

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: May 28, 2009

Date of decision: May 29, 2009

BAIL APPLN. No. 673 of 2009

AMARJEET SINGH

..... Petitioner

Through: Mr.D.C. Mathur, Senior Advocate
with Mr. Yogesh Saxena, Advocate.

versus

DIRECTOR OF REVENUE INTELLIGENCE.... Respondent

Through: Mr. Satish Aggarwala, Advocate.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

J U D G E M E N T

1. This is an application for regular bail in the case titled “***Davendra Singh v. Kewal Ram & Ors.***” S.C. No.61-A/08 under Sections 21/27A and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (‘NDPS Act’) pending in the court of the learned Special Judge, NDPS Court, New Delhi. The Petitioner was arrested by the officials of the Directorate of Revenue Intelligence (‘DRI’) on 4th April 2008 and has remained in custody since then.

2. The case of the DRI as stated in its complaint filed in the Court of

the Special Judge, NDPS, By Davender Singh, Intelligence Officer
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(I.O) is that on 3rd April 2008 intelligence was gathered through a reliable source at 1600 hours by Shri Raman, I.O., DRI that a person would be coming in an Opel Astra car (No.HR-26K-9005) carrying narcotics drugs concealed in a suitcase which would be transferred to another person who would also come to the designated place of delivery at 1900 hours in his cherry colour Tata Safari car. The said information was reduced into writing by IO Raman Mishra who was the officer of the DRI at CGO Complex, Lodhi Road, New Delhi.

3. The further narration in the aforementioned complaint filed by the DRI is that on the basis of the said information a team of officers of the DRI was constituted. It is stated that two witnesses were called at around 1700 hours on 3rd April 2008 and requested to remain present during the possible interception and subsequent search proceedings. These two were Shri Kali Charan and Shri Satish, both working as sweepers with the CPWD. It is stated that at 1715 hours the raiding party left for the spot which was on the main (outer ring) road in front of Capital Court, Munirka, New Delhi. The DRI team mounted a surveillance.

4. The complaint further states that at about 1700 hours one Opel Astra car bearing registration No. HR-26 K-9005 came to the designated place. The driver of the said car parked it on the main road

in front of Capital Court, Munirka. At around 1915 hours one cherry

colour Tata Safari bearing registration No. CH 03 U 9626 reached there. The driver of the Tata Safari stopped his vehicle just in front of the Opel Astra. A person aged about 37-38 years got out of the Tata Safari and proceeded towards the Opel Astra car. The driver of the Opel Astra car then came out of his vehicle. He opened the boot of his car took out one black colour suitcase from it. When he was about to hand over the said suitcase to the person who had alighted from the Tata Safari, the officers of the DRI immediately apprehended both the persons and took both the vehicles in their control. It is stated that the driver of the Opel Astra car identified himself as Kewal Ram (Accused No.1). The person who alighted from the Tata Safari car identified himself as Amarjeet Singh (Accused No.2), the petitioner herein.

5. It is stated that “on persistent questioning by the officers” accused No.2 admitted that the suitcase contained contraband narcotic drugs concealed below its false bottom and that it had been brought by the accused No.1 from Punjab. Notice under Section 50 NDPS Act was served upon both accused persons separately. Both expressed their desire “by writing in their own handwriting on the body of the said notice that they do not require the presence of any Gazetted Officer or Magistrate to carry out the searches and in fact any officer of the DRI can carry out the searches.” They also stated in writing on the notice

itself that “since the place of interception was very crowded and the

same was not considered to be a safe place to carry out their searches as well as their vehicles, they requested the officers for taking them along with their belongings and vehicle to any safer place to carry out further proceedings.”

6. It is stated that thereafter the DRI officers along with the witnesses and the accused persons and the vehicles were brought to the office of DRI at CGO Complex, Lodhi Road, New Delhi. The two vehicles i.e. the Opel Astra and Tata Safari were parked in the parking of CGO Complex, Lodhi Road, New Delhi. The search of the Opel Astra car resulted in the recovery of one small black colour suitcase and one big black colour suitcase carrying the mark ‘LIBERTY SKY BAG’. The search of the small black colour suitcase revealed that it contained the old and used clothes of accused No.1. The large black colour suitcase with mark ‘LIBERTY SKY BAG’ contained one blanket and four unstitched ladies suits. The said large black colour suitcase was found to contain an abnormally thick bottom having a zipper attached on it. On unfastening the bottom having a zip of the said case two packets of heat sealed transparent polythene were recovered, which were found to be containing an off white powder/granules suspected to be contraband narcotic drugs. The same was then tested with the UN Field Drug Test Kit which gave a positive result for presence of heroin. Thereafter both the packets were marked as A and B. The

gross weight of the packets marked as A was found to be 2.463 kg and

the net weight was found to be 2.414 kg. Likewise, the gross weight of packet B was found to be 2.590 kg and net weight was found to be 2.549 kg. Thus the total gross weight of both the packets was found to be 4.963 kg.

7. The off white powder/granules were seized under Section 42 NDPS Act along with the packing material i.e. transparent polythene heat sealed pouches. Three representative samples of off white powder were kept in transparent pouches which were stapled and then sealed further keeping in brown craft paper envelopes. The test memos for the testing of the samples were prepared. The seized heroin packets marked A and B along with the transparent polythene packets were then kept separately in yellow colour envelopes marked as A and B. It is stated that the value of the seized heroin was assessed to be Rs.20 lakhs approximately. Both the vehicles used for transporting the contraband narcotic drugs were also seized. Both the accused persons were thoroughly questioned in the presence of witnesses and their personal search were carried out. Their driving licences and one page of note book written in Punjabi was recovered from accused No.2. The seizure memos were duly signed by the witnesses, the accused persons and the complainant. Thereafter the officers of the DRI also prepared the site plan of the place of interception of both the accused persons and this was also signed by the signatories to the Panchnama.

The facsimile of DRI seal used for sealing was also affixed on the

panchnama. It is stated that the panchnama started at 2030 hours and concluded at 2300 hours on the same day. The contents of the panchmana were read over to the witnesses as well as to the accused in vernacular and being satisfied that it had been correctly understood by both the accused persons the witnesses and the complainant signed the panchnama proceedings.

8. It is claimed by the DRI persons that pursuant to the summons dated 3rd April 2008 the accused No.1 had made a statement dated 3rd/4th April 2008 admitting to the aforementioned recovery, seizure and inter alia stated that on 2nd April 2008 at Nakodar Taxi Stand one Amarjeet Singh (accused No.2 and petitioner herein) informed him through a messenger that that a car was required for carrying two consignments for two separate dates i.e. 2nd and 3rd April 2008 from G.T.Road, Ludhiana to New Delhi and that he would be paid Rs.50,000/- for that job. As directed by Amarjeet Singh, Kewal Ram collected one black colour suitcase loaded with 5 kg of heroin from an unknown person at G.T. Road, Ludhiana in his Opel Astra car and carried it to New Delhi. Kewal Ram stated that he reached New Delhi at 1950 hours on 2nd April 2008 and handed over the said suitcase loaded with 5 kg heroin to an unknown person at Delhi near Radisson Hotel at Gurgaon in the presence of Amarjeet Singh. He then returned to Ludhiana on the same night. He again collected another

morning of 3rd April 2008. He arrived at New Delhi around 1610 hours on 3rd April 2008 in his Opel Astra car carrying the said suitcase with 5 kg of heroin. Around 1800 hours on the same day Amarjeet Singh met him near Lohia Hotel, Mahipal Pur, Delhi and instructed that the suitcase should be delivered to him (Amarjeet Singh) at the front side of Capital Court, Munirka, New Delhi. Kewal Ram then reached at the said place around 1915 hours on 3rd April 2008. Amarjeet Singh was available at the front side of the Capital Court, Munirka in his Tata Safari. As per the directions when Kewal Ram was about to load the said suitcase in the Tata Safari the DRI officials detained both of them and thereafter they both arrived at the DRI office along with both vehicles. According to Kewal Ram, Amarjeet Singh paid him Rs.5,000/- on 2nd April 2008 after he delivered the heroin on that day. He was to get another 50,000/- for both deliveries. Kewal Ram in his statement under Section 67 NDPS Act admitted that 4.963 kg of heroin was concealed in the suitcase recovered from the Opel Astra car brought by him from Punjab for giving to Amarjeet Singh. He stated that he admitted his mistake.

9. According to the DRI, pursuant to the summons issued to him on 3rd April 2008, the Petitioner appeared before the DRI and in his voluntary statement under Section 67 NDPS Act admitted to the recoveries, seizure and other incriminating facts as already noticed.

He stated that on 1st April 2008 he along with Bablu (Sukhwinder

Singh) reached Delhi in the evening and stayed at Hotel Lohia, Mahipal Pur Road, Delhi. He also purportedly admitted to the facts concerning the arrest and service of the notice under Section 50 NDPS Act on each of the accused and their being brought thereafter to the CGO complex where the panchnama was drawn up.

10. The DRI officers then arrested both the accused persons on 4th April 2008. The residential premises of accused No.2 at Haldwani and of accused No.1 at Ludhiana were searched.

11. The Petitioner's application for bail was rejected by the learned Special Judge by an order dated 11th February 2009. The learned Special Judge held that the recovery was of a commercial quantity of 4.963 kg of heroin from accused No.1 at the time he was to hand it over to accused No.2. Therefore the embargo under Section 37 NDPS Act would be attracted. It is further held that since the accused No.1 had earlier also delivered drugs using his Opel Astra car at the instance of accused No.2 there was every likelihood of the petitioner committing the offence again, if released on bail.

12. In the present petition the Petitioner has contended inter alia that the notice under Section 50 NDPS purported to have been given at the site of interception to both the accused persons, was a typed notice.

The font size of the letter of the notice as well as the panchnama was

the same and printed out from the same printer. There was no printer at the spot. The said documents, it was alleged were prepared in the DRI office subsequently and not served on the spot as claimed. It is pointed out that the Petitioner has retracted his confession at the first available opportunity on 20th May 2008 and apart from the retracted confession there was no material to connect the Petitioner with the crime. It is further pointed that while Kewal Ram in his statement under Section 67 NDPS Act stated that he reached the spot at 1700 hours and found the co-accused Amarjeet Singh already there, in the panchnama it is stated that Kewal Ram arrived at 1700 hours and thereafter at 1915 hours Amarjeet Singh came there in its Tata Safari car.

13. Reliance is placed on the judgment in *Noor Aga v. State of Punjab 2008 [3] JCC [Narcotics] 135* to submit that retracted confession is a weak piece of evidence and requires independent corroboration. It is further submitted that retracted confession cannot be used as substantive evidence in a case of criminal conspiracy. Reliance is placed upon the judgments of the Supreme Court in *Haricharan Kurmi v. State of Bihar AIR 1964 SC 1184*, *Mirza Akbar v. King-Emperor AIR 1940 PC 176* and *Jayendra Saraswathi Swamigal v. State of Tamil Nadu 116 (2005) DLT 354 (SC)*. Relying on the judgment in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294* it is submitted that “the power of the

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Court to grant bail should not be pushed too far”. If the Court comes to the conclusion that in all probability the accused is not liable to be convicted, a bail order should be passed.

14. Mr. D.C. Mathur, learned Senior counsel appearing for the Petitioner submitted that in the instant case the DRI had made numerous false statements in the panchnama and preceding it in the notice served under Section 50 NDPS Act. It is pointed out that a perusal of the font and the printer used to print out the notice under Section 50 NDPS Act showed that as the same printer on which the panchnama was printed out was used. Kewal Ram had made an endorsement in English on the said notice under Section 50 NDPS Act. There was nothing therein to indicate that the statement had been read over and explained to Kewal Ram. As far as Amarjeet Singh is concerned the notice contains his handwriting in Hindi with his signatures appended below to the effect that he also does not wish to be searched. Was also doubtful. The statements of both persons under Section 67 NDPS Act have been retracted on the ground they were obtained by use of force.

15. On 18th April 2009 the Respondent DRI filed a reply in this Court. This Court on 20th April 2009 passed the following order after perusing the reply:

1. The reply filed by the Respondent DRI in this

Court on 18th April 2009 has been perused. The reply is signed by an officer of the DRI who has not been identified in the reply. However, Mr. Aggarwala, learned Senior standing counsel confirms that the signature on the reply is of Devendra Singh, Intelligence Officer, DRI, Delhi Zonal Unit, New Delhi who has also signed the notices under Section 50 NDPS Act (copy at pages 13 and 14 of the paper book) as well as the *panchnama*, a copy of which is at page 15 of the paper book.

2. However, it is seen that reply is supported by an affidavit of Dr. Atul Handa, Deputy Director, DRI stating that the contents of the accompanying reply are true and correct. Mr. Aggarwala is unable to explain why a different person should swear to the supporting affidavit when such deponent has himself has not signed the reply. This Court requires to Dr. Handa to file an affidavit, within one week, indicating why this course was adopted in the present case.

3. Among other grounds urged by Mr. D.C. Mathur, learned Senior counsel appearing for the Petitioner in support of this application for bail is that the notice under Section 50 NDPS Act which is purported to have been served upon the Petitioner at the spot at the time of his arrest, is a computer-typed sheet on which the Petitioner's endorsement in Hindi to the effect that he does not

wish to be searched in the presence of a Magistrate is found. He states that this is simply not feasible. He further points out that this notice as well as the *panchnama* appear to have been printed out from the same printer. The *panchnama* is purported to have been drawn at the office of the DRI on the same date. He accordingly doubts the veracity of these documents. He refers to the averment in para 9 (vii) of the petition which reads as under:

“9 (vii) Notice u/s 50 NDPS Act purported to have been given at the spot of interception to both the accused persons is typed. However the print and font of the notice and *panchnama* are same, which shows that both the documents were typed and print out was taken from the same printer. There was no printer at the spot. Therefore, the only inference which could be drawn is that all documents were prepared at the DRI office and petitioner was implicated.”

4. The reply filed by the DRI in response to para 9 reads as under:

“14. With reference to para No.9, the same as stated by the petitioner, is wrong and is denied. The circumstances to establish false implication are factually and legally incorrect. It is denied that any witness is a stock witness. It is further denied that there is any contradiction. It is also denied that the documents were prepared subsequently and the Petitioner has been falsely implicated. As

regards the alleged retraction, when the petitioner was produced before the court, he did not make any grievance. Attention in this behalf is invited to the judgment of M. Prabhu Dayal by the Hon'ble Supreme Court and Yakub Khan v. NCB of this Hon'ble Court.”

5. The aforementioned reply is, in the considered view of this Court, unsatisfactory. It does not specifically deal with the averment made out by the Petitioner in para 9 (vii) of the petition.

6. Considering that Mr. Devendra Singh, Intelligence Officer, DRI purportedly drew up both the notice under Section 50 NDPS Act as well as the *panchnama*, this Court requires him to file a further affidavit specifically dealing with the above contention in para 9 (vii) of the petition. He will also explain to this Court how and in what circumstances the aforementioned documents were drawn up.

7. The supplementary affidavit of Mr. Devender Singh be filed within one week from today with an advance copy to be served upon the learned counsel for the Petitioner at least two days prior to the next date of hearing. Dr. Handa will also file his affidavit within the same period.

8. List on 1st May 2009.

9. Order be given dasti to learned counsel for both the parties under the signature of the Court Master.”

Thereafter on 4th May 2009 the following order was passed:

“1. A detailed order was passed by this Court in this matter on 20th April 2009 in the present application for bail where the attention of the Court was drawn by learned Senior counsel for the Petitioner to a computer-typed notice purportedly served upon the Petitioner under Section 50 NDPS Act at the time of his interception on the spot and on which the Petitioner’s endorsement in Hindi to the effect that he does not wish to be searched in the presence of a Magistrate is found. The contention of learned Senior counsel for the Petitioner was that given the circumstances in which the interception is stated to have taken place, the service on him of a computer-typed notice at the spot, giving his full particulars, was simply not feasible. It is further pointed out that both the notice under Section 50 NDPS Act as well as the *panchnama* were printed out from the same printer.

2. This Court was not satisfied with the reply given by the Respondent DRI to the aforementioned averment in the petition. The said reply was signed by Mr. Devendra Singh, Intelligence Officer, DRI with the supporting affidavit signed by Dr. Atul Handa, Deputy

Director, DRI. This Court was also surprised to note that Dr. Handa had sworn the supporting affidavit whereas the reply was in fact signed by Mr. Devendra Singh. In the said affidavit Dr. Handa stated that he had personal knowledge of what was said by Mr. Devendra Singh in the reply. This was the reason why this Court in its previous order dated 4th May 2009 required Dr. Handa to file a further affidavit in this case explaining why he did so.

3. Dr. Handa has filed an affidavit dated 29th April 2009 stating as under:

“I, (Dr.) Atul Handa, Deputy Director, Directorate of Revenue Intelligence, do hereby solemnly affirm and declare as under:

1. The reply to the bail application was signed by the seizing officer Shri Devendra Singh, Intelligence Officer. However, the reply is supported by an affidavit sworn in by me.

2. As per the practice all affidavits in the Hon’ble High Courts and the Hon’ble Supreme Court are filed by the officials of the rank of Under Secretary and above. Since I was under the bona-fide impression that the affidavit had to be signed by me, I verified the reply as given by Sh. Devendra Singh, Intelligence Officer, from the case records and signed the affidavit.

3. I respectfully submit that it was in the aforesaid circumstances that I had signed the affidavit in support of the reply, signed by Shri Devendra

Singh, Intelligence Officer.”

4. On his part Mr. Devendra Singh, the Intelligence Officer has filed an affidavit dated 29th April 2009 stating as under:

“I Devendra Singh, aged.... years, Intelligence Officer, Directorate of Revenue Intelligence, New Delhi, do hereby solemnly affirm and declare as under:

1. That regarding the issue of notice under Section 50 of NDPS Act and the panchnama being printed from the same printer, it is true that the notice under Section 50 of NDPS Act, 1985 and panchnama were made from the same computer.

2. It is further submitted that on the basis of a specific intelligence, surveillance was mounted by the officers of DRI, in front of Capital Court, Munirka, New Delhi, on 3.4.2008. The team intercepted two persons alongwith their vehicles. On interception of the said Amarjeet Singh and Kewal Ram at Munirka, New Delhi, the intercepting team of DRI, DZU, immediately informed the senior officers of DRI about the interception, which is a routine practice. The details of the intercepted persons namely Amarjeet Singh and Kewal Ram were conveyed to the senior officers. Immediately, a back-up team alongwith paraphernalia required e.g. weighing machine, UN Drug Testing Kit and typed notices issued under Section 50 of the NDPS Act, 1985, was dispatched to the interception site.

3. It is denied that the petitioner has been framed in the present case, as alleged or at all.”

5. In the considered view of this Court both the affidavits do not answer the concern expressed by this Court in its order dated 20th April 2009. The affidavit of Mr. Devendra Singh is totally vague when it claims that “the intercepting team of DRI, DZU, immediately informed the senior officers of DRI about the interception, which is a routine practice.” There is no indication of what this ‘routine practice’ is and how the records of the DRI would help the Court to understand it. The DRI should be maintaining records in the instant case to show the time when they received the information, the time when the team left for effecting the interception, the time when the interception took place, the time when the information was conveyed by the team to the senior officers of the DRI, and the recording of the actual contents of such information received by the senior officers contemporaneously in writing in some record maintained at the office of the DRI. Dr. Handa obviously did not understand the concern expressed by this Court in its order dated 20th April 2009 because he has simply filed a supporting affidavit stating that everything Mr. Devendra Singh stated in his reply was true and correct to Dr. Handa’s information and belief. He is yet to inform this Court the basis on which he swore to that affidavit which did not give any of

the particulars which is now sought to be given, although in an incomplete form, by Mr. Devendra Singh in his affidavit.

6. This Court would like to impress upon the DRI that when it sends a team based on information received by it to effect an interception, it is likely that it is going to affect the liberty of the person so intercepted. Considering the gravity of the offence which is sought to be prevented or investigated, it is all the more necessary that every step taken by the officers of the DRI is backed up by records maintained at the DRI. The question is also about answerability or accountability of the intercepting team not only to the superior officers of the DRI themselves but also to the law. When a question arises whether in fact the interception took place in the manner as alleged by the DRI, and whether in fact the persons intercepted were present at the spot, and whether they were served notice, the records of the DRI should speak for themselves.

7. This Court requires Dr. Handa, Deputy Director, DRI and Mr. Devendra Singh, Intelligence Officer, DRI to be present in Court on the next date of hearing together with the complete record to explain on what basis the affidavits tendered today have been sworn by them.

8. Mr. Satish Aggarwala, learned counsel for

the DRI informs the Court that Mr. D.D. Rishi, Additional Director General ('ADG'), DRI is the person in overall incharge of the operations of the Delhi Zone Unit. This Court requests Mr. D.D. Rishi, ADG, DRI to immediately convene a meeting of senior officers to address the issue of maintaining the records in the office of the DRI. It is clarified that the records can be shown in confidence to the Court when requested particularly when questions of the kind raised by the Petitioners, as recorded in the order dated 20th April 2009 of this Court, arise for consideration. As far as the present case is concerned, the records maintained in the office of the DRI contemporaneous with the events that took place will be shown to this Court on the next date of hearing.

9. List on 18th May 2009.

10. A copy of this order be given dasti to the parties under the signature of the Court Master.”

16. Pursuant to the aforementioned directions the Deputy Director, Directorate of Revenue Intelligence had convened a meeting of the officers involved in the investigations on two consecutive dates i.e. 25th and 26th May 2009. He has appended to his affidavit the statement made by all these officers which according to him support the case of the DRI that the Petitioner was arrested around 1915

hours, served with the notice under Section 50 NDPS Act at the spot and that the Petitioner and the DRI officers returned to CGO Complex, Lodhi Road, New Delhi and entire panchnama proceedings which started at 2030 hours concluded at 2300 hours.

17. According to Mr. Mathur, learned Senior counsel appearing for the Petitioner the affidavit of Dr. D.D.Rishi, Additional Director General, DRI does not improve the situation as far as the veracity of the record of the DRI is concerned. He pointed out that some of the officers associated with the alleged interception of the Petitioner were no longer available. A new version has been introduced about two of the Intelligence Officers going to the spot in a motorcycle with the weighing machine and typed notices, which version was not there in any of the earlier versions of the DRI including the panchnama, the complaint, the reply affidavit filed by the DRI in this Court and the affidavit of the IO and ADG, DRI pursuant to the order of this Court. He submits that since the evidence is falsified, the prosecution of the Petitioner should fail. He submits that the requirement of Section 37 NDPS Act and that there should be reasonable ground to believe that the Petitioner has not committed the offence is satisfied as far as the present case is concerned. It is submitted that the wording of the notice under Section 50 itself indicates that it was inconsistent with the case of the DRI. It was not a document which was served on the

therefore cannot form the basis for convicting the Petitioner. Reliance is placed upon the judgments in *Ravindran @ John v. The Superintendent of Customs 2007 (2) JCC Narcotics 89*, *Vinod Solanki v. Union of India JT 2009 (1) SC 1* and *Noor Aga v. State of Punjab*.

18. Appearing on behalf of the DRI, Mr. Satish Aggarwala learned Senior Standing counsel vehemently opposes the grant of bail to the Petitioner. It is maintained that none of the affidavits has any false statement been made by the officers of the DRI. He argued that what was stated in the affidavit now filed by the DDG was correct. He repeatedly stressed that there was no need for the DRI officials to falsely implicate the Petitioner. The offence was a grave one and therefore no bail should be granted. Mr. Aggarwala relied upon the judgments of the Supreme Court in *Abbas Khan v. Central Bureau of Narcotics* (Crl. A. No. 101 of 2005 dated 14th January 2009) and *Union of India v. Rattan Malik @ Habul* (Crl. A. No. 137 of 2009 dated 23rd January 2009). It is submitted that the words ‘reasonable grounds under Section 37 NDPS Act should mean something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with.’ Thus the recording of satisfaction on both aspects i.e. the accused is not guilty of the alleged offence and that he is not likely to commit any such offence while on bail have to be satisfied.

19. As it can be seen from the order dated 20th April 2009 the first question that arises is whether it was possible for the officers of the DRI to have in fact served on the spot typed notices under Section 50 NDPS Act on the two accused after their interception on 1915 hours and to have returned to the office with them at CGO Complex, Lodhi Road by 2030 hours. The earliest version of what exactly happened according to the DRI is available in the text of the notice itself. The typed portion of the said notice under Section 50 NDPS Act served upon the Petitioner reads as follows:

“NOTICE UNDER SECTION 50 OF THE NDPS
ACT, 1985

To

Shri Amarjeet Singh, Aged 40 years,
S/o Shri Harcharan Siingh,
H/o Smt. Bhupinder Kaur Sidhu @ Rani.
C/o Shri Vijay, Near Madhu Muskan Hotel, Talli
Tal, District Nainital, Uttra Khand.

Consequent upon your interception on main road in front of the Capitol Court, Munirka, New Delhi at about 1915 hrs. today i.e. 03.04.2008 when you were found transferring a black colour zipper suitcase from vehicle Registration No. HR 26 K 9005 (Opel Astra) to your vehicle Registration No. CH 03 U 9626 (TATA SAFARI), in pursuance to a specific intelligence that the said suitcase contained contraband narcotic drugs, it is reasonably believed that the drugs are kept in the

said suitcase. It is, therefore, necessary to carry out your personal search and rummaging/search of the said suitcase and vehicles under the provision of NDPS Act, 1985. Before carrying out the said searches by this notice you are hereby informed that you have a legal right to state if you desire, the said searches can be carried out in the presence of a Magistrate or of any Gazetted Officer. You may indicate your option in writing. You are informed that this is your legal right.

(Devendra Singh)
Intelligence Officer,
DRI, DZU, New Delhi.”

20. It must be mentioned here that below this notice there is a writing in Hindi signed by the Petitioner stating that he does not wish to be searched by either a Gazetted Officer or a Magistrate and that the searches should be carried out at the office. This notice is in addition has been signed by the IO Devendra Singh and the Petitioner Amarjeet Singh. It is also signed by the two panchas Kali Charan and Satish in Hindi.

21. It requires to be noted that in the above notice it is stated that “when you were found transferring a black colour zipper suitcase from vehicle Registration No. HR 26 K 9005 Opel Astra to your vehicle Registration No. CH 03 U 9626 Tata Safari ...” In fact the

case of the DRI is other way round. The allegation is that it was Kewal Ram who came in the Opel Astra and sought to transfer the black colour suitcase from his car to the Tata Safari.

22. We next come to the notice under Section 50 NDPS Act served upon Kewal Ram which reads as under:

“NOTICE UNDER SECTION 50 OF THE NDPS
ACT, 1985

To

Shri Kewal Ram, S/o Late Shri Peera, Aged 30
years, R/o V Kotla Nurpur, Tehsil Nakodar,
District Jalandhar, Punjab.

Consequent upon your interception on main road in front of the Capitol Court, Munirka, New Delhi at about 1915 hrs. today i.e. 03.04.2008 when you were found transferring a black colour zipper suitcase from vehicle Registration No. HR 26 K 9005 (Opel Astra) to vehicle Registration No. CH 03 U 9626 (TATA SAFARI), in pursuance to a specific intelligence that the said suitcase contained contraband narcotic drugs, it is reasonably believed that the drugs are kept in the said suitcase. It is, therefore, necessary to carry out your personal search and rummaging/search of the said suitcase and vehicles under the provision of NDPS Act, 1985. Before carrying out the said searches by this notice you are hereby informed that you have a legal right to state if you desire, the said searches can be carried out in the presence of

a Magistrate or of any Gazetted Officer. You may indicate your option in writing. You are informed that this is your legal right.

(Devendra Singh)
Intelligence Officer,
DRI, DZU, New Delhi.”

23. Below that is an endorsement written in English which reads as under:

“I do not require the presence of a Magistrate or a Gazetted Officer of the department and any officer can carry out the required search/request that the searches may not be carried out at this crowded place but at your office, as the place is not safe to carry out the search.”

24. Below the endorsement there is a signature in Gurumukhi. Again this has been signed further by two panchas- Kali Charan and Satish in Hindi. It may be noticed that in this notice an identical wording is used that Kewal Ram was found transferring from vehicle Registration No. HR 26 K 9005 Opel Astra to vehicle Registration No. CH 03 U 9626 Tata Safari”. It appears that the same wording of the notice was used for both accused persons.

25. We then come to the panchnama. The relevant portion of the panchnama reads as follows:

“At about 1900 hrs., one Opel Astra car bearing

Registration No. HR 26 K 9005 came to the designated place and the driver of the said vehicle parked the car on the main road in front of Capitol Court, Munirka, New Delhi. At around 1915 hrs. one cherry colour Tata Safari bearing Registration No. CH 03 U 9626 also reached the said place. The driver of the Tata Safari car stopped his vehicle just in front of the vehicle No. HR 26K 9005 (Opel Astra) and parked the vehicle there only. Then, one person aged about 37-38 years got out of the said Tata Safari and proceeded towards the Opel Astra car. The driver of the Opel Astra car then came out of his vehicle and opened the diggy of his car and took out one black colour suitcase from the diggy and when he was about to hand over the said suitcase to the person who had approached him from the cherry colour Tata Safari bearing registration No. CH: 03 U 9626, the officers immediately apprehended both the persons and also took both their vehicles in their control. On questioning by the officers, the person who was driving the Opel Astra car identified himself as one Kewal Ram, the other person who had come out of the Tata Safari identified himself as Amarjeet Singh. On persistent questioning by the officers, Amarjeet Singh admitted that the said suitcase, was containing contraband narcotic drugs, concealed below the false bottom of black colour suitcase which was brought by Kewal Ram from Punjab and was lying in Kewal's car. Then, the Notice under Section 50 of the NDPS Act, 1985

was served upon both Amarjeet Singh and Kewal Ram, separately. Both of them expressed their desire by writing in their own hand writing on the body of the said notice that they do not require the presence of any Gazetted Officer or Magistrate to carry out the searches and in fact any officer of the DRI can carry out the searches. They also stated in writing on the notice itself, that since the place of interception was very crowded, and the same was not considered to be a safe place to carry out their searches as well as of their vehicles, they requested the officer taking them along with their belongings and vehicles to any safer place to carry out further proceedings. Thereafter, the officers along with us, the said two persons along with their belongings and vehicles were brought to the said office of Directorate of Revenue Intelligence, situated at Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi.”

26. It will be noticed that in the above passage there is no mention whatsoever about the officers at the spot calling up anyone at the CGO Complex and conveying to them the addresses and the other details of the two accused persons. There is no mention of the officers in the CGO Complex typing out such notices and printing them out on a printer and thereafter rushing to the spot in a motorcycle.

27. We next come to the statement of Kewal Ram under Section 67

NDPS Act purportedly made on 3rd/4th April 2008. This is a totally inculpatory statement where he admits to carrying 5 kg of heroin on the instructions of Amarjeet Singh in a false bottom of the large black suitcase in his Opel Astra car. Interestingly, as regards the crucial aspect of his reaching Delhi he states as under:

“I arrived at New Delhi around 16.10 hours on 03.04.2008, in my Opel Astra car No. HR-26K-9005 with the above said suitcase along with 5 Kg. heroin. Again around 1800 hrs on the evening on 03.04.2008, Amarjeet Singh met me at Near Lohia Hotel, Mahipalpur, Delhi and he further instructed that the said suitcase along with 5 kg heroin would be delivered to me at the front side of Capital Court Munirka, New Delhi. I reached at around 1915 hrs. on 03.04.2008 at the above said spot. Shri Amarjeet Singh as available at the front side of Capital Court, Munirka, Delhi on his TATA Safari No. CH 034 9626 as per the directions of Amarjeet Singh, when I was loading the said suitcase along with 5 kg heroin in his vehicle TATA Safari No. CH 034 9626. The same persons introduced themselves as DRI officers detained both of us and after that we, both of us and the officers of DRI were arrived at DRI office along with suitcase loaded with 5 kg heroin as well as vehicle (i.e Opel Astra No. HR-26K-9005) and TATA Safari No. CH 034-9626.”

28. It is plain that there is a material contradiction in the version of

Kewal Ram and what the DRI has stated in the panchnama as well as in the complaint filed thereafter. Here Kewal Ram states that he arrived in Delhi at 1610 hours itself and then he met Amarjeet Singh at 1800 hours near Lohia Hotel, Mahipal Pur and that Amarjeet Singh instructed him to bring the suitcase with 5 kg heroin to the Capital Court, Munirka. In the complaint however it is stated that he drove from the Ludhiana to the spot and reached there 1715 hours. The second material contradiction was that he reached at 1915 hours at the spot and he saw Amarjeet Singh already there. In the panchnama it is stated that Kewal Ram arrived at 1900 hours and Amarjeet Singh arrived later at 1915 hours.

29. The second major factor as regards the Kewal Ram is concerned is that both his statement under Section 67 NDPS Act and the endorsement made by him on the notice under Section 50 NDPS Act are in English. He has signed both of them in Gurumukhi. Below the notice purportedly written by him in English there is only an endorsement of Amarjeet Singh in Hindi that he fully agrees with the said statement. There is no endorsement that the said statement was read out to Kewal Ram in the local language and understood by him to be correct.

30. This Court had directed Kewal Ram to be produced in Court from judicial custody. He appeared and made the following statement:

**“Statement of Kewal Ram, aged about 30-31
years s/o Shri Peera r/o Village Kotla Bhago,
Tehsil Nakodhar, Punjab - without oath**

I have studied till 10th Standard in a Government School in my village. I am not conversant with English. I can speak some Hindi but am fluent in Gurmukhi. I have been shown a copy of the statement which is annexed to the petition as Annexure P-5. I identify my signature which is in Gurmukhi but I state that I do not know what is written in the statement which is in English. I further state that the statement was not explained to me and that my signature thereon was obtained forcibly.

The above statement was read over and explained to the deponent by Mr. Pawan Bahl, learned APP in Punjabi and accepted by him as correct”

31. Thereafter this Court on 29th May 2009 passed the following order:

“1. Pursuant to the order dated 18th May 2009 the co-accused Kewal Ram has been produced from custody. His statement has been recorded separately.

2. The statement of the co-accused Kewal Ram raises serious doubts about the manner in which the DRI has conducted the investigation and recorded statements in the instant case. It is further pointed by Mr. Mathur, learned Senior counsel for

the Petitioner that there is endorsement in Hindi at the foot of the statement of Kewal Ram, signed by the accused Amarjeet Singh on 4th April 2008, to the effect that he agrees with the statement made by Kewal Ram “on 3.4.04.2008.”

3. The affidavit of Dr. D.D. Rishi, Additional Director General, DRI dated 26th May 2009 is taken on record.

4. Mr. Mathur states that he will study the affidavit and make his submission tomorrow.

5. List on 28th May 2009. Order be given dasti to learned counsel for the parties under the signature of the Court Master.”

32. To this Court it appears that the version of the DRI that Kewal Ram in his own language wrote the endorsement in question under Section 50 NDPS Act and on his own wrote the statement under Section 67 NDPS Act, which runs into 3 pages, is wholly unbelievable. When Kewal Ram was produced before this Court it was plain that he could not even speak three words of English. His statement had to be explained to him in Punjabi by Mr. Pawan Bahl, learned APP for the State who was present at the Court. He stated that his signatures on his statement under 67 NDPS Act had been obtained forcibly after he was beaten up. He was unable to write in

English or speak in English. To say the least this is one of the most
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unfortunate aspects of the present case, since this reflects poorly on the methods employed by the DRI in investigating its cases.

33. The CGO complex at Lodhi Road, New Delhi is at least 12 to 13 km from Munirka. 3rd April 2008 was a week day and the time at which the interception took place, was according to the DRI between 1915 hours and 1930 hours. It is now claimed that two officers in the CGO complex, after being told of the interception sometime after 1915 hours and that too after “persistent questioning of the accused” (after they were intercepted) and after being given the details of the accused including their names, their entire addresses, the vehicle numbers etc. had those details typed out on the notice under Section 50 and had it printed out on the computer and then those two notices were carried by the two officers with the weighing machine and field testing kit on a motorcycle to reach the spot by 1945 hours. Although it was claimed by Mr. Aggarwala that one will be able to cover the distance in 15 minutes. Anyone familiar with the traffic conditions in Delhi and the area in question will know that on a week day between 1900 hours and 2000 hours it is not possible to reach from the CGO Complex, Lodhi Road to the spot on the outer ring road at Munirka within 15 minutes. Further a mere look at the notice under Section 50 would show that it would take a minimum of 10 to 15 minutes, even at the fastest typing speed, to prepare such notices. If we thereafter

the notices on the spot, obtain the endorsements of the two accused thereon on the spot, and thereafter the officers and accused to return to the CGO Complex at Lodhi Road, it is impossible that all this took place by 2030 hours when the panchnama proceedings began. It appears to this Court that this is just not possible.

34. The affidavit dated 26th May 2009 of Dr.D.D. Rishi the Additional Director General, DRI has been perused. It sets out in detail the statements made before him by each of the officers who constituted the team which intercepted the two accused. What is significant is that each of the officers states that the interception took place at around 1915 hours. However none of them actually says that when the back up team consisting of R.M.Singh and A.K.Sinha (both the IOs who left the office of the DRI at the CGO complex after preparing the notices under Section 50 NDPS Act) actually reached the spot. It must be remembered here that this version of two officers, A.K.Sinha and R.M. Singh, preparing the notices and then travelling to the spot on the motorcycle is stated for the first time in the affidavit dated 26th May 2009 of Dr. D.D. Rishi. There is absolutely no record of these happenings in the records of the DRI. At no point of time earlier i.e. either in the panchnama or in the affidavit filed by IO Devendra Singh, these facts were stated. It appears to this Court that this is a desperate attempt to somehow justify the impossible. It is a poor

taken to the spot, served on the accused, their endorsements taken and all of them returning to the CGO Complex and all this taking place between 1915 hours and 2030 hours. Clearly, this kind of an affidavit cannot stand legal scrutiny.

35. This Court is pained to note that the DRI has not been forthright with this Court. Despite filing several affidavits, the correct facts have not been presented. This Court is constrained to observe that the offences under the NDPS Act are doubtless grave. However that cannot be an excuse for being lax on the statutory procedures. The Court must insist that the procedure established by the law be scrupulously adhered to since in cases involving the offences under the NDPS Act, and in particular where the quantity involved is a commercial one, the chance of the accused getting bail is very slim, there should be an insistence on strict compliance by the DRI with the procedures. Since the infraction of liberty is severe, greater care should be taken to ensure that the procedure established by law is not allowed to be diluted. The following observations of the Supreme Court in *Directorate of Revenue v. Mohammed Nisar Holia (2008) 2 SCC 370* are apposite:

“11. Power to make search and seizure as also to arrest an accused is founded upon and subject to satisfaction of the officer as the terms “reasons to believe” have been used. Such belief may be founded upon secret information that may be orally

conveyed by the informant. Draconian provision which may lead to a harsh sentence having regard to the doctrine of ‘due process’ as adumbrated under Article 21 of the Constitution of India require striking of balance between the need of law and enforcement thereof, on the one hand, and protection of citizen from oppression and injustice on the other.”

36. The approach that a Court should adopt in an application for bail under Section 37 NDPS Act has been explained as follows by the Supreme Court in *Union of India v. Shiv Shanker Kesari (2007) 7 SCC 798*:

“11. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.

12. Additionally, the Court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion.”

37. In *Ashak Hussain Allah Detha v. Assistant Collector of Customs*

1990 CRI.L.J. 2201 it was observed (at p.2207):

“However, well intended the action of the prosecution is, if the circumstances reveal that the statements on the basis of which the prosecution seeks to have the accused convicted, are not voluntary, the Court’s discretion must naturally be influenced by the deplorable practices followed by the Investigating Officers for procuring the statements. The accused who are tried on the basis of such tainted evidence may well be acquitted. But then the time spent in custody does not return to them after their acquittal. It is, therefore, necessary to consider whether the prosecution is in possession of credible evidence.”

38. Turning to the case on hand the following reasons weigh with this Court for concluding that there are reasonable grounds to believe that the Petitioner is not guilty of the aforementioned offences under the NDPS Act.

(a) The narration in the panchnama as well as in the complaint by the DRI about the manner in which the interception took place and the notices were prepared and served under Section 50 NDPS Act, appears to be improbable and is not supported by the records of the DRI. The different versions of the DRI on these aspects raise serious doubts about the investigation. The contents of the notice served on the Petitioner under Section 50 NDPS contradicts the case of the DRI.

(b) Kali Charan, a stock witness appears to have been deployed for acting as a witness to the arrest, service of notice and the panchnama. He is a sweeper in the CPWD. The Petitioner has placed on record the documents pertaining to another interception that took place in June 2008 where again Kali Charan was the public witness. This is too much of a coincidence to be ignored.

(c) All that the DRI has are the retracted confessions of both Amarjeet Singh and Kewal Ram. Both of them have stated that these statements were extracted from them through coercive methods. The statements do not inspire confidence that they were made voluntarily.

(d) It is plain that Kewal Ram is not conversant in English. Yet both the endorsements on the notices served on him under Section 50 NDPS Act as well as the statement made by him under Section 67 NDPS Act are recorded in English. This Court on production of Kewal Ram was satisfied that he could not have possibly written them out in his own hand as claimed by the DRI. There is no endorsement that the contents were read out to him and explained to him in the local language.

(e) The repeated affidavits of the officers of the DRI and particularly the Intelligence Officer Devendra Singh of the events that transpired do not inspire confidence at all. At every possible stage there is an improvement of the version of what happened in the evening of 3rd April 2008 outside the Capital Court in Munirka and thereafter.

(f) The investigation in the case is riddled with contradictions, improbabilities and illegalities. It does not inspire confidence.

39. For all of the aforementioned reasons, this Court is of the view that reasonable grounds exist for holding that the Petitioner is not guilty of the offence under the NDPS Act.

40. The second limb of the Section 37(b) NDPS Act is that the Court must be satisfied that the Petitioner is not likely to commit the offence under the NDPS Act if released on bail. For this purpose reliance is placed by the DRI upon the statement of Kewal Ram himself that he was earlier asked by Amarjeet Singh to hand over some consignment to one Billu (who has not been examined). As already noticed, Kewal Ram's statement appears to be neither voluntarily nor reliable. In any event the statement is in a language with which he is not conversant. Barring this statement of Kewal Ram there is nothing to show that the Petitioner is likely to commit an NDPS Act offence if granted bail. According to this Court both limbs of Section 37(b) NDPS Act stand satisfied.

41. In these facts and circumstances, it is directed that the Petitioner be released on bail subject to his furnishing a personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the

satisfaction of the trial court. The Petitioner will surrender his

passport before the trial court and will not leave Delhi without the prior permission of the trial court. He will not intimidate any of the witnesses. He will appear before the trial court on every date fixed in the case and furnish his present correct address to the trial court. The Petitioner will not interfere in the fair progress of the trial and not seek unnecessary adjournments. If any of these conditions is violated, the prosecution can apply to this Court for cancellation of the bail granted to the Petitioner.

42. It is made clear that no observation made in this order is intended to influence the opinion to be formed by the trial court at the subsequent stages on an independent assessment of the evidence that comes on record.

43. At one stage of the proceedings in this case the ADG, DRI placed on record a circular which shows that the DRI has commenced maintaining an NDPS case diary. The facts of this case show the immediate and imperative need for maintaining such a record by the DRI. It is hoped that the statutory procedures will strictly be followed and that the cases are investigated and prosecuted strictly in accordance with law.

44. The application is accordingly disposed of.

45. Order dasti to the parties.

S.MURALIDHAR, J

MAY 29, 2009
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