



2024:DHC:2866



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

Reserved on: 02.04.2024
Pronounced on: 10.04.2024

+ **BAIL APPLN. 2291/2023**

RAJENDER PRASAD SHARMA

..... Applicant

Through: Mr.Mohit Mathur, Sr. Adv.
Mr.Sonu Bhatnagar,
Mr.Abhilash Mathur, Mr.Manoj
Chauhan, Mr.Deepak Goel,
Mr.Mayank Sharma, Mr.Raj
Kumar, Advs.

versus

NCB

..... Respondent

Through: Mr.Subhash Bansal, SCC with
Mr.Shashwat Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on bail in Case No. VIII/39/DZU/2022 under Sections 8(c), 21(c), 23, 25, 27A & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'NDPS Act') registered at Police Station: R.K.Puram, New Delhi.

Case of the Prosecution:

2. As far as is relevant to the present application, it is the case of the prosecution that based on the information received, the Narcotics



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Control Bureau (in short, 'NCB') Team, on 27.04.2022, reached at House No. F- 86, Abul Fazal Enclave, Jamia Nagar, Okhla, New Delhi. On the 3rd floor of said house, they found co-accused Razi Haider Zaidi, and during search of said house, it led to the recovery of the following:

- i) 50 packets in Flipkart packing containing off-white powdery substance. Upon testing the substance in each packet, it was found out to be Heroin. Substance of each packet was weighed and found to be 1 kg each.
 - ii) Ten packets of white powdery substance, which upon testing gave no conclusive result. However, the weight of packets marked as D-1, 2, 3, 4, 6 was 1 kg each; weight of packets marked as D-5, D-7 was 980 grams each; the weight of packet marked as D-9 was 1.5 kg; the weight of packets marked as D-8 and D-10 was found to be 11.800 kg and 26.800 kg, respectively.
 - iii) Pieces of wooden log *Mulethi*, containing suspected Heroin, which was kept in bags. The weight of said bags was 15.900 kg and 17.150 kg respectively.
 - iv) One piece of wooden log *Mulethi* was found to contain Heroin. It was marked as "FF"
 - iv) Packing material of Flipkart and Amazon.
 - v) Indian currency of Rs. 30 Lakhs.
 - vi) Documents and Mobile Phones.
3. It is further alleged that Razi Haider Zaidi, in his voluntary statement under Section 67 of the NDPS Act recorded on 27.04.2022, disclosed that the Heroin seized from the said flat was recently shifted



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from Muzaffar Nagar, U.P. on the direction of a co-accused, Shahid. It had been prepared at a godown at Muzaffar Nagar. The co-accused Razi Haider Zaidi is stated to have further revealed that he had imported the said heroin in two different modes, out of which, the first lot was received in the consignment of *mulethi* from the applicant who is running the business as M/s R.R. Global Impex. He further disclosed that the applicant had stored the consignment of heroin at Vinayak Cold Storage at Kondli, Sonapat, and that he alongwith his associates had collected the same from said Cold Storage in the presence of the applicant herein in February, 2022.

4. The prosecution further alleges that the co-accused Razi Haider Zaidi, in his further statement recorded on 29.04.2022, disclosed that the bag of *mulethi* with heroin concealed therein was collected by him from Vinayak Cold Storage along with co-accused Imran and Avtar Singh @ Sunny. He stated that he had collected 18-19 bags, and those bags were later stored at a rented house at Jamia Nagar. He is alleged to have stated that he had contacted the applicant herein in this regard on the direction of a co-accused Shahid. He is also alleged to have disclosed the mobile number of the applicant.

5. The prosecution further alleges that on follow-up investigation, on 04.05.2022, the applicant appeared pursuant to the notice under Section 67 of the NDPS Act. In his voluntarily statement, he revealed that he is doing the business of dry fruits and *mulethi* and imports these items under the name of M/s R.R. Global Impex. He disclosed that he had imported a consignment of 311 *Kattas* of *mulethi* from Alim Nazir Ansari from Afghanistan, who had also given him a



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number which was saved as 'Sunny, Sarita Vihar'. He further revealed that he had received a call from the said number with the caller identifying himself as Sunny and asking about 19 *kattas* of *mulethi*. He informed Sunny that these 19 *kattas* were kept at Vinayak Cold Storage, Kondli. He further disclosed that on 25.02.2022, three persons had come to the Cold Storage, out of which one person was Sunny. He revealed that the said persons provided a letter-head of the company M/s Best Trading Co., and the 19 *kattas* were released to them in the name of the said Company. He also identified the accused Razi Haider Zaidi as the person who had come to collect the *kattas* alongwith the co-accused identified as Sunny.

6. The applicant was arrested on 04.05.2022. His mobile phone was seized. It is alleged that while in custody, the applicant tendered his statement wherein he disclosed the procedure of import of consignment of *mulethi*, its distribution, and other documents.

7. The prosecution further alleges that the co-accused Avtar Singh @ Sunny, in his statement during custody, revealed that the co-accused Razi Haider Zaidi used to talk with the applicant from his mobile. During their conversation, the applicant provided the address of the Cold Storage Kondli, Sonapat. Thereafter, he along with Razi Haider Zaidi and Mohd. Imran went to the said Cold Storage and met the applicant. The applicant pointed out 19 packets/*kattas*, which were having blue colour markings. The said *kattas* were taken by them. He allegedly stated that the *mulethi* logs contained in those 19 *kattas* were taken to the house of Razi Haider Zaidi at C-19, Okhla Vihar, Jamia Nagar, and after the retrieval of Heroin from the *mulethi* logs, the logs



were shifted to F-86, 3rd Floor, Abul Fazal Enclave, Jamia Nagar, Okhla, New Delhi, where those *mulethi* logs were cut opened, and further Heroin was retrieved from them. He stated that the Heroin was packed in 1 kg packing wrapper of Flipkart.

8. Proceedings under Section 52A of the NDPS Act were carried vide orders dated 26.04.2022 and 25.06.2022 before the learned Magistrate.

9. The prosecution, in the Status Report, alleges that the applicant is involved in the trafficking of the contraband, and the same is evident from the following circumstances:

“a) The present accused had received Heroin concealed in Mulethi from Afghanistan and said bags of Mulethi containing Heroin were handed-over to Razi Haider Zaidi, Md. Imran and Avtar Singh@ Sunny on 25-02-2022.

b) In the voluntary Statement under section 67, NDPS Act, tendered by Rajendra Prasad Sharma, categorically explained the process of importing Mulethi and Heroin concealed therein sent by Nazir from Afghanistan. He further tendered the screen-shot of whatsapp message sent by Nazir containing the Haider's Mobile number as Sunny. Rajender also identified Haider Zaidi.

c) It is submitted that there is CDR connectivity between Rajender (Mobile No. 8851672477), Razi Haider Zaidi (Mobile No. 8181994786) and one Alem Nazir Ansari @ Nazeer.

d) Admittedly Rajender Prasad Sharma imported the consignment of Mulethi with Heroin concealed therein, and said Import was done by R.R. Global which is owned and operated by Rajender Prasad Sharma.

e) As per Bill of Entry dated 23-01-2022 at Custom Attari Border, Punjab, it mentioned



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consignment received from Alam Nazir Ansari Ltd. And the PAN No. of accused Rajender Kumar Sharma also mentioned.

f) As per Receipt dated 24-02-2022 of Vinayak Cold Storage, it mentioned 311 Bora (Plastic Katta) received from R.R. Global Impex.

g) During investigation, the documents were collected i.e. Delivery Challan of Vinayak Cold storage dated 25-02-2022 mentioning 19 Katte (Bora) sent to Best Trading Company and mobile no. 8851672477 of Rajender Sharma mentioned on Invoice of Rs. 99,887/- . Further a Tax Invoice dated 25-02-2022 which mentioned 906 Kg Liquorices Roots sold to Best Trading Co. Another document of Ledger Book of R.R. Global showing amount of Rs. 99,887/- received in cash from Best Trading Co. Further during investigations, it surfaced that the GST Invoice generated in favor of Best Trading Co. was only for purposes of to avoid detection/apprehend and no genuine transaction took place with Best Trading Co.

h) On 25-02-2022, Razi Haider, Mohd. Imran and Sunny collected the specially marked i.e. Blue-Mark on 19 Kattas of Mulethi from Kundli. As per Location of Mobile Numbers of Rajender (8851672477), Haider Zaidi (818199478610 & 8595732192), Mohd. Imran (9319123400) all found to be at Kundli, Sonipat, Haryana on 25-02-2022 at same time.

i) The Statements of accuseds Md. Imran, Avtar Singh and Razi Haider Zaidi also disclosed that 19 Kattas with special mark were handed-over to Razi Haider.

j) The special blue-marked Katte, one mulathi logs containing Heroin and Mulethi logs were recovered from the rented house of accused Razi Haider Zaidi alongwith 50 Kgs Heroin on 27-04-2022 at Abul Fazal Enclave.

k) As per documents collected during investigations, it has surfaced from the Stock Register of R.R. Global Impex that on 11-11-2021, total 17000 Kgs quantity of Liquorice Roots (Mulethi) had been received from Alam Nazir Ansari. The documents also show that

Signature Not Verified

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By: SUNIL
Signing Date: 10.04.2024
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huge quantity of Mulethi –purchase / imports have been carried out by R.R. Global from Alam Nazir over a period of time.”

Submissions of the learned Senior Counsel of the Applicant

10. The learned senior counsel for the applicant submits that the applicant is in the legitimate business of import of dry fruits and *mulethi*. He had imported and supplied *mulethi* to the accused against proper invoices and receipts, which are being relied upon even by the prosecution.

11. He submits that, apart from the legitimate transactions between the applicant and the co-accused, there is no other material available with the prosecution that may link the applicant with the knowledge of import of heroin.

12. Placing reliance on the complaint that has been filed, he submits that it is the case of the prosecution that during the search at the house of the co-accused Razi Haider Zaidi, they recovered from an orange gunny bag having blue colored marking, pieces of *mulethi* logs and the same were kept in a white colored gunny bag. The *mulethi* logs that were found in the said bag, however, were not tested for presence of heroin, either at the spot or later in the proceedings under Section 52A of the NDPS Act. It is only a small piece of *mulethi*/wooden log, which was recovered separately, that was tested at the spot and later in the sampling procedure followed under Section 52A of the NDPS Act. He submits that the said log cannot be connected with the *mulethi* logs that had been imported by the applicant and were supplied by him to the co-accused Razi Haider Zaidi.



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13. He submits that, therefore, the rigors of Section 37 of the NDPS Act stand complied with. He submits that the applicant has been in custody since 05.05.2022, and there is no likelihood of the trial concluding anytime soon. He submits that the applicant has no criminal antecedents.

14. He further submits that barring the legitimate transaction of supply of the imported *mulethi* to the co-accused Razi Haider Zaidi against proper invoices/receipts, there is no other financial transaction or contact information that has been alleged by the prosecution between the applicant and the co-accused.

15. He submits that one of the other co-accused namely Shamim Ahmed, who is also alleged to be a co-conspirator only on the basis of the alleged money transaction with the main accused, has been released on bail by this Court vide order dated 12.02.2024 passed in Bail Appln. 2840/2023, titled ***Shamim Ahmed v. Narcotics Control Bureau.***

Submissions of the learned Special Counsel for NCB

16. On the other hand, the learned Special Counsel for the NCB submits that in the present case, the applicant is involved in the import of heroin concealed in *mulethi* logs. He submits that the entire transaction and the involvement of the applicant in the conspiracy to import the heroin is evident from various circumstantial evidence, like the CDR showing the interaction between the applicant and the co-accused; admitted supply of bags containing *mulethi* by the applicant to the co-accused; recovery of such bags from the premises of the co-



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accused; financial transactions between the applicant and the co-accused; and, their presence together at Sonipat on 25.02.2022.

17. The learned Special Counsel for NCB, placing reliance on the judgments of the Supreme Court in *State of Kerala v. Rajesh Etc.* (2020) 12 SCC 122; *Union of India v. Prateek Shukla*, (2021) 5 SCC 430; and the order of this Court in BAIL APPLN 3717/2023, titled *Deepak Khurana v. Narcotics Control Bureau*, dated 21.03.2024, submits that keeping in view the legislative mandate behind Section 37 of the NDPS Act, the reasonable belief contemplated therein requires existence of such facts and circumstances as are sufficient in themselves to justify a satisfaction that the accused is not guilty of the alleged offence and a liberal approach in the matters of bail under the NDPS Act is uncalled for.

Analysis and Findings

18. I have considered the submissions made by the learned counsels for the parties.

19. As it would be evident from the above, it is the case of the prosecution that the applicant had imported the *mulethi* logs, which he then supplied to the main accused Razi Haider Zaidi. It is alleged that from the *mulethi* logs, the co-accused extracted Heroin, which has also been recovered in the raid that was conducted on 27.04.2022 at House No. F-86, Abul Fazal Enclave, Jamia Nagar, Okhla, New Delhi. However, what is to be noted is that the Complaint that has been filed by the respondent before the learned Trial Court *inter alia* speaks of pieces of *mulethi* logs recovered '*from an orange gunny bag having*



blue colour marking'. It is the blue marking which the prosecution uses to identify the *mulethi* that was allegedly supplied by the applicant to the co-accused Razi Haider Zaidi. Interestingly, the said *mulethi* logs were not tested for the presence of Heroin, either at the spot or later in the proceedings under Section 52A of the NDPS Act before the learned Magistrate. Therefore, *prima facie* there is no evidence that the *mulethi* logs that has been supplied by the applicant to the accused Razi Haider Zaidi indeed had Heroin concealed in them. The only evidence of the same is in form of the alleged Voluntary Statements of the co-accused, which would be inadmissible in evidence.

20. What has been tested is a loose piece of *mulethi* log allegedly recovered from the said house, which on testing is alleged to have given a positive result for the presence of Heroin, both at the spot and pursuant to the proceedings under Section 52A of the NDPS Act. How the prosecution is going to connect this *mulethi* log to the ones supplied by the applicant is not evident from the material that is placed before this Court by the prosecution.

21. Once the gravamen of the allegation, that the *mulethi* logs supplied by the applicant to the co-accused Razi Haider Zaidi contained Heroin, is not established, the only material left with the prosecution is the supply of *mulethi* logs by the applicant to the co-accused; their presence at the Cold Storage at Kondli, Sonapat; and their telephone connectivity. These alone are not sufficient to presently hold that the accused has committed the offence charged.

22. It is the case of the applicant that the supply of *mulethi* logs was



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a legitimate transaction which has been duly evidenced by legal documents, being invoices and receipts of the same. It is further the case of the applicant that the applicant is in a legitimate business of import and supply of *mulethi* logs and dry fruits. The CDRs showing the connectivity of the applicant with the co-accused and their presence at Kondli, Sonipat, may also not be of much relevance. Any which way, this would be tested in the trial.

23. As noted herein above, the prosecution merely relies upon the alleged voluntary statements under Section 67 of the NDPS Act by the applicant and the co-accused. These would not be admissible in nature. Reliance in this regard can be placed on to the judgment of the Supreme Court in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.

24. From the above, in my view, the applicant has been able to satisfy the twin conditions under Section 37 of the NDPS Act. There are reasonable grounds for believing that the applicant is not guilty of the offence charged against him.

25. The applicant also does not have any criminal antecedents. Therefore, presently this Court is of the opinion that if he is released on bail, he is not likely to commit any offence.

26. The applicant has been in custody since 05.05.2022. The trial is not likely to conclude any time soon. In *Rabi Prakash v. State of Odisha* 2023 SCC OnLine SC 1109, it has been held by the Supreme Court that delay in conclusion of the trial itself is a negation of the Fundamental Right of the accused guaranteed under Article 21 of the Constitution of India, entitling the accused to be released on bail.



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Reference in this regard can also be made to the judgments of the Supreme Court in *Mohd. Muslim v. State (NCT of Delhi)* 2023 SCC OnLine SC 352; *Dheeraj Kumar Shukla v. State of U.P* 2023 SCC OnLine SC 918; *Badsha SK v. State of West Bengal* 2023 SCC OnLine SC 1867; *Man Mandal and Another v. State of West Bengal* 2023 SCC OnLine SC 1868, and of this court in *Gurpreet Singh v. State of NCT of Delhi* 2024 SCC OnLine Del 696.

27. Keeping in view the above principles of law and the facts of the present case, it is directed that the Applicant be released on Bail in Case No. VIII/39/DZU/2022 registered at Police Station: R.K.Puram, New Delhi under Sections 8(c), 21(c), 23, 25, 27A & 29 of the NDPS Act, on furnishing a personal bond in the sum of Rs.1,00,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the learned Trial Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times. They shall not be switched off or changed by him without prior



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intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.

- v. The Applicant shall not indulge in any criminal activity, shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses and shall not tamper with the evidence of the case.
- vi. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his bail in the present case as well.

28. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

29. The bail application is disposed of in the above terms.

30. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J

APRIL 10, 2024/Arya/am

Click here to check corrigendum, if any