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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.519 OF 2015

Pravin Kumar S/o. Brahma Singh .Applicant

V/s.

Union of India & anr. .Respondents

Mr.Anil Lalla i/b. M/s.Lalla & Lalla, Advocate, for the Applicant
Ms Y.N.Katpitia, Advocate, for Respondent No.1 - UOI
Mrs.S.S.Kaushik, APP, for Respondent No.2 - State

CORAM : REVATI MOHITE DERE, J.

DATE : 15TH APRIL, 2015

P.C.

. Heard the learned counsel for the applicant and the learned Additional Public Prosecutor for the respondent No.1 – UOI.

2. By this application, the applicant seeks his enlargement on bail in NDPS Special Case No.152 of 2014. The petitioner was arrested by the respondent No.1 – Directorate

of Revenue Intelligence (hereinafter referred to as 'D.R.I.') on 17.02.2014 for the alleged offences punishable under Sections 8(c) read with Sections 22 & 29 of the Narcotic Drugs And Psychotropic Substances Act (hereinafter referred to as 'NDPS' Act). A complaint/charge sheet has been filed as against the applicant and the co-accused and the said case, being NDPS Special Case No.152 of 2014 is pending before the learned Special Judge, NDPS.

3. On 10.02.2014 the D.R.I. received specific intelligence that a courier parcel was booked with International City Runners India Private Ltd.(hereinafter referred to as 'ICR'), a Courier Company, based at Andheri(E), (Mumbai) for being sent to London and that the said parcel contained Ketamine Hydrochloride, a prohibited substance under the NDPS Act. Pursuant to the said information, the consignment was intercepted and in the search conducted, 5 Kgs of Ketamine

was recovered from the food stuff and was seized under a panchanama. Similar intelligence was also received on 13.02.2014. The intelligence squad found that another consignment was booked with ICR for London, and that the said consignment contained Methaqualone, concealed in food stuff. In the said search that was conducted, food stuff was found in the parcel and in the food stuff, off-white crystalline powder was concealed. The total weight of the said consignment was 4.996 Kg. According to the prosecution, pursuant to the statement which was recorded of Nixon D'Souza, the owner of ICR, it was revealed that the two parcels which were seized on 10.02.2014 and 13.02.2014 were booked by one Kiran Jangale (original accused No.2). According to Mr.D'Souza, the applicant was co-ordinating with ICR over the phone and had made payments to ICR for courier charges, for sending the consignments to London. On 15.02.2014 the first statement of the applicant came to be recorded under Section 67 of the NDPS Act by the Central Exercise Department, Dehradun. Similarly, on 10.02.2014 & 17.02.2014 statements of the applicant came to be recorded by the Central Excise Department, Dehradun and the DRI. It appears that during the pendency of the bail application of the applicant, the DRI took further custody of the applicant under the orders of the Court and the further statement of the applicant came to be recorded, on 24.03.2014.

4. The learned counsel for the applicant submitted that there was no material qua the applicant, so as to connect him to the alleged recovery of contraband on 10.02.2014 and 13.02.2014, based on the earlier three statements of the applicant. He submitted that the only statement which can be said to be incriminating is the statement which was recorded on 24.03.2014, when the applicant was

taken into custody whilst the bail application was pending before the Special Court. According to him, mere payment of courier charges, by itself is not sufficient to connect the applicant to the alleged offences. He submitted that the applicant had absolutely no knowledge about the alleged concealment of contraband in the food stuff by accused No.2. He submitted that the conspiracy alleged is between December, 2013 to February, 2014 and the alleged chats are prior to that i.e. from September, 2013 to October, 2013. According to him, the Email address appearing at the bottom of the chat is not shown in the chat, and as such, the chat being fabricated and tampered with, cannot be ruled out. He submitted that the applicant is an Engineer by profession, having completed his Masters in Information Technology (MIT) from Punjab University. He submitted that the applicant has been falsely implicated in the said case and that there is no material before this Court to come to a conclusion that there are reasonable grounds for denying bail to the applicant.

5. Per contra, the learned APP submitted that there is ample material against the applicant to show his complicity. She submitted that it was a well-planned conspiracy where the roles of all the accused were well defined. She submitted that Alishan Sharma (original accused No.1) was responsible for acquisition of the contraband and Kiran Jangale (original accused No.2) would take delivery of the said contraband and pack the same in his house in food stuffs and thereafter, would take it to the courier company. She submitted that from the house of Kiran Jangale, 12½ Kg of Methaqualone was found concealed in food stuffs. She submitted that as far as the role of the present applicant is concerned, it was his responsibility to make payment of courier charges to ICR, for delivery of the

consignment from Mumbai to London. She further submitted that the material on record, which is the statement of the applicant recorded under Section 67 of the NDPS Act and the chats exchanged between Jonathan and the present applicant, would bear testimony to the same. She relied on several chats exchanged between Jonathan and the present applicant to show that it was a well planned conspiracy and that the applicant was well aware that the payments of the courier charges, were towards the contraband which was being sent from Mumbai to London. In particular, she relied on page Nos.128, 131, 140, 142 & 142A of the complaint/charge sheet tendered by her. She submitted that the statement of Stephanie Misquitta, an employee of ICR also reveals that the applicant was in touch with her, with regard to the consignments being sent from Mumbai to London and that the amounts for the said courier charges, were being sent by the applicant to the Courier Company i.e. ICR. She also relied on page No.150 of the said complaint/charge sheet to show that earlier 10 such consignments had been sent from Mumbai to London, through ICR. To corroborate the said fact, she relied on the statement of co-accused No.2, Kiran Jangale which was recorded under Section 67 of the NDPS Act to show that the pouches of food stuff contained contraband i.e. a psychotropic substance. She further relied on page No.86 to show payments of Rs.49,000/- having been made by Sundeep Amin through Western Union Money Transfer in the name of the brother of the applicant and the friend of the brother of the applicant and twice in the name of the applicant himself. The amount sent was Rs.49,000/- for each of consignment. According to the prosecution, after deducting the courier charges, the balance amount was to be distributed between the applicant and Jonathan.

6. Perused the complaint/charge-sheet. The first statement of the applicant was recorded on 15.02.2014. The question No.14 which is reproduced as under :-

> "Q.14 : Is any courier has ever been booked through the said M/s. International City Runners India Private Limited by using your mobile no. & your residential address i.e. C/o. S.S.Rawat, 103/48, Adarsh Colony, Gurunanak Road, Subhash Nagar, Dehradun ?
> Ans. In my knowledge no such courier was ever booked by using my mobile no. & aforesaid address."

In the second statement dated 16.02.2014 recorded by the Central Excise Department, Dehradun, the applicant has given details of his Emails and passport. He has stated that he has not received any remuneration in the process, as he was just gathering information of the courier agency to facilitate Jonathan. According to the applicant's statement, his name, mobile number & contact address appears to have been misused by somebody. To Q.16 as to what were the products he was sending to London through courier, his reply was he has never sent any courier to London and that he was gathering information, such as name and address of the courier agency, their contact no., email ID, to transfer the same to his client Shri Jonathan at China. In the third statement dated 17.02.2014, he has stated that he was booking courier parcel through ICR and that he was doing the said job for one of his friends, Jonathan, a British national settled in China. He has further stated that he had arranged shipment of ten courier parcels since December, 2014. According to the applicant, pursuant to Jonathan's request he had made enquires with the courier company for shipment of courier parcels to London, containing food stuffs and that Jonathan had offered Rs.49,000/- per consignment and that the remaining amount, after making payment of courier charges, was to be distributed equally between the two. He has also stated that he had contacted the courier company i.e. ICR and spoken to Ms Stephanie with regard to the shipment charges. According to the applicant, he had informed her that the courier charges would be deposited directly into the account of the ICR by RTGS. He has also stated that he had informed Jonathan, that the courier company i.e. ICR, had accepted to process their shipments. It appears that in the fourth statement dated 24.03.2014, the applicant has disclosed that he had received a sum of Rs.49,000/- on nine occasions and that the said money was sent by Jonathan, through one Sundeep Amin from London. The said amounts were sent on the applicant's instructions in the name of his brother, brother's friend and twice in his name. In the said statement, he has stated that in the chats, the words "K" on print out no.9 and the word "ket" on print out no.12 were used for Ketamine. Chats which were exchanged between the parties, in particular chats, dated 10.09.2013 to 19.09.2013 clearly show that the applicant had knowledge of the contraband which was being sent from Mumbai to London. The applicant's stand from his 1st statement of denial to later statements shows a complete change. The subsequent statements coupled with chats, shows that the applicant had knowledge that what was couriered contained contraband. The courier charges were paid by the applicant to ICR, through RTGS, for the shipments. Apart from the aforesaid, the statement of Stephanie Misquitta and the transfer of funds on page No.86 of the complaint/charge-sheet clearly shows the applicant's complicity in the said offences.

7. Considering the material on record, it cannot be said that there are no reasonable grounds for believing that the applicant is not guilty of the alleged offences. Hence, the application is rejected. However, the trial is expedited.

8. The aforesaid observations are prima facie, for considering the applicant's bail application and the learned Special Judge, shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made herein.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)