



2nd LLOYD TRIAL ADVOCACY COMPETITION
[2019 - 20]



IN THE SPECIAL SESSIONS COURT
(NDPS ACT)

Gandhi Nagar Court, South Delhi

Cr. Appli. 22 of 2019

Date: 01.10.2019

In the matter of:

Nikhil Gurung

.....Applicant

v.

State (N.C.T. Of Delhi)

.....Respondent

Coram: Sh. Rupesh Singh, Special Judge, Sessions Court

Present: Mr. Shahzeb Ahmed, Ld. Counsel for the State.

Ms. Sharmishtha Sharma, Ld. Counsel for the applicant.

I.O. Vivan Khandpal

Heard Ld. Counsel for applicant Ms. Sharmishtha Sharma, and Ld. Public Prosecutor Shahzeb Ahmed along with I.O. Vivan Khandpal. Counsel for the applicant submitted that an FIR 138/19 PS Malviya Nagar registered against accused on 07.09.2019 under sec. 8(c) read with 21/29 of the NDPS Act, 1985 accusing the applicant having dealt with the possession or tranship of narcotic drugs or he has used the same drug for his own consumption which he was carrying in his bag at the time of his arrest.

Learned counsel further submits that the FIR lodged by the police is implanted as there are overwriting on 2 occasions in the FIR, firstly with respect to the FIR No. and secondly with respect to the GD Entry. Accused has already passed 14 days in police custody, thereafter he was sent to judicial custody. Learned counsel submits that there is no occasion now to keep the person in judicial custody as he is student and the accused has no previous criminal record.



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Learned Public prosecutor submits that as per sec. 37 of NDPS Act in such matters not granting the bail is a rule and granting the bail is an exception. Reliance is placed in the apex court judgment *State of MP v. Kajad 2001*. Public Prosecutor further submits that when accused was arrested by police he was in possession of drug and narcotics substances and it is evidence that bag and mobile phone was seized by the police of which receiving was also given to the accused. It was pertinent to mention that in the seizure memo there is no mention of any drug or narcotic substance. Learned Public prosecutor further states that if the accused is released on bail, he may involved in commission of such offence again. It is settled principle of law "*suspicion how so ever grave it is cannot take place of settled law*".

Having heard both the counsel this court is of the opinion that the accused should be released on bail on furnishing the personal bond of 2 Lakh Rupees along with the condition that the accused shall not go out of the city without the permission of the court and will not affect the proceedings or investigation or he will not meet any witness of this case directly or indirectly. On the request of Ld. Public prosecutor the accused is directed to get his medical test done after every 24 hours by a registered medical practitioner and same shall be appointed by the magistrate. The next date of hearing will be 5th of October, 2019 for the final disposal of this bail application and accused is released on bail.



(Sh. Rupesh Singh)
Special Sessions Judge
Delhi: 01.10.2019