

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 08.02.2022
Pronounced on: 10.03.2022

+ **BAIL APPLN. 3045/2019**

KALE RAM @ KALU RAMPetitioner
Through: Mr. A.K. Sahu, Advocate with
petitioner produced from judicial
custody.

Versus

NARCOTICS CONTROL BUREAURespondent
Through: Mr. Subhash Bansal, Sr. St. Counsel
with Mr. Shashwat Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER
10.03.2022

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under section 439 of Cr.P.C. for grant of regular bail in SC.No.8605 of 2016 under Sections 20 & 29 NDPS ACT registered at Police Station NCB.

2. The brief facts of the case are that on secret information accused Raghav Sehajpal, Krishan Chand and Ram Lal were apprehended and from the possession of accused Raghav 220 gm of charas was recovered and two parcels containing 399 and 925 gm of charas were recovered from Kishan Chand and Rs. 65000/- were recovered from accused Ram Lal. It is further

alleged that accused persons in their statements under Section 67 NDPS Act admitted their involvement. It is further alleged that accused Raghav Sehajpal in his statement under Section 67 of NDPS Act has disclosed the name of the present petitioner and his mobile number. It is further alleged that co-accused Raghav disclosed that he used to get the contraband through Kale Ram (petitioner herein) through conductors and drivers who sometimes used to give money in cash and sometimes used to deposit money in HDFC bank accounts. It is further alleged that many transactions were found to have taken place between accused Raghav and petitioner Kale Ram and accused/petitioner Kale Ram disclosed in his statement under Section 67 of NDPS Act that he gave five packets to Kishan Chand and Ram Lal with instructions to give the packets to Raghav Sehejpal.

3. I have heard the learned counsel for the petitioner and learned senior standing counsel for the respondent-NCB. I have also perused the status report and the records of this case.

4. It is submitted by the learned counsel for the petitioner that the petitioner is in custody since 14.03.2015. It is further submitted by learned counsel for the petitioner that co-accused - Raghav Sehajpal and Ram Lal are on regular bail. He further submitted that the petitioner did not possess any contraband, and he is charged with conspiracy with co-accused. It is further submitted by the learned counsel for the petitioner that the petitioner was arrested on the disclosure statement of the co-accused and has been falsely implicated. He further submitted that the petitioner has deep roots in

the society and has family to support. Learned counsel for the petitioner further submitted that as per the allegations in the complaint, the element of conspiracy with the other co-accused person is missing. He further submitted that the bank slips which are exhibited in the court are not bearing the signature of co-accused Raghav and different signatures are appearing on them. He further submitted that there is no evidence to show that the amount of Rs.65,000/- which according to the prosecution was deposited by co-accused Raghav Sehajpal in the account of petitioner was in relation to sale and purchase of contraband.

5. On the other hand, it is submitted by the learned senior standing counsel for the NCB that co-accused Raghav Sehajpal on apprehension categorically disclosed that he used to get contraband from Kale Ram i.e. present accused/petitioner through drivers and conductors, and used to make payment in cash or sometimes deposit money in HDFC bank account of the petitioner. The verification of the bank account of present petitioner shows that number of transactions have taken place between both and the said fact is also corroborated through the statements under Section 67 NDPS Act of the accused persons. He further submitted that there is an entire chain including the drivers, and conductors involved in the trade. Learned senior standing counsel further submitted that the petitioner Kale Ram is the main accused who used to deal in the contraband through the other co-accused, and there is a recovery of commercial quantity of charas in this case. He further submitted that at this stage, the court is not supposed to prejudge the

evidence and the petitioner is unable to show even *prima facie* that he is not guilty of such offence and also that there is an embargo u/s 37 of the NDPS Act in granting bail to the petitioner.

6. In the instant case, co-accused Raghav Sehajpal has been released on bail vide order dated 06.06.2015 as he was found in possession of intermediate quantity of charas. The other co-accused who has been released on bail is Ram Lal as nothing was recovered from him except Rs.65,000/- which according to the prosecution was received by him from co-accused Raghav Sehajpal.

7. In the present case, there is no recovery of any contraband from the petitioner and as per the prosecution no amount has been recovered from his bank account. The recovery of Rs.65,000/- has been effected from co-accused Ram Lal which according to the prosecution was received by him from co-accused Raghav Sehajpal, both of whom are already on bail. As far as the question of voluntary statement of the petitioner under Section 67 of the NDPS Act is concerned, in the absence of any recovery of any drugs from the petitioner, it will be a debatable issue whether the disclosure statement made by the co-accused is admissible against the him or not and in this regard reliance can be placed upon the judgment of the Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu (2013) 16 SCC 31*.

8. Looking into the facts and circumstances of this case, and the fact that two co-accused are already on bail, nothing has been recovered from the petitioner in the form of contraband or money which according to the

prosecution has changed hands during the conspiracy alleged to have been hatched by petitioner and his co-accused, therefore, in these circumstances, the embargo of Section 37 of NDPS Act does not come in the way in granting bail to the petitioner as far as the facts of the present case is concerned. I am also of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.

9. It is not the case of the prosecution that petitioner has been involved in any case of similar nature. Reference may be had to the judgment of the Supreme Court in *Ranjit Singh Brahmajeet Singh Sharma Vs. State of Maharashtra (2005) 5 SCC 294* wherein while referring to an identically worded provision under Maharashtra Control of Organized Crimes Act, 1999, the Supreme Court held that the satisfaction is with regard to likelihood of not committing the offence under the Act and not any offence whatsoever.

10. Therefore, in the facts and circumstances discussed hereinabove, and without commenting upon the merits of the case, and considering the fact that the petitioner is in judicial custody since 14.03.2015, he is admitted to bail on his furnishing personal bond in the sum of Rs. 50,000/- with one surety in the like amount, to the satisfaction of the learned Trial Court. The petitioner shall not leave the country without the prior permission of the concerned Trial Court.

11. The petition stands disposed of accordingly.

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

RAJNISH BHATNAGAR, J

MARCH 10 , 2022/ib

HIGH COURT OF DELHI



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