stated not to be cooperating with the investigation previously and given the fact that the public witnesses are yet to be examined in the case, the probability of the applicant trying to influence the witnesses cannot be ruled out.

e. lastly, there is nothing on record before this Court to arrive even at a prima facie satisfaction that the applicant had not committed the said offence; nor is there any cogent reason to presume that the applicant is not likely to commit similar offence if released on bail.

Hence, the rigours of Section 37 are not satisfied in the instant case.

22. Therefore, in light of the aforesaid analysis of the provisions of the law, the jurisprudence pertaining thereto, and the relevant rulings of the Hon'ble Supreme Court referred above, this Court is not inclined to allow the instant application.

23. Accordingly, the instant Bail Application stands dismissed.

24. Pending applications, if any, also stand disposed of.
25. The judgment be uploaded on the website forthwith.