

**B.A.No.131/21
FIR No.149/18
PS Crime Branch
State v. Asif Khan
U/s 21 NDPS Act**

05.06.2021

Present: Sh. K.P. Singh, Ld Addl. PP for State through videoconferencing.

Sh.PawanShishodia, Counsel for accused-applicant through videoconferencing.

Hearing is conducted through videoconferencing.

This is an application u/s 439 Cr.P.C. for grant of regular bail on behalf of accused-applicant Asif Khan in case FIR No.149/18.

Arguments are heard. For orders, put up at 4 p.m.



(NeeloferAbidaPerveen)
SpecialJudge-02, NDPS/
ASJ,(Central), THC/Delhi
05.06.2021

At 4 pm

ORDER

This is an application u/s 439 Cr.P.C. for grant of regular bail on behalf of accused-applicant Asif Khan in case FIR No.149/18.

Ld. Counsel for accused-applicant submits that the accused-applicant was arrested on 01.06.2018 by the Crime Branch police officials and since then he is in judicial custody. That nothing has been recovered from the accused-applicant. That the chargesheet has already been filed and prosecution has examined 7 witnesses out of total 17 witnesses. That co-accused Nazim had already been released on bail vide order dated 21.08.2019. That the accused-applicant was earlier released on two days interim bail vide order dated 19.01.2021 and surrendered before Jail authority and did not misuse the liberty of interim bail. That the wife of the accused-applicant has been suffering from serious ailments and there is no one in the family to look after sick wife and minor child except the accused-applicant. That there is no compliance of section 50 of the NDPS Act in the present case and that the entire case of the prosecution is just a figment of imagination to falsely implicate the accused-applicant. That the accused-applicant has served his sentence in the other case and is granted bail in still other case registered against him. Ld. Counsel relies upon the following judicial pronouncements:-

1. **Sanjay Chandra v. CBI** 2012 1 SCC 40;
2. **Suraj Kumar v. Union Territory of J&K** decided by Hon'ble High Court of Jammu and Kashmir dated 31.12.2020.

Ld. Addl. PP submits that the case pertains to

recovery of commercial quantity of the contraband and therefore rigors of Section 37 of the Act are to be satisfied and besides heavy recovery effected from the possession of the accused-applicant in this case, accused-applicant does not have clean antecedents as accused-applicant is a previous convict who stands convicted in two cases also under the NDPS Act.

Heard.

It is the case of the prosecution that 270 grams of heroin is recovered from the possession of the accused-applicant i.e. commercial quantity prescribed for the contraband. Accused-applicant does not have clean antecedents and there are two previous convictions standing against him. Earlier, interim bails of the accused-applicant was dismissed on 29.04.2019, 16.10.2020 & 26.02.2020 and regular bail applications were dismissed on 19.02.2019, 29.06.2020. The accused-applicant has not been fair to Court and has suppressed the previous orders. There is no change in circumstances since the dismissal of the last application for grant of regular bail which would warrant fresh consideration of the bail application of the accused-applicant. Further in such facts and circumstances, mandate of Section 37 of the Act is not satisfied, there is no material for the Court to arrive at a satisfaction that the accused-applicant has not committed the

offence or is not likely to commit similar offence if released on bail. The judgements relied upon are distinguishable on facts. It is not a fit case for grant of regular bail. This application u/s 439 Cr.P.C. for grant of regular bail on behalf of accused-applicant Asif Khan in case FIR No.149/18 is **dismissed**.

Copy of order be forwarded to Ld.Counsel for accused-applicant through electronic mode.



(NeeloferAbidaPerveen)
SpecialJudge-02, NDPS/
ASJ,(Central), THC/Delhi
05.06.2021

B.A.No.2287/21
FIR No.166/2018
PS EOW
State v.Deepak Kumar Malhotra

05.06.2021

Present: Sh. K.P. Singh, Ld Addl. PP for State with IO Inspector Shivani through videoconferencing.

Sh. Vineet Chaddha, Counsel for accused-applicant through videoconferencing.

Sh. Sharukh Inam, counsel for complainant through video conferencing.

Hearing is conducted through videoconferencing.

This is an application u/s 439Cr.P.C. for grant of regular bail on behalf of accused-applicant Deepak Kumar Malhotra in case FIR No.166/18.

It is jointly submitted by the Ld. Counsel for the accused-applicant and the Complainant that the accused-applicant has entered into a settlement Deed with the Complainant and in order to facilitate the process of settlement and to enable the accused-applicant to make payment in terms of the settlement, conditional bail may be granted to the accused-applicant and that unless the accused-applicant is granted bail he shall not be in a position to honour the same. Ld. APP submitted that it is the Karnataka Bank that is the complainant and not any such entity as PHOENIX, at this Ld.

Counsel clarified that the debt has been assigned to Phoenix ARC Private Limited and that in this manner Phoenix ARC Private Limited has stepped into the shoes of the complainant.

Arguments heard. For orders, put up at 4 pm.



(Neelofer Abida Perveen)
Special Judge-02, NDPS/
ASJ, (Central), THC/Delhi
05.06.2021

At 4 pm

ORDER

This is an application u/s 439 Cr.P.C. for grant of regular bail on behalf of accused-applicant Deepak Kumar Malhotra in case FIR No.166/18.

The submissions made today before this Court have been noted earlier. From the contents of the application it emerges as the contention of the applicant-accused that the Applicant/Accused has been arrested on 29.12.2020 by the officers of EOW. Mandir Marg. New Delhi, and is the Accused No. 4 in the FIR No.0166/2018 dated 16.08.2018 lodged by the Economic Offence Wing, New Delhi on the basis of the complaint filed by Shri Mahesh P Malunekar, Associate Vice President, Phoenix ARC Private Limited having its office at 5th Floor. Dani Corporate park. 158 CST park, Kalina, Santa Cruz East, Mumbai- 400098. That the Applicant/Accused is engaged

in the business of gold and diamond jewellery, and approached the Bank of Karnataka and applied for an overdraft facility of Rs. 2.00,00,000/ under the "Karnataka Vyapar Mitra Scheme" in the name of M/s Gauri Shankar Jewelers, and in respect thereof had deposited the original title deeds of the property bearing No. 14A/89, WEA, Karol Bagh, New Delhi- 110005 in favor of the mother of the Applicant/Accused, vide Memorandum of deposit of Title Deeds dated 16.01.2014, one Hypothecation Agreement dated 17.01.2014 was also executed wherein charge in favor of the Assignor Bank was created over all the stocks and books of debts of M/s Gauri Shankar Jewelers and other guarantee and undertaking documents dated 17.01.2014, on the basis of which vide letter of sanction dated 17.01.2014 loan was granted to the Applicant/Accused in the name of M/s Gauri Shankar Jewelers. That due to losses being incurred on the business front, the Applicant/Accused could not facilitate the repayment of the EMI's of the said loan and therefore the Assignor Bank for the purpose of recovering the outstanding dues of Rs.2,15,05,217/- issued notice under Section 13 (2) of the SARFAESI Act, 2002 on 02.07.2015 and possession notice under Section 13(4) of the SARFAESI Act. 2002 was issued by the Bank in course thereof. That the Assignor Bank preferred an application under Section 14 of the SARFAESI Act, 2002 before

the Court seeking appointment of a Receiver to take physical possession of the property bearing No. 14A/89. WEA. Karol Bagh. New Delhi- 110005, and vide order dated 29.10.2015 Receiver was appointed by the Court in order to take possession of the subject property. That the Applicant/Accused being aggrieved of the order dated 29.10.2015 passed by the Hon'ble Court of Chief Metropolitan Magistrate, West, Tis Hazari Courts preferred an SA bearing No. 403/2015 before the Ld. Debt Recovery Tribunal, Delhi. That the aforesaid loan account has been termed as a Non Performing Asset in the books of the Assignor Banks i.e. the Bank of Karnataka and has been thereafter assigned to the Complainant Company i.e. M/s Phoenix ARC Private Limited with the underlying security interest in the favor of the complainant company i.e. M/s Phoenix ARC Private Limited vide Deed of Assignment dated 28.12.2015. That subsequently the SDA filed by the Applicant/Accused bearing No. 403/2015 the Learned Debt Recovery Tribunal, New Delhi challenging the order dated 29.10.2015 passed by the Learned CMM, West, Tis Hazari Courts appointing the receiver to take physical possession of the aforesaid property, was dismissed vide order dated 01.02.2017. That thereafter a second application bearing MA No. 68/2017 was preferred by the Complainant company under Section 14 of the SARFAESI Act, 2002 before the Court. That

the Court while allowing the application so filed before it by the complainant company duly appointed a receiver and directed him to take the physical possession of the mortgaged property and handover the possession to the authorized officer of the complainant company. That on 22.08.2017 the receiver so appointed by the Court issued notice to the Applicant/Accused that he will come and take physical possession of the mortgagee property on 08.09.2017. That against the notice dated 22.08.2017 issued by the Learned Receiver so appointed by the Hon'ble Court of Chief Metropolitan Magistrate, West. Tis Hazari Courts for taking physical possession of the mortgaged property SA bearing No. 270/2017 was filed before the Learned Deb: Recovery Tribunal by Shri Pradeep Rana S/o Late Shri VA Singh, claiming that his father is the owner of the Second Floor of the said mortgaged property with roof rights. That in the meanwhile another SA was filed before the Learned Debt Recovery Tribunal. New Delhi by Shri P.N. Khanna S/o Late Shri A.N. Khanna while challenging the aforesaid notice dated 22.08.2017 issued by the receiver, claiming that he is the owner of the Ground and First Floor of the mortgage property by virtue of sale deed dated 03.05.2017. That the Applicant/Accused has kept regular communications with M/s Phoenix PRC Private Limited (Complainant Company), by way of different letters/representations and emails thereby communicating the exact

financial position prevalent with the Applicant/Accused and time and again requesting the complainant company to grant him extension so as fulfill the obligations towards the said settlement agreement. That the Applicant/Accused is willing to pay the complete settlement amount in regard to the loan availed by him on account of his firm M/s Gauri Shankar Jewelers to the Complainant Company and for the said purpose he had finalized to sell one of his inherited property (commercial space) to a party in New Delhi. That the Applicant/Accused was arrested before the completion of the deal and therefore could not complete the payment as planned by him. That if the Applicant/Accused is granted bail by this Hon'ble Court he shall complete the OTS proposal by selling the said shop.

Ld. Addl.PP has contended that Accused is proprietor of M/S Gauri Shankar Jewellers, to whom O.D limit of Rs.2 crore was sanctioned by Karnataka Bank against the mortgage of property i.e. H. No.14-A/89, WEA Karol Bagh, New Delhi-110005, which was already mortgaged with Central Bank of India. Accused Deepak Malhotra is authorized signatory of the account in which loan amount was received and subsequently misappropriated. Huge public money is involved in the case. Accused Deepak Malhotra is also involved in several cases i.e. SPL Case No. 11/12, RC 1202010A0010, U/S 120B, t/w 420'467/468/471 IPC & 13(1) (d) PC Act & u/s

420/467/468/471 IPC P/S-CBI/ACB GZB; FIR No. 94/18 dt 23.04.2018 U/S 406/420/467/471/120B IPC, PS EOW; FIR No. 255/18 dt 10.12.2018 U/S 420/406/120B IPC, PS EOW, and is a habitual offender. That the prosecution has no knowledge of any such purported settlement.

Heard.

The accused-applicant is proprietor of M/S Gauri Shankar Jewelers in 2014 is alleged to have obtained loan amount of Rs. 200 lakhs from the complainant bank by submitting fabricated record besides mortgaging one immovable property in the name of his mother which property had already been sold to third parties. The accused-applicant also alleged to have adopted the same modus operandi to secure loan with Central Bank while mortgaging the same property. The loan account for the persistent default was declared NPA and has been assigned to M/s Phoenix ARC Private Limited vide Deed of Assignment dated 28.12.2015. Proceedings are already initiated under the SARFAESI Act 2002. The accused-applicant contends that he was all along willing to repay the loan amount and that now under one time settlement scheme settlement has been entered into and the accused-applicant is to make a time scheduled repayment and for the purposes he needs to procure funds. Though the accused-applicant submitted fabricated documents to secure

the loan, however at this stage considering that the Financial institution has now entered into a one time settlement of the loan account and the accused is also ready to abide by this one time settlement, in the interest of securing public money and to enable the accused-applicant to arrange funds for the repayment of the loan amount interim bail of 30 days is being granted to the accused-applicant subject to his furnishing personal bond with two sureties in the sum of Rs. 50,000/- each to the satisfaction of the Ld. MM/Duty MM, and subject to the condition that he shall deposit his passport if he holds one with the Id. Trial Court, he shall not leave the NCR region without the permission of the IO, he shall mention the mobile phone number to be used by him which number it shall be ensured by him is kept on switched on mode throughout with location activated and shared with the IO at all times. Application is disposed of accordingly.

Copy of order be forwarded to Ld. Counsel for accused-applicant through electronic mode.



(Neelofer Abida Perveen)
Special Judge-02, NDPS/
ASJ, (Central), THC/Delhi
05.06.2021