Court No. - 14
Case :- BAIL No. - 6782 of 2019
Applicant :- Rajveer Singh
Opposite Party :- Union of India
Counsel for Applicant :- Anil Kumar Sharma,Abhishek Singh Pawar,Alok Yadav,Ashwani Kumar Singh Ratho,Kunwar Sushant Prakash,V.K.Pandey
Counsel for Opposite Party :- Digvijay Nath Dubey

Hon'ble Chandra Dhari Singh,J.

1. Heard Sri I.B. Singh, learned Sr. Advocate assisted by Sri Alok Yadav, learned counsel for the applicant, Sri Digvijay Nath Dubey, learned counsel for the respondent.

2. By means of this application, the applicant, who is involved in Case Crime No. - 02 of 2019, under sections 8/20 of Narcotics Drugs and Psychotropic Substance Act, Police Station - Gomti Nagar, District Lucknow, is seeking enlargement of bail.

3. In nutshell, the facts which led to the prosecution of the accused are that the complainant is said to have received special information that a Truck loaded with narcotic substances (Ganja) was coming from Orissa through Jhansi, Orai, Kanpur, Lucknow and was going to Aligarh. It is stated that on the basis of the aforesaid information, a team of the officers of Directorate of Revenue Intelligence was constituted and along with two witnesses they reached Nadarganj where the transporting truck coming from Kanpur was intercepted at around 02:00 PM. The person sitting in the truck was apprehended and on inquiry, he disclosed his name as Rakesh Kumar. The other person accompanying him in the Truck was Veerpal. It is stated that the aforesaid two persons initially feigned ignorance regarding the contents of contraband in the truck but thereafter upon being questioned they were informed that they were carrying Ganja in the truck. Upon searching the Truck, a special cavity was found in the Truck from where about 146 packets were recovered which were weighed and a total of 628.280 Kgs. of Ganja was recovered from the 146 packets. The complicity of the present applicant Rajveer Singh came into light in the confessional statements of Rakesh Kumar and Veerpal. The applicant also confessed in his statement given under Sec - 67 of NDPS Act that he purchased the seized contraband from his own money. Based on his Statement, he was arrested under Section 43 of NDPS Act.

4. Learned counsel for the applicant has submitted that neither any recovery of contraband has been made from the exclusive possession of the applicant accused nor he was arrested on spot. The complicity of the accused-applicant came into light in the confessional statements of co-accused Rakesh Kumar and Veerpal. However, subsequently they have retracted their confessional statements and have stated that they were compelled under threat to make the statement after they had been placed under arrest, which renders such statements inadmissible. He further submitted that the applicant accused was arrested illegally after a long gap from the date of alleged incident from a Hotel situated

in Gorakhpur when the applicant was on his business trip. The applicant was neither produced before any magistrate after arrest nor any summon was served to him u/s 67 of the Act. He submitted that no confessional statement was given by the applicant accused rather his signature was forcefully taken on blank pages and the same was used later on to record his false and fabricated confession. He also retracted his confession immediately before the Learned Court below. He Submitted that the applicant accused is not the registered owner of the vehicle bearing registration number UP 81 AF 3651 from which the alleged contraband Ganja was recovered in cavity. There is no documentary evidence or other evidence on record to show that Shri Bahoran Singh has sold the said truck to the applicant 5-6 years ago. The applicant is falsely implicated in the instant case. Applicant has no criminal antecedent and is in jail since 04.04.2019. It has also been submitted that there is no possibility of the applicant fleeing away from the judicial process or tampering with the evidence. Learned counsel submits that in case the applicant is released on bail, he will not misuse the liberty of bail and shall abide by all conditions imposed.

5. Per Contra, Mr. Digvijay Nath Dubey, learned counsel for respondents, vehemently opposed the aforesaid submissions of learned counsel for the applicant by contending that the applicant accused is fully involved in planning, financing and managing deliveries of commercial quantity of Ganja and has clear role in the instant case, also his involvement is established in other acts of smuggling through statement of one Shreedam Adhikari dated 10.05.2019 in DRI Case No. 08/2019. He submitted that Co-accused Rakesh Kumar (driver of truck) and Veerpal (other person in truck) in their voluntary statement given u/s 67 of the Act admitted that they were transporting the seized ganja to Aligarh on the instructions of accused Rajveer Singh. They also stated that he is the owner of the truck and the said truck was purchased from Bahron Singh. They also stated that the applicant along with Ankit Singh and Rohit Singh came to Kanpur in Car on 12.02.2019 and paid Rs. 50,000 to Tandon Denter for repair of said truck. He also gave them Rs. 25000/-. The accused - applicant in voluntary statement dated 03/04.04.2019 tendered under Sec - 67 of NDPS Act confessed that on his directions the seized 628.28 Kg Ganja was smuggled and the same was brought by his own money. He submitted that one Shreedam Adhikari (one of the suppliers of ganja arrested in another case no. 08/2019) admitted supplying ganja to the accused applicant. Shri Bahoran Singh in his voluntary statement dated 25.06.2019 stated that he has sold truck no. UP81AF3651 to the accused applicant 5-6 years ago. Statement of Bahoran Singh was also corroborated by the statement of Mukesh Kumar. He further submitted that bail of accused Rakesh Kumar has been rejected by the coordinate bench of this Hon'ble Court vide order dated 30.07.2020 passed in Bail Application No. 7139(B) of 2019. He further submitted that there is ample credible evidence against the applicant, as such, no case is made out to satisfy the twin conditions of Section - 37 of the Act mandatory for grant of bail. Therefore, this bail application is liable to be rejected in the interest of justice.

6. I have heard the learned counsel for the parties and perused the records. There is no dispute that the commercial quantity of Ganja is 20 Kgs. Recovered and seized total 628.28 Kgs. of Ganja in this case are much more than the

commercial quantity, therefore, provisions of section 37 of the Act are attracted in this case, which is in addition to section 439 of Cr.P.C. and mandatory in nature.

7. In view of Section 37 of the Act, before granting bail for the offence under N.D.P.S. Act twin conditions as provided under Section 37(1)(b) (i) and (ii) have to be satisfied. Section 37 of the N.D.P.S. Act is quoted herein below:

> *"37. Offences to be cognizable and non-bailable. - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*
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> *(a) every offence punishable under this Act shall be cognizable;*
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> *(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-*
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> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
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> *(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."*

8. The expression 'reasonable grounds' has not been defined in the N.D.P.S. Act, but the Apex Court in the case of ***Union of India Vs. Rattan Mallik @ Habul, 2009 (1) SCC (Crl) 83***1, has settled the expression **"reasonable grounds"**. Relevant paragraphs no. 12, 13 and 14 are quoted herein below:

> *"12.It is plain from a bare reading of the non-obstante clause in the Section 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 sub-clause (b) of sub- section (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.*
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> *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 Vs. Shiv Shanker Kesari, 2007(7) SCC 798] 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."*

9. In the instant case, 628.28 Kg of contraband ganja was recovered from the truck. The present applicant was not named in the FIR nor was he present on spot. No recovery is made from the possession of the accused applicant. His name came into light on the confessional statements of co-accused Rakesh and Veerpal recorded under section 67 of the NDPS Act stating that they were transporting the seized ganja to Aligarh on the instructions of the accused applicant. They also stated that he is the owner of the truck and the said truck was purchased from Bahron Singh. Bahron Singh also corroborated the statement of Rakesh and Veerpal, however prosecution has failed to put on record any documentary evidence or RC Transfer certificate establishing the ownership of applicant - accused in respect of seized vehicle bearing registration No - UP 81 AF 3651.

10. A Division Bench of Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu (2013) 16 SCC 31** while discussing the ratio laid down in decisions of **Raj Kumar Karwal Vs. Union of India (1990) 2 SCC 409 and Kanhiyalal Vs. Union of India (2008) 4 SCC** and certain other judgments observed that the ratio laid down in the case of Kanhiyalal Vs. Union of India (supra) is required to be re-looked and thus, referred the matter to a Larger Bench. The matter was referred to a Larger Bench of three judges, who culled out following two issues for determination:-

> *"1. Whether an officer "empowered under Section 42 of the NDPS Act" and/or "the officer empowered under Section 53 of the NDPS Act" are "Police Officers" and therefore, statements 4 of 7 recorded by such officers would be hit by Section 25 of the Evidence Act; and*
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> *2. What is the extent, nature, purpose and scope of the power conferred under Section 67 of the NDPS Act available to and exercisable by an officer under Section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict an accused."*

The Larger Bench in its judgment has concluded in para 152 that *"a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20 (3) and 21 of the Constitution of India."* It was further held that the judgments rendered in Kanhiyalal and Raj Kumar Karwal do not state the correct law and thus overruled. The reference was

therefore answered by stating:-

> *"(i) That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.*
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> *(ii) That a statement recorded under Section 67 of the NDPS 5 of 7 Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."*

11. In the instant case, the Narcotics Bureau is relying not only upon the statement given by the co-accused implicating the applicant herein but also upon a statement given under Section 67 of the NDPS Act by the applicant. The petitioner has been nominated as an accused on the disclosure statement of co-accused Rakesh and Veerpal. The complicity of the applicant will have to be determined by the quality of evidence led during trial. As far as the self inculpatory statement relied upon, this Court is prima facie of the opinion that the ratio as laid down in Tofan Singh's case would come to the aid of the applicant to allow him the benefit of regular bail.

12. Bahoron Singh in his voluntary statement recorded under section 67 of the Act corroborated the statements of Rakesh and Veerpal and stated that he had sold the said truck to the applicant 5-6 years ago. However, prosecution failed to bring on record any documentary evidence or RC Transfer certificate to establish the ownership of applicant - accused in respect of seized vehicle bearing registration No - UP 81 AF 3651.

13. In terms of Section 50 of the Motor Vehicle Act, 1988 the transfer of a vehicle ought to be registered within 30 days of the sale. Section 50(1) of the Act obliges the transfer or to report the fact of transfer within 14 days of the transfer. In the case of ***Naveen Kumar v. Vijay Kumar & ors., (2018) 3 SCC 1*** Hon'ble Apex Court held that-

"Even though in law there would be a transfer of ownership of the vehicle, that, by itself, would not absolve the party, in whose name the vehicle stands in RTO records, from liability to a third person …

Merely because the vehicle was transferred does not mean that such registered owner stands absolved of his liability to a third person. So long as his name continues in RTO records, he remains liable to a third person."

14. In the instant case, except the voluntary statement of Bahron Singh u/s 67, there is no documentary evidence or any other substantial evidence to prove that Bahron Singh sold the seized vehicle bearing registration No - UP 81 AF 3651 to the accused-applicant. Also despite alleged sale of the vehicle no transfer of ownership in accordance with Section 50 of Motor Vehicle Act, 1988 was made and hence Bahoron Singh continued to be the owner of the vehicle. Therefore, there is no material on record to prove the ownership of the accused applicant in respect of said vehicle.

15. In the light of the analysis of the case as mentioned above, I find reasonable grounds in terms of section - 37 of The N.D.P.S. Act to believe that the applicant accused is not guilty of an offence and he is not likely to commit any offence while on bail. I find it is a fit case for grant of bail to the applicant.

16. Accordingly, the bail application is allowed.

17. Let the applicant **Rajveer Singh** be released on bail in Case Crime No. - 02 of 2019, under sections 8/20 of Narcotics Drugs and Psychotropic Substance Act, Police Station - Gomti Nagar, District - Lucknow, on his furnishing personal bonds and two reliable sureties each of the like amount to the satisfaction of the court concerned with the following conditions:

(1) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence, if the witnesses are present in Court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law;

(2) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code;

(3). In case, the applicant misuses the liberty of bail and in order to secure their presence proclamation under Section 82 Cr.P.C. is issued and the applicant fail to appear before the Court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against them, in accordance with law, under Section 174-A of the Indian Penal Code.

(4) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of their bail and proceed against them in accordance with law.

18. The observations made herein are only for the purpose of deciding the instant bail application and shall not in any manner effect the investigation or trial of the case.

Order Date :- 14.9.2021/Anand