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

+ **BAIL APPLN. 766/2020**

VIRENDER KUMAR @ VEERU

..... Petitioner

Through

Mr.Arvind Kumar Shukla, Adv. with
Mr.Ram Singh, Adv.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through

Mr.Panna Lal Sharma, APP for State.
SI Arvind Crime Branch ASI Krishan
Kumar Crime Branch Kotwali.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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23.03.2020

Crl. M.A. 5763/2020

Allowed, subject to all just exceptions.

Application is disposed of.

Bail Appln.766/2020 & Crl.M.B. 468/2020

Present petition is filed under section 439 Cr.P.C. for grant of bail in pursuance to FIR No.163/2017 registered at Police Station Crime Branch, Delhi for the offence punishable under section 21/25/29 NDPS Act.

Case of the petitioner is that petitioner was apprehended on 16.09.2017 and was taken in judicial custody on 19.09.2017 for alleged recovery of 300 gms. of contrabands/heroin. On the examination of the sample sent by the prosecution, FSL had submitted its report thereby stating that the alleged contraband was found to be having purity of only 6.5% and the entire recovery from the accused could be evaluated to be only 19.5 gms. which is intermediate and section 37 of NDPS Act does not come in the way while granting bail.

Learned counsel on behalf of the petitioner submits that the falsity of the allegation is established from the examination report of the Forensic Science Laboratory dated 10.11.2017, wherein it is mentioned that pinkish colour powdery material kept in plastic pouch tied with rubber band is stated to be heroin and weighs 5.15 gms approximately. However, the police after arresting the accused had prepared the samples of 5 gms heroin, which was clearly mentioned as muddy colour material.

From the above contradictions, it is apparently reflected that the samples which are alleged to have been prepared at the place of incident on 15.09.2017 at 9.30 pm were different from the samples which were sent for examination to FSL. As per the prosecution, the recovery of the contraband from the applicant/accused was effected on the road Sector 15 to Section 18, Rohini towards canal, whereas, the Petitioner was actually arrested at Kashmiri Gate Flyover, Delhi.

Learned counsel for petitioner further submits that there is non-compliance of section 50 of NDPS Act as recovery alleged to be effected from the person of the petitioner.

Learned counsel for petitioner has relied upon the case of *"Sandeep Kumar vs. Central Bureau of Narcotics: 2019 Lawsuit (DEL) 2001"* decided on 08.07.2019, which is based upon the law laid down by the Hon'ble Supreme Court in *"Rafiq Qureshi vs. NCB, Eastern Zonai Unit: Lawsuit (SC) 1179"* decided on 07.05.2019, decided the case on the basis of purity percentage available in the contraband.

In addition to above, this Court granted bail in the following cases:

- (i) Bail Application No. 424/ 2020 titled as *'Firozuddin @ Bittu vs. State'*, wherein quantity of the seized heroine was 1.5 kg.

- (ii) Bail Application No. 3167/ 2019 titled as "*Rajvinder Singh vs. State*", wherein quantity of seized heroine was 450 gms.
- (iii) Bail Application No. 3072/ 2019 titled as "*Paramjeet Singh vs. State*", wherein 1.5 kg. of heroine powder was allegedly recovered from the accused.

Therefore, keeping in view of the intermediate quantity of the substance and without commenting upon the merits of the case, I am of the view that the petitioner deserves bail.

Accordingly, he shall be released on bail on his furnishing personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Trial Court.

Before parting with the order, it is relevant to mention that nothing contained in this order shall be construed as an expression on the merits of the case. The Trial Court shall not get influenced by the observations made by this Court, while passing the final orders in the trial.

The present petition is allowed and disposed of.

Copy of this order be transmitted to the Jail Superintendent and the Trial Court concerned for compliance.

Order *dasti* under the signatures of Court Master.

SURESH KUMAR KAIT, J

MARCH 23, 2020/ab