

Court No. - 44

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40293 of 2022

Applicant :- Amardeep Kumar Yadav @ Pankaj Yadav

Opposite Party :- State Of U.P. . And Another

Counsel for Applicant :- Sushil Kumar, Markande Singh Yadav, Mukul Yadav, Sunil Kumar Pandey

Counsel for Opposite Party :- G.A., Krishna Agarwal

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the applicant and Sri Krishna Agarwal learned counsel for the C.B.N.
2. The complaint in question was filed against the applicant as clear from the complaint filed along with the supplementary affidavit for proceeding against the applicant under Section 8, 22, 29, 30 of the N.D.P.S. Act read with Section 65A, 66 and 67 of the N.D.P.S. Rules.
3. The counsel for the applicant at the very outset argues that as per the complaint, certain injections total weighing 2.700 kg. 0.250 kg. and 3.22 kg. were allegedly recovered on a search carried out against one Rajdev Yadav based and based upon the said recovery, a view was formed that the goods so recovered fall under the N.D.P.S. Act as no license could be shown by the said Rajdev Yadav. In the complaint which is on record reveals that the said Rajdev Yadav while giving his statement under section 67 of the N.D.P.S. Act stated that he had purchased the said goods from the applicant herein. Subsequently, the statement of the applicant was also recorded under section 67 of the N.D.P.S. Act and based upon the said two statements and a view that although the goods recovered were pharmaceutical goods and the same were used by mixing it by the persons for narcotic purposes. The complaint on record specifically para 30 to 38, reveals the investigation done by the complainant who arrived at a conclusion that it was the applicant who was also involved in the selling of the recovered goods which had the potential of being used as narcotics. Specific statements to that effect is stated in para 37 which itself records that the injections so seized did not fall within the definition of

narcotics but when the two injections are mixed was generally used by the persons for narcotic purposes. It is argued that the entire prosecution is based upon the assumptions which cannot be a ground for prosecution. It is further argued that the applicant is being prosecuted solely based upon the statements under section 67 of the N.D.P.S. Act given by Rajdev Yadav as well as the applicant which are not admissible in evidence by virtue of the judgment as given by the Hon'ble Supreme Court in the case of ***Tofan Singh v State of Tamilnadu (2021) 4 SCC 1***. It is further argued that the main accused Rajdev Yadav from whom the offending goods were allegedly seized has been enlarged on bail vide order of this Court dated 26.5.2023 passed in Bail Application No. 1337 of 2023. It is further argued that the applicant has no criminal history of an offence under NDPS Act, thus, the applicant should be enlarged on bail.

4. Sri Krishna Agarwal appearing on behalf of the respondent-C.B.N. argues on the basis of the observations made by this court while allowing the bail application of Rajdev Yadav tries to impress that the stand taken by the Rajdev Yadav was that the goods belongs to the applicant Amardeep Yadav and based upon the said fact Rajdev Yadav was enlarged on bail. He argues that once an admission is made and is duly recorded in the bail application, there is a presumption that the goods were seized from Amardeep Yadav and coupled with the fact that the statements under section 67 of the N.D.P.S. Act, the applicant does not deserve to be enlarged on bail. He further argues that even in the judgement in the case of Tofan Singh (supra), it was said that the statements alone devoid of any corroborative material is not enough, whereas in the present case, the department had corroborated the said statement along with the other investigations carried out as is clear from para 32 onwards of the complaint. He however, does not argue that applicant has no criminal antecedents of an offence under N.D.P.S. Act prior to the offence in question.

5. He further argues that the test of section 37 of the N.D.P.S. Act has to be satisfied before the bail can be granted.

6. Considering the submissions made at the bar and recorded above, from the plain reading of the complaint, apart from the statements under section 67 of the N.D.P.S. Act, the view expressed in the complaint specifically in para 37, refers to the potential use of the seized material for narcotic purposes, the department itself was of the view that the seized goods were

pharmaceutical goods, however, they had the potential of being used for narcotics purposes. Apart from that two statements under section 67 of the N.D.P.S. Act were heavily relied upon.

7. In the light of the said what emanates is that apart from the two statements under section 67 of the N.D.P.S. Act and the view of the department, no material exists as against the applicant so as to implicate or punish him with the offence in question. Admittedly, the applicant has no criminal antecedents of an offence under N.D.P.S. Act prior to the present case. The applicant is in custody since 27.7.2022. The scope of the section 37 of the N.D.P.S. Act and twin conditions prescribed therein came up for consideration before the Hon'ble Supreme Court in the case of **Mohd Muslim @ Hussain vs State (NCT of Delhi); 2023 LiveLaw (SC) 260**, wherein, the Hon'ble Supreme Court had occasioned to consider the true import of the twin conditions prescribed under section 37 of the N.D.P.S. Act and recorded as under:-

"18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under

Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India vs. Ratan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having 19 (2009) 2 SCC 624 regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

8. In view of the law explained and referred extracted above in the case of **Mohammad Muslim (supra)**, there are reasons to record that on the basis of statement under section 67 of the N.D.P.S. Act without there being prime facie, corroboration with any other material, the prosecution may not be able to establish the guilt.

9. It is clarified that this observation is tentative and would not be used for concluding the trial against the applicant. As regards the second condition, as the applicant has no criminal antecedents of an offence under N.D.P.S. Act and was selling medicines as is also disclosed in the complaint, in view of the law laid down in the case of **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & Anr. (2005) 5 SCC 294**, the second of the twin condition also stands satisfied, as such, for both the reasons recorded above, the applicant is enlarged on bail.

10. Accordingly, the bail application is allowed.

11. Let the applicant- **Amardeep Kumar Yadav @ Pankaj Yadav** be released on bail in Case Crime No.Nil of 2022, under Section 8/22/29 of the N.D.P.S. Act, Police Station- C.B.N. Lucknow (Jamaniya), District- Ghazipur, on his furnishing personal bonds and two reliable sureties of Rs.1,00,000/- each to the satisfaction of the court concerned with the following conditions:

(a) The applicant shall execute a bond to undertake to attend the hearings;

(b) The applicant shall not commit any offence similar to the offence of which he is accused or suspected of the commission; and

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Order Date :- 2.11.2023

S.A.