

Mujibur Rehman vs.state

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Court : Delhi

Decided On : Mar-28-2019

Appellant : Mujibur Rehman

Respondent : State

Judgement :

\$~13 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

28. 03.2019 BAIL APPLN. 229/2019 MUJIBUR REHMAN STATE versus

... Petitioner

..... Respondent Advocates who appeared in this case: For the

... Petitioner

: Mr. Suman Kumar Divakar, Adv. For the Respondent: Ms. Kusum Dhalla, Addl. PP for the State with ASI Pawan Kumar CORAM:-

"HONBLE MR JUSTICE SANJEEV SACHDEVA JUDGMENT SANJEEV SACHDEVA, J.

(ORAL) 1.

... Petitioner

seeks regular bail in FIR No.140/2018 under Sections 20/ of the Narcotic Drugs and Psychotropic Substance Act, 1985, registered at Police Station Crime Branch, New Delhi.

2. 3. The petitioner has been in custody since 04.08.2018. The allegations in the FIR are that secret information was received that one Tahir would be transporting Ganja in his truck from Orissa to Delhi and one Amit Kumar Jha would be available to receive the same. BAIL APPLN.229/2019 Page 1 of 4 4. Based on the secret information, a trap was led and the truck was apprehended at the pointing out of the secret informer and 175 kg. of Ganja was recovered from a secret compartment of the truck. Commercial quantity being more than 20 Kgs.

5. Accused who was apprehended, in his statement, disclosed that he had received 45 kg. of Ganja from the petitioner and loaded the same in Orissa.

6.

... Petitioner

has alleged that he has no connection with the subject offence. Investigation has revealed that the petitioner was in contact with the co-accused who is alleged to have used his truck for transporting Ganja.

7.

... Petitioner

denied being the subscriber of the mobile phone which prosecution alleges to be that of the petitioner and used by him to connect with the co-accused.

8. Learned Addl. PP submits that the Consumer Application Form (CAF) of the said mobile number is in the name of the petitioner and there were about 106 calls between him and the co-accused during the relevant period. Further it is alleged that investigation has confirmed the location of the petitioner at the spot from where Ganja was allegedly loaded on the truck at the relevant time.

9. Learned counsel for the petitioner submits that evidence against the petitioner is circumstantial and there is no material available to BAIL APPLN.229/2019 Page 2

of 4 connect the petitioner with the subject crime. He further submits that one other co-accused has already been granted bail by this Court and as such on the principle of parity, he should also be admitted to bail.

10. I am unable to accept the plea of learned counsel for the petitioner as the quantity of drugs recovered from the petitioner is 175 Kg. of Ganja. The petitioner is alleged to have supplied 45 Kg of Ganja for the subject transaction which is more than the commercial quantity of Ganja. The petitioner is further alleged to have used the same modus for transporting Ganja from Orissa to Delhi on earlier occasions also.

11. Prosecution has placed on record material to prima facie show that there was call connection between the petitioner and the other co-accused over 106 times during the relevant period. As per the case of the prosecution, the presence of the petitioner has been established at the place where Ganja was loaded for transporting the same to Delhi. Being commercial quantity, embargo of Section 37 of the NDPS Act clearly comes to play.

12. Further contention of the learned counsel for the petitioner that other co-accused who is similarly situated has been admitted to bail and accordingly the petitioner should also be admitted to bail as a principle of parity, is not acceptable.

13. While considering an application for bail, court has to examine BAIL APPLN.229/2019 Page 3 of 4 the role ascribed to the accused. In the case of the petitioner, the allegation is that he was in direct connection of the co-accused and his presence at the spot where Ganja was loaded is prima facie established. Further, there is no question of application of principle of parity or equality in the case of grant of bail. The role ascribed to the present petitioner is different from the other co-accused, who has been granted bail.

14. I am of the view that the circumstances of the case as also the material collected by the prosecution prima facie does not warrant the petitioner to be admitted to bail. I find no merit in the petition.

15. The petition is accordingly dismissed.

16. Order Dasti under the signatures of the Court Master. SANJEEV SACHDEVA,
J MARCH28 2019 rs BAIL APPLN.229/2019 Page 4 of 4

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