

दीपक वासन
DEEPAK WASON
स्पेशल न्यायाधीश (एन.डी.पी.एस.)
Special Judge (NDPS)
कोर्ट नं. 810, छठा तल
Court No. 810, Sixth Floor
द्वारका न्यायालय (दोपहो), नई दिल्ली
Dwarka Courts (S-W), New Delhi

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SC No. 669-2021
State vs. Ishu @ Kapil & Ors.
FIR No. 275-2021
u/s 20/25 NDPS Act
PS Dabri
CNR No. DLSW010104152021

22.01.2022

Proceedings conducted through video conferencing.

Present: Sh. Brijesh Kumar, Ld. Addl. PP for the State.
Sh. Ajay Kumar, Ld. counsel for the accused Ishu @ Anurag and accused Mayank Dhawan with both accused on bail.
Sh. Mahipal Singh, Ld. Counsel for accused Ishu @ Kapil with accused Ishu @ Kapil produced from JC.
Sh. Rajesh Juneja, Ld. counsel for the accused Tajwar Rawat with accused produced from JC.
Sh. Tripurari Tiwari, Ld. counsel for accused Nikhil Kumar with accused Nikhil Kumar produced from JC.
Sh. Akshay Bhandari and Sh. Digvijay Singh, Ld. Counsels for accused Harvinder Singh @ Karan with accused Harvinder Singh @ Karan produced from JC.
Sh. Vishnu Shankar Jain and Ms. Marbiang Khongwir, Ld. Counsels for accused Ridalin Nongbet with accused produced from JC.
Five bail applications under Section 439 Cr.P.C moved on behalf of accused persons namely Ishu @ Kapil, Harvinder Singh, Tajwar Rawat, Nikhil and Ridalin for grant of bail are pending for disposal.

It is a matter of record that another bail application of



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accused Ishu @ Kapil dated 30.10.2021 is also pending for disposal.

IO has already filed the replies.

Arguments heard.

Record perused.

It is submitted by Ld. Counsels for all the accused persons that all the accused persons have been falsely implicated in the present case. It further submitted by Ld. Counsels that accused Tajwar Rawat, Nikhil Kumar and Ishu @ Kapil are in custody since 05.05.2021. It is further submitted by Ld. Counsels that accused Harvinder Singh is in custody since 07.05.2021 and accused Ridalin is in custody since 19.09.2021. It is further submitted by Ld. Counsel for all the accused persons that prosecution have emptied two sacks of contraband together and thereafter, put them into three sacks subsequently and therefore, samples which were drawn from Mark D, E and F were after the contents of the 2 sacks have been mixed. It is further submitted by Ld. Counsel for all the accused persons that prosecution was required to draw samples independently from both the sacks and not after the mixing the contents of both the sacks and such a procedure of drawing samples after emptying and mixing the contents and putting them in different bags is against the procedure established by law. It is further submitted by Ld. Counsel for accused Harvinder and Ridalin that there is no recovery from the accused persons. It is further submitted by Ld. Counsel for all the accused persons that investigation is complete

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and no purpose would be served by keeping the accused persons in judicial custody and it is jointly requested that all accused persons (who are in judicial custody) be granted bail.

On the other hand, Ld. Addl. PP for the state has argued on the present bail application and strongly opposed the same on the ground that total recovery in the present case is around 43.020 kg of ganja including cash of Rs. 15,84,500/- and hence, it is requested that bail applications of all accused persons be dismissed.

The record reveals that initially, accused Tajwar Rawat was arrested with illegal ganja of 2.600kg, cash of Rs. 1,38,500/- and Rs. 16,000/-. The record further reveals that accused Tejwar Rawat was working as a employee of accused Nikhil, Ishu @ Kapil and Harvinder Singh. During the investigation, the accused Tejwar Rawat was interrogated and he disclosed the name of main suppliers namely Nikhil and Ishu @ Kapil and they were arrested in the present case. The record further reveals that further search was carried out and 22.620 Kg of ganja was also recovered at the instance of Nikhil and Ishu @ Kapil from Flat No. A-6/25, LIG DDA Flat, First Floor, Sector-23, Dwarka alongwith huge amount of cash ie 14,30,000/- and safexpress way bill No. 93978945 along with some documents.

The record further reveals that during further investigation, one other accused namely Harwinder was arrested. The record further



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reveals that during the PC remand of accused Harvinder and from the mobile phone of accused Nikhil, it came to know that the order made by accused Nikhil reached at Safe Express Ware Bamnoli Delhi and thereafter, at the instance of accused Nikhil, police reached at Safe Express Ware House Bamnoli Delhi and IO made inquiry from Manager Amit Sharma who produced Way bill No. 93978696 and thereafter, IO checked two parcels of bar code No. 939786960001 and found 11.600 kg and 6.200 kg ganja in both parcels. The record further reveals that during investigation, IO came to know that accused Harvinder was the same person who used to transfer money in one bank account belonging to one of the accused Ridalin Nagbet. The record further reveals that during the investigation, accused Ridalin was also arrested.

The record further reveals that during the investigation, accused Mayank was arrested on the disclosure statement of accused Nikhil. The record further reveals that on the basis of disclosure statement of accused Mayank Dhawan, accused Ishu @ Anurag was arrested. The record further reveals that all accused persons connected with each other for illegal business of ganja through whatsapp chat and CDR. The record further reveals that total recovery in the present case is 43.020 Kg ganja, which is a commercial quantity.

The record reveals that as per prosecution, during the investigation, accused Tajwar Rawat, Nikhil Kumar and Ishu @ Kapil were taken to flat No. A-6/25, LIG DDA Flats, First Floor and at their instance, the



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lock of the flat was opened. The record further reveals that there were two white plastic kattas in the flat which were having two gatta cartoons which were lying opened and which were told to be ganja by the accused persons. The police official by seeing and smelling found it to be ganja. The record further reveals that ganja was taken from two cartoons and contraband together was put into three plastic kattas which were marked as D, E and F having weight 7.100 Kg, 7.390 Kg and 8.130 Kg respectively. From the record, prima facie it appears that the contraband was mixed together in three kattas and samples were not taken separately from both the cartoons. At this stage, it would be relevant to go through the judgment titled as **"AHMED HASSAN MUHAMMED VS. THE CUSTOMS"** in bail application No. 3076/2020, passed by Hon'ble High Court of Delhi on 11.02.2021. The Hon'ble High Court of Delhi has dealt with the procedure of samples in para no. 17 of the judgment as under:-

17. *In Basanti Rai (Supra), while dealing with a case where accused was found carrying a polythene bag containing 8 similar polythene bags having brown colour substance and Investigating Officer took small pieces of charas from each packet, mixed the same and drew two sample parcels which were sent to FSL for analysis, I had allowed the appeal while holding as under:-*

25. *After hearing both the learned counsel for parties and going through the Trial Court record, I find force in the submission of learned counsel for appellants. Admittedly, the samples were*



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drawn after breaking small pieces from 08 of the polythene bags which were allegedly kept in a green coloured bag by the appellant in his right hand. The lo prepared two samples of 25 grams each after taking a small quantity from each of the slabs.

26. Though the settled law is that if it is not practicable to send the entire quantity then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination. Otherwise, result thereon, may be doubted.

27. For example, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed, without that the result would be negative”.

In the above-mentioned case, the bail application of accused was allowed by the Hon'ble High Court of Delhi and the accused was released on bail, who was involved in commercial quantity case.



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In the present case also as discussed above, ganja was taken from two cartoons and thereafter, ganja was put into three plastic kattas. It appears that police officials have mixed the ganja taken from two cartoons into three kattas which were marked as D, E, F and sent to FSL for examination, which is contrary to the procedure prescribed under the law.

In view of the submissions made above and law discussed above and keeping in view the facts and circumstances of the case and the fact that all the accused persons are in custody since long time, investigation is complete, charge-sheet has already been filed and no purpose would be served by keeping all the accused persons in custody, **all five bail applications stand allowed.** All accused persons namely **Ishu @ Kapil, Harvinder Singh @ Karan, Tajwar Rawat, Nikhil Kumar and Ridalin Nongbet** are hereby granted bail on furnishing personal bond in sum of Rs. 30,000/- each with one surety of like amount each to the satisfaction of this Court / Ld. Duty MM. Nothing stated herein which shall tantamount to expression of opinion on merits of case and whatever has been stated is only for the purpose of deciding the present bail applications.

All five bail applications stand disposed of accordingly.

Since the bail application of accused Ishu @ Kapil has been decided, the another bail application of accused Ishu @ Kapil dated 30.10.2021 has become infructuous. **Application stands disposed off accordingly.**



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Copy of this order be forwarded to Ld. Counsels for all the accused persons through e-mail.

Copy of this order be also forwarded to concerned Jail Superintendent for information and compliance through e-mail.

Re-notify the matter on **11.04.2022** for **arguments on charge.**



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(Deepak Wason)

Spl. Judge (NDPS)/Dwarka Courts/SW

New Delhi/22.01.2022

Special Judge (NDPS)

द्वारका न्यायालय (न.प.) नई दिल्ली
Dwarka Courts (S.W), New Delhi