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

+ **BAIL APPLN. 286/2023**

**SHAKUNTLA**

..... Petitioner

Through: Mr. Jatan Singh, Mr. Siddharth Singh,  
Mr. R.K. Gautam, Advts.

versus

**THE STATE GOVT OF NCT OF DELHI**

..... Respondent

Through: Mr. Ajay Vikram Singh, APP for  
State with ASI Mahesh Kumar, AGS  
Crime Branch

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**24.02.2023**

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1. This is a bail application seeking bail in FIR No. 87/2021 dated 06.05.2021 u/s 20/29 NDPS Act registered at PS Crime Branch.
2. Mr. Singh, learned counsel for the applicant has drawn my attention to seizure memo dated 06.05.2021, wherein it has been stated that 10 packets were recovered from the applicant. All the 10 packets were opened and the contents of all packets were transferred in one big plastic bag and when weighed was 20.5 Kg. Thereafter, samples were drawn from the bag containing the mixed contraband.
3. It is stated by Mr. Singh, learned counsel for the applicant that the same is in violation of the standing order 1/88 which mandates that transferring of content of all packets into one and then drawing a sample



from the mixture is not permitted.

4. Standing order 1/88 reads as under:

*“2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each packet/container in case of seizure of more than one package/container.”*

5. I have already taken a view in BAIL APPL. 3233/2022 in Laxman Thakur vs. State (Govt. of NCT of Delhi) wherein it has been held that if instructions contained in standing order 1/88 have not been followed and the sample has been drawn after mixing with contents, the same causes serious prejudice to the case of the applicant.

6. I have further held that since the collection of sample itself is faulty, the rigorous of Section 37 of the NDPS Act will not be applicable.

7. The said observations were in terms of the judgment of “*Sumit Tomar vs. State of Punjab*” (2013) 1 SCC 395, as well as the Hon’ble Supreme Court in “*Union of India vs. Bal Mukund & Ors.* [(2009) 12 SCC 161] which has opined that standing order 1/88 is a requirement of law.

8. The applicant is in custody since 08.05.2021 and there is no other criminal case against the applicant.

9. For the aforesaid reasons, I am inclined to allow the application and the applicant is entitled to be released on bail on the following terms and conditions:

- i. The applicant shall furnish a personal bond and a surety bond in the sum of Rs. 25,000/- each, to the satisfaction of the Trial Court;
- ii. The applicant shall appear before the Court as and when the matter is taken up for hearing;
- iii. The applicant shall join investigation as and when called by the I.O



concerned;

- iv. The applicant shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times. The applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
  - v. The applicant shall report to the local Police Station on the first Monday of every month;
  - vi. In case the applicant changes his address, he will inform the IO concerned and this Court also;
  - vii. The applicant shall not leave the country during the bail period and surrender his passport, if any, at the time of release before the I.O. concerned;
  - viii. The applicant shall not indulge in any criminal activity during the bail period;
  - ix. The applicant shall not communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.
10. The application is allowed and disposed of in the above terms.

**JASMEET SINGH, J**

**FEBRUARY 24, 2023/dm**

*Click here to check corrigendum, if any*