

Court No. - 17

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2812 of 2023

Applicant :- Man Singh Verma

Opposite Party :- Union Of India Thru. I.O. Ncb Lko.

Counsel for Applicant :- Anil Kumar Pandey

Counsel for Opposite Party :- Akhilesh Kumar Awasthi

Hon'ble Rajeev Singh,J.

(I.A./05/2024)

1. Heard Shri Akhilesh Kumar Awasthi, learned counsel for N.C.B., Lucknow.
2. This application is filed with a prayer to waive the imposition of compensation of Rs. 5,00,000/- by modifying the order dated 22.05.2024 on the part of imposition of compensation to the Director, Narcotics Control Bureau, New Delhi, passed in the instant bail application of the applicant.
3. Shri Awasthi submits that there is no irregularity in the arrest of the applicant and sending him to jail as contraband was recovered from his possession and as per the statutory provisions, the article was sent for examination. He further submits that the applicant is a habitual offender as mentioned in paragraph no. 17 of the affidavit filed in support of the application for modification. He further submits that a different case was placed before the trial court in his bail application and the same was rejected and a new story was set up before this Court in his application, hence, the order dated 22.05.2024 is to be modified by deleting the direction related to compensation of Rs. 5 lakhs.
4. On the point of maintainability of this application, Shri Awasthi is unable to place any judgement. He does not dispute the fact that as per the provisions of Section 362 Cr.P.C., once final order is signed, it cannot be reviewed except to correct a clerical or arithmetical error.

5. Considering the submissions of Shri Awasthi and going through the contents of the application of modification of the order dated 22.05.2024 as well as other relevant enclosures; it is evident that Man Singh Verma (applicant) was challaned by showing recovery of contraband, thereafter, contraband was sent to C.R.C.L., New Delhi but the report was found negative. Again, it was sent to C.F.S.L., Chandigarh and again result of the report was negative. In between, the bail application of the applicant was pending before this Court and after calling the reports, the bail application of the accused person was disposed of on 22.05.2024.

6. The order dated 22.05.2024 is as under:-

"1. Heard learned counsel for the applicant, Shri Akhilesh Kumar Awasthi, learned counsel for the opposite party and perused the record.

2. The instant bail application has been filed on behalf of the applicant with a prayer to enlarge him on bail in Case Crime No. 02 of 2023 under Sections 8(C)/21/29 N.D.P.S. Act, Challaned by- Narcotics Control Bureau, Lucknow at Barabanki, District- Barabanki.

3. Counter affidavit was filed by Shri Surendra Kumar, Intelligence Officer, Narcotics Control Bureau, Lucknow with a prayer that the bail application of the applicant be dismissed. Thereafter, rejoinder affidavit was also filed on 07.04.2023 and the matter was ordered to be listed on 21.05.2024.

4. On 21.05.2024 following order was passed:

"1. Heard.

2. List this case tomorrow i.e. on 22.05.2024.

3. In the meantime, Shri Piyush Kumar Singh, learned A.G.A. shall seek written instructions from Superintendent, District Jail Barabanki about the date of release of the applicant- Man Singh Verma s/o Shri Khyaliram Verma r/o Village- Parashuram Pur, Police Station- Miranpur Katra, District- Shahjahanpur, who was confined in Case Crime No. 02 of 2023 under Sections 8C/21/29 of N.D.P.S. Act and was challaned by Narcotics Control Bureau, Lucknow.

4. In the meantime, Shri Akhilesh Kumar Awasthi, special counsel for N.C.B. shall seek instructions about the fact that whether the article was sent for second examination or not. "

5. Today, photocopy of the report of Jail Superintendent, District Jail, Barabanki dated 21.05.2024 is placed by Shri Piyush Kumar Singh, learned A.G.A, which is being taken on record.

6. The aforesaid report reveals that the applicant, namely, Maan Singh Verma was admitted in jail in pursuance of Case Crime No. 02 of 2023 under Section 8(C)/21/29 of N.D.P.S Act, challaned by Narcotics Control Bureau, Lucknow, District-Barabanki on 06.01.2023 and in pursuance of the custody warrant issued by Additional District and Sessions Judge, Court No. 10, Barabanki; he was released on 10.04.2023 in pursuance of release order of Additional District and Sessions Judge, Court No. 10, Barabanki.

7. Shri Akhilesh Kumar Awasthi, learned Special Counsel for N.C.B. submitted that the sample of the contraband was sent twice to Central Revenues Control Laboratory, New Delhi (for short "C.R.C.L.") as well as to Central Forensic Science Laboratory, Chandigarh (for short "C.F.S.L.") and in reports of both the labs, no heroin was found. He further submitted that closure report was submitted on 06.04.2023 with a prayer that on the basis of reports of C.R.C.L., New Delhi and C.F.S.L., Chandigarh, it is revealed that confiscated article does not come into the category of contraband under the provisions of N.D.P.S. Act, therefore, Case Crime No. 02 of 2023 (supra) may be closed. He further submitted that the said application was given by Shri Surendra Kumar, Junior Intelligence Officer, N.C.B, Lucknow through Shri V.K Tandon, Special Public Prosecutor, N.C.B on 06.04.2023, thereafter, case was closed and the release order was passed. He further submitted that as the applicant has already been released on 10.04.2023, present bail application has lost its efficacy, accordingly, the same may be dismissed as infructuous.

8. Learned counsel for the applicant submitted that the applicant is a young person who does not have any criminal antecedent and was falsely implicated in the present case with the association of Sub-Inspector of the concerned police station when he went to Lodheshwar Mahadev Temple, Ramnagar, Barabanki on 04.01.2023 along with other villagers; when he was standing in the queue for darshan/visit where one Gaurav Singh along with another Sub-Inspector in civil dress tried to go ahead by breaking the queue, and as applicant made protest, he was abused and dragged from the queue by the aforesaid persons and was brutally beaten by them. He further submitted that the applicant was brought to the office of Anti Narcotics Task Force, Barabanki (for short "A.N.T.F.") at about 2:00 P.M. where he was confined illegally and illegal demand was also raised from him as well as his companion; when they were unable to fulfill their demand, the applicant was kept in confinement. In this

connection, his associates and other family members went to Superintendent of Police, Barabanki on 05.01.2023 for making complaint against the illegal detention of the applicant where it was informed by the officials of the office of Superintendent of Police, Barabanki that the applicant has been handed over to the officers of N.C.B., and on 06.01.2023, he was challaned in the false case.

9. Learned counsel for the applicant submitted that the mandatory provision of Sections 100 & 165 of Cr.P.C and other provisions regarding the search and seizure were not complied with by the opposite party. He further submitted that it also came into the notice of the deponent that the applicant was challaned by showing false recovery of the contraband by preparing fabricated arrest/recovery memo dated 06.01.2023 by Raj Kumar Shaw, Intelligence Officer, N.C.B., Lucknow.

10. Arrest/ Recovery Memo dated 06.01.2023 prepared by Raj Kumar Shaw, Intelligence Officer, NCB. Lucknow is reproduced as under:-

"Acting on an information provided by ANTF. Barabanki U.P. that 02 persons namely Maan Singh, R/o Shahjadpur, U.P. and Aman Singh, R/o Pilibhit, U.P. are coming with huge quantity of Heroin for delivery to one Shubham at Asaini Tiraha, Barabanki - Faizabad Road, Barabanki, U.P. between 10:30 am to 12:00 pm night on 05.01.2023. the same information was received by me and reduced in writing in NCB-1 form and submitted to the immediate superior officer Shri Harish Kumar, Superintendent, NCB Lucknow on 05.01.2023. After the perusal of at information, Shri Harish Kumar, Superintendent authorized me as seizing officer and detailed a team consisting with me, Nitin Srivastava Sepoy and Rakesh Kumar Driver for further action under the provisions of NDPS Act. After that the detail team collected necessary equipments for search and seizure procedure like DD Kits, weighing machines, LAC, Seal, paper, pouch, envelop and wax etc and left NCB office at about 5:00 pm on 05.01.2023 with out departmental Vehicle Mahindra Bolero DL12 C 5464 and reached at ANTF Barabanki Office at about 7:30 pm on 05.01.2023. After Arrival at ANTF Office, Barabanki, the team met with Sri Suraj Singh, SD, ANTG Barabanki and informer and discussed about the secret information. After discussion, the joint team of ANTF Barabanki and NCB Lucknow alongwith informer left the ANTF office at about 9:30 pm and reached at Asaini Tiraha, Barabanki at about 10:00 pm on 05.01.2023. Then the team approached some persons by and requested them to be independent witness but they did agree citing their personal reasons due to winter season. Hence the two constable apart from the ANTF Barabanki, namely Mohd. Shahbaan and Gaurav Tiwari were called on the spot as independent witnesses. The ANTF Barabanki was consisted with SI Suraj Singh, SI Karmesh Kumar Pandey, HC

Manish Kumar Dubey, CST Amarpal and Ajit Mishra and Driver Jitendra Singh. The joint team of ANTF and NCP along with witnesses mount surveillance and keep waiting with strict vigil on the Tirahah for suspected persons. At about 11:30 pm, two persons arrived at the Asaini Tiraha in a Tempo and came from Lucknow side. Their clothings were matched as per the information and the informant identified the suspected persons. After that the joint team surrounded both the suspected persons and introduced themselves by showing departmental identity card. The team also revealed the information and purpose of interception to both of them. After interception, the informant left the team and went out from the spot. On spot enquiry, both of them disclosed their name as Maan Singh Verma, age 30 years, son of Khyali Ram Verma, R/o Village Parashrampur, Post and P/s - Miranpur Katra, Tehsil - Tilhar, District - Shahjahanpur, U.P. pin 242301 and Aman Singh, age 26 years, Slo Sonpal Singh, R/o village and post-Bhaden Karda, P/s - Bilsanda, Tehsil - Bisalpur, District Pilibhit, U.P. They also revealed that they are carrying Heroin concealed under the jackets to Barabanki delivery to one Shubham Verma. The said contraband was procured from one Shiaram Gangwar, Rio Dhakaa, Faridpur, Bareilly, U.P. After that notices U/s 50 NDPS act 1985, was served to both of the persons respectively explaining the provisions in writing that they have legal right to tender their personal search before the nearest Magistrate or Gazette officer. In return, they replied to be searched before the Gazetted Officer. Then the Dy. SP Shri Amar Bahadur Singh, ANTF OPS, Barabanki called over mobile phone and intimated the interception with request of the both intercepted persons. At about 12:30 am on 06.01.2023 Shri Amar Bahadur Singh, DY. SP, ANTF, Barabanki reached on the spot and personal search of both the persons carried out before him. During search of Maan Singh, 01 transparent. Plastic packet containing brown color powder was recovered from the under pocket of the jacket wear by him. Maan Singh was worn a black and green color jacket of Urban Youth Brand. During the search of Aman Singh, 1 yellow polythene containing black color of polythene having brown color of powder was recovered from the under pocket of the jacket (green color of Man Style, Adidas Brand) wear by him. Then the small quantity of the brown color powde was taken out from the both plastic packets and tested with DD kits in presence of intercepted persons and witnesses. The test gave positive result for Heroin. For safety and security purpose at nigh hours in winter season, the intercepted accused Maan Singh and Aman Singh and recovered Heroin along with witnesses brought to ANTF Office, Barabanki, U.P. for further necessary action at about 02:00 AM on 06.01.2023. After arrival, at ANTF office, the net weight of the contraband and packing materials was taken / done with weighing machine carried by the NCB team, which are as under:-

From Possession of Maan Singh

<i>Sl. No.</i>	<i>Description</i>	<i>Weight</i>	<i>Description</i>	<i>Weight</i>
<i>1.</i>	<i>Weight of Heroion</i>	<i>0.930 kg</i>	<i>Weight of Heroin</i>	<i>0.350 kg</i>
<i>2.</i>	<i>Weight of transparent plastic pockt</i>	<i>10 gm.</i>	<i>Weight of Yellow and black polythene</i>	<i>10 gm.</i>

Then the recovered Heroin alongwith packing material were seized CAT Uls 42 NDPS Act and sealed with NCB seal no. 18 and marked as under after wrapping in marking cloth.

-0.930 kg Heroin was marked as P1

-0.350 kg Heroin was marked as P2

- 01 transparent plastic packet as P3

- 1 yellow and 1 black poltthene as P4

The samples will be drawn at the time of production before the Magistrate from the seized contraband by Investigating Officer, The recovery mema, invest..... Of recovered contraband, sketch Map of place of interception, and facsimile of the NCB seal No. 18 was prepared at the ANTF office, Barabanki. Facsimile of the seal no. 18 used in seizing/sealing of the contraband was also affixed below here.

After that, contrasts of the recovery memo read over to Maan Singh and Aman Singh in language known to them alongwith all team members and then the undersigned, accused persons, witnesses and team members put their dated signatures on each pages of recovery memo. The entire search seizure procedure was started at 11:30 pm on 05.01.2023 and concluded at about 6:00 am on 08.01.2023 in peaceful manner without harm and damage to any person or property. The case was registered vide NCB, Lucknow crime No. 02/2023. one copy of the recovery memo dated 06.01.2023 will also be provided to both of the accused persons. The videography of recovery and testing of contraband with DD kits done by official cassette Sony Handycam and the clip was seized and marked as P5 (SD Memory 12/22 8GB Micro).

06.01.2023

Raj Kumar Shaw

I.O. NCB Lucknow"

11. Further submission of learned counsel for the applicant was that admittedly, this fact was brought into the notice of trial court on 10.02.2023 that the sample which was sent to C.R.C.L., New Delhi, which was found negative, thereafter, application was moved for sending the rest of the sample to C.F.S.L., Chandigarh. He further submitted that judicial remand of the applicant was allowed when no case of the prosecution was found true on the basis of earlier report. He further submitted that the applicant is aged about 30 years and false detention has given dent on his life as well as his family. He further submitted that the averments made in the paragraph nos. 23, 24, 25 & 26 of the bail application are denied in very vague manner with the averments that applicant is a habitual offender of N.D.P.S. Act, hence, the applicant is entitled for compensation for illegal detention.

12. Shri Akhilesh Kumar Awasthi, learned Special Counsel for N.C.B. vehemently submitted that all the action was done by the authorities bonafidely and they are protected under Section 69 of N.D.P.S. act, therefore, the applicant is not entitled for any compensation. However, he did not dispute the fact that the applicant was taken into custody on the basis of presumption that he was carrying heroin.

13. Considering the submissions of learned counsel for the parties and going through the contents of bail application as well as other relevant enclosures; it is undisputed fact that in Paragraph No.23 of the bail application, the applicant has stated that on 04.01.2023, he went to Lodheshwar Mahadev Temple, Ramnagar, Barabanki where Gaurav Singh along with another Sub-Inspector tried to go ahead by breaking the queue, on such act of the said persons, the applicant protested, as a result, he was dragged and beaten brutally. Thereafter, he was brought to the office of A.N.T.F. at 2:00 P.M. On 05.01.2023, the family members of the applicant made a complaint to the Superintendent of Police, Barabanki about his illegal detention then it was informed that the applicant has been handed over to the officers of N.C.B. and he was challaned in the present case.

In the arrest/recovery memo dated 06.01.2023 prepared by Shri Raj Kumar Shaw, Intelligence Officer, N.C.B., New Delhi, it is revealed that the applicant was taken into custody by Joint Team of A.N.T.F. and N.C.B. Thereafter, N.C.B. registered a case and proceeded in the search/arrest memo. It is also mentioned that the small quantity of powder, which was recovered from the possession of applicant, was taken out from the packets and tested with the D.D. kits and the test came positive for heroin. In this connection, the applicant was sent to jail on 06.01.2023.

In the counter affidavit, it is admitted that report dated 30.01.2023 of C.R.C.L., New Delhi shows that no heroin, Amphetamine, Methamphetamine, Ketamine, Methaqualone, Cocaine or THC was found in the alleged article.

The report dated 30.01.2023 of CRCL, New Delhi is as under:-

"Packing Details

Received two sample packets marked as SD1 & SO1 respectively in sealed and intact condition. The sample packets were found sealed with five lac seals. Impression of each seal affixed on the the sample packets tallied with the facsimile of the seal as given on the test memo.

At the time of taking out the samples from strong room for analysis, the sample packets marked as SD1 & SO1 were in sealed and intact condition. Impression of the seals affixed on the sample packets tallied with the facsimile of the seal as given on the test memo.

Report:-

CLD 2853-2854 (N) - *Each of the two samples is in the form of pale brown powder. On the basis of Chemical, Chromatographic & Spectroscopic examinations, it is concluded each of the two samples under reference does not answer positive test for Heroin, Amphetamine, Methamphetamine, Ketamine, Methaqualone, Cocaine & THC. For further identification/conformation the samples may be forwarded to any other Government Laboratory, if required.*

S.No.	CLD No.	Marked as	Gross wt. of sample received (gm)	Gross wt. of remnant returned (gm)
1	2853 (N)	SD1	4.6	3.6
2	2854 (N)	SO1	5.1	3.8

Facsimile of seal "CENTRAL REVENUES CONTROL LABORATORY GOVT OF INDIA 2" affixed on sealed remnant samples is as under."

14. *It was also informed to the trial Court that total 4 samples were taken on 06.01.2023 from the recovered article and 2 were sent to C.R.C.L., New Delhi for examination and the report bearing no. 1/ND/R/2022/CLD/2853-2854 (N) dated*

30.01.2023 which was received in the office of N.C.B. on 07.02.2023 reveals that in the given sample, no heroin, Amphetamine, Methamphetamine, Ketamine, Methaqualone, Cocaine or THC was found. Then, with the permission of trial court, again sample was sent to C.F.S.L., Chandigarh and in the report dated 05.04.2023 of CFSL, Chandigarh, again result was found negative.

Report dated 05.04.2023 of C.F.S.L., Chandigarh is as under:-

Examination Report

"1. Examination Report No. CFSL (C)/568/23/Nar/100/23/990 dated 5/4/23

2. Ref No. NCB/LKO/III/INV/SEIZ/02/2023/4113 Dated:10.02.2023

From:Zonal

Director, NCN. Lucknow

U/S: 8/21/29 NDPS Act.

P.S. NCB Lucknow

3. Case No. 02/23

Dated 06.01.2023

4. Mode of Receipt: Through Nitin Srivastava NCB/3250

5. Date of Receipt: 13.02.2023

6. No. of sealed Parcel/

Exhibit(s) received: 02 sealed parcel (s) along with specimen seal(s) of "NARCOTICS CONTROL BUREAU 18/ASHOKA EMBLEM" and other case related documents.

7. Condition of seals: The seal(s) were intact and tallied with the specimen seal(s) as per forwarding authority letter

8. Details of parcels/Exhibit(s) received:

Parcel Identity: Description including details of their seals/sealings and exhibits contained therein

1-2 02 sealed parcel(s) marked as "SO2" and "SD2" by the forwarding authority and sealed with seal(s) of "NARCOTICS CONTROL BUREAU 18/ASHOKA EMBLEM" with case details and signature & stamp of Hon'ble Court Barabanki. On opening the parcels, each was found to contain one polythene further containing exhibit(s) 1 and 2 in parcels SO2 and SD2 respectively.

Exhibit 1 Powdered material.

Weight with polythene 4.18 gms.

Exhibit 2 Powdered material.

Weight with polythene: 3.81 gms.

9. *Purpose of Reference: For Chemical examination and report.*

10. *Date(s) of Examination: 15.03.2023 - 05.04.2023*

11.

Results of the Examination

Various laboratory tests such as chemical tests and Chromatographic Analysis were carried out with the exhibit(s) for its identification. The results thus obtained have been analysed as given below:

(i) None of the narcotics drugs and psychotropic substances covered under NDPS Act 1985 could be detected in exhibit(s): 1 and 2.

12. After the examination, the parcel (s) containing the exhibit (s)/remnants (Weight of remnants 3 3 gms & 2 gg gms with polythene for exhibit(s) 1 and 2 respectively) has/have been sealed with the seal impression as per specimen provided below:- "

15. Thereafter, admittedly, closure report was submitted by the Special Public Prosecutor, N.C.B. on 06.04.2023 and the applicant was sent to jail on 06.01.2023 and released on 10.04.2023. In the meantime, the trial court granted judicial custody remand to the applicant knowing this fact that as per the report dated 30.01.2023, no contraband was found in the recovered articles. As the applicant is a young person and he was confined for a period of about 4 months on the basis of alleged recovery of heroin. But after testing the sample in C.F.S.L., Chandigarh as well as C.R.C.L., New Delhi, no contraband was found. Therefore, it is a fit case for grant of compensation.

*16. Director, Narcotics Control Bureau, New Delhi is directed to pay **Rs.5,00,000/-** to the applicant within a period of two months and shall file affidavit of compliance by the next date.*

*17. Accordingly, the bail application is **disposed of**.*

18. List this case on 09.09.2024 within top 10 cases for further order on the compliance affidavit.

19. The trial court is directed to transmit all the relevant record related to the Case Crime No. 02 of 2023 (supra) as well as record related to the remand of the applicant.

20. Senior Registrar of this Court is directed to communicate this order to the Director, Narcotics Control Bureau, New Delhi as well as trial Court, forthwith, for necessary compliance."

7. The provisions of Section 362 of Cr.PC. are as under:-

"362. Court not to alter judgment. - Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

As per the aforesaid provisions, the order can be modified or reviewed except making correction therein related to arithmetical and clerical error.

8. Subject to above, the application for modification is misconceived and accordingly stands *dismissed*.

Order Date :- 16.7.2024

Arpan