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

+ **BAIL APPLN. 1802/2016**

PUNEET KUMAR

..... Petitioner

Through: Mr. Manoj Ohri, Senior Advocate
along with Mr. Abhishek Maratha &
Ms. Anshul Sharma, Advocates.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Rajat Katyal, APP and Ms. Ankita
Goyal, Advocate along with Inspector
Tilak Chand Bisht, IO/SI Rakesh
Malik & SI Somil Sharma, Special
Cell/SWR, for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

09.09.2016

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1. The petitioner has preferred the present petition under Section 438 Cr.P.C. read with Section 36C and 37 of the NDPS Act for grant of anticipatory bail in the case FIR No.44/2016 registered at Police Station – Special Cell, Saket under the NDPS Act, 1995.

2. The petitioner is serving as an Inspector in the Customs Department at Delhi. The case of the prosecution is that based on a secret information received on 23.07.2016, one Faizan, who hails from Mumbai and was

suspected to be dealing in contraband psychotropic drug 'Mephedrone' commonly known as 'Meow-Meow', was apprehended in the area of Greater Kailash Part-II, New Delhi. Based on the specific information, a special team was constituted and a raid was conducted. Eventually, Mohd. Faizan Ahmed Supariwala was apprehended along with two packets containing the drug 'Mephedrone' weighing 1.215 Kgs. and 935 gms. respectively. The aforesaid case came to be registered and the said Mohd. Faizan was arrested. On his interrogation, he disclosed the name of one Sunny, resident of Chittaranjan Park, Delhi, from whom he procured the drugs. He informed that Sunny is going to deliver another parcel of the same drug to another man on the same evening near Gurudwara, Greater Kailash Part-II and he could get him arrested. He disclosed the names of others involved in the same trade.

3. On 23.07.2016 itself, on the basis of the disclosure made by Faizan, a raid was conducted and accused Surender Singh Lamba @ Sunny was apprehended along with a packet of drug 'Mephedrone' weighing 650 gms. Near Gurudwara Greater Kailash Part-II, New Delhi. Accordingly, he too was arrested. Upon interrogation, Surender Singh Lamba @ Sunny also made disclosure of other persons from whom he used to procure the said drug.

4. On 24.07.2016, based on the disclosure made by Surender Singh Lamba @ Sunny, a raid was conducted in the area of Krishna Nagar, whereupon one Rishi Koli resident of Ghondli Village, Krishna Nagar, Delhi was apprehended. On his interrogation, he made disclosure of an agent, namely Guddu from whom he used to procure the said drug. At the

instance of the accused Rishi, accused Guddu was arrested on 24.07.2016 near Karkardooma Courts while he was in possession of two packets of 'Mephedrone' being 600 gms and 250 gms. respectively.

5. On their interrogation while in police custody, accused Guddu Yadav and Rishi made a disclosure that they have procured the consignment from Manoj and, accordingly, the accused Manoj Sanger was arrested from Ghaziabad, UP on 30.07.2016. Though nothing incriminating was recovered from his possession, he was arrested under Section 29 of the NDPS Act on the ground of his being a part of the conspiracy.

6. On his interrogation, Manoj confessed regarding his involvement and he, in turn, named one Sanjay Khanna and Deepak Parashar @ Pandit. Accordingly, Deepak Parashar @ Pandit and Sanjay Khanna were arrested on 30.07.2016 and they were too found to be in possession of the contraband drug, namely, 'Mephedrone'. During his interrogation, Sanjay Khanna stated that they had procured the said drug from Mahender, who was having close relations with Customs Department.

7. On the basis of the disclosure made by Sanjay Khanna, a raid was conducted and accused Mahender Singh Rana was apprehended from Shakarpur, New Delhi in the night intervening 31.07.2016 and 01.08.2016 and he was found in possession of nine packets of contraband total weighting 9.09 Kgs.

8. During his investigation, Mahender Singh Rana disclosed that a custom employee, namely Puneet Kumar – the petitioner is the source of total recovered 'Mephedrone' drug. He stated that he had taken 21 Kgs. of

the said drug from the petitioner Puneet Kumar. Out of the said supply, he had already sold 12 Kgs. of the drug to accused Sanjay Khanna on different occasions and around 9 Kgs. remained with him.

9. The submission of Mr. Ohri, learned senior counsel for the petitioner is that a perusal of the order passed by the Sessions Court as well as the status report filed by the State shows that the source of the said drug is stated to be from the Customs Warehouse Department in respect whereof the petitioner allegedly was in-charge of six godowns, namely Godowns No.1 to 5 and the VIP Godown. Mr. Ohri submits that the said drug 'Mephedrone' has never ever been stored in the said godowns.

10. He further submits that unless and until the prosecution establishes that the said drug was ever stored in the said godowns or that any of the stored drug out of the said drug (if any) is missing, even if stored, the mere disclosure of Mahender Singh Rana, who is himself an accused, is not sufficient to implicate the petitioner.

11. Mr. Ohri submits that Mahender Singh Rana is a regular customer and purchases auctioned goods from the Customs Department, and in that context, he has been in touch with the petitioner. Mr. Ohri submits that Mahender Singh Rana, only with a view to settle personal scores with the petitioner, has sought to rope him in.

12. Mr. Ohri has also referred to the circumstances in which he is seeking interim protection. Mr. Ohri has referred to paragraph 7 of his bail application, which reads as follows:

“(7) However, when the aforesaid was happening the applicant had gone on a birthday party on 31-7-2016 night, where he got late, when his daughter got ill with high fever and the health of his daughter started deteriorating, due to which, he had to stay back to his father’s house.

Later, in the morning of 01-08-2016 the applicant took his daughter to a doctor, neighboring his Father’s residence, who suspected dengue and prescribed for tests.

Then, the applicant went to his office for the half day and then came to attend his daughter. Thereafter, he sent his Father in law to bring some money and the reports of his daughter from his house at Madhu-vihar, who didn’t return back and his cell-phone was switched off. When the applicant asked one of his neighbours then he was told that his house has been raided by Delhi police and his father-in-law has been detained, interrogated and beaten and Police is searching for the applicant.

Then the applicant got terrified by the said raid and acts of Police and was advised to contact an advocate by a friend. The said found out that the matter is being handled by the Delhi Police Special Cell at Saket, wherefrom it was found out that the Police is searching for the applicant on the basis of the statement of one Mahender Singh Rana.

The applicant told the advocate that Mahender Singh Rana is and has been a regular customer of the custom’s goods and has inimical relations with the applicant and it is therefore, Mahender Singh Rana has stated his name to settle scores.

Later, the case of “International drug Racket” was disclosed in news, where it had been alleged that a custom’s officer is the source of the drugs. A true copy of a cutting of the newspaper is being annexed herewith and marked as ANNEXURE-A/2.”

13. Mr. Ohri submits that the petitioner is ready and willing to join the

investigation, however, there is no need for his custodial interrogation.

14. On the other hand, Mr. Katyal, learned APP has sought to place reliance on his status report. Mr. Katyal submits that the petitioner was in-charge of the warehouse/ Malkhana where voluminous goods/ properties remain in his custody. Stock taking is underway in the Malkhana by the Customs authorities. Mr. Katyal points out that the petitioner was in the office till lunch time on 01.08.2016, and thereafter, he left the office and has been unauthorisedly absent since then.

15. The Call Detail Records (CDR) of the mobile phone of the accused Mahender Singh Rana have been scanned, and it is found that the petitioner and Mahender Singh Rana have been in regular touch with each other on more than 250 times since January 2016 on mobile phone. Mr. Katyal submits that the claim of the petitioner that Mahender Singh Rana is inimical to him, is belied by the fact that they were in regular touch.

16. Mr. Katyal has also pointed out that the CDR of the petitioner's mobile show that on 01.08.2016 at about 11:45 a.m., he received a called from a mobile phone, which is registered in the name of Mahender Singh Rana's daughter, namely, Kavita Rana. This also, prima-facie, belies the stand of the petitioner that Mahender Singh Rana was inimical to him, and it shows the involvement of the petitioner with Mahender Singh Rana and his family.

17. Mr. Katyal submits that Mahender Singh Rana was apprehended in the night between 31.07.2016 and 01.08.2016, and evidently, it was only when the petitioner received a call from the daughter of Mahender Singh

Rana, that he became aware of the fact that Mahender Singh Rana had been apprehended. Thereafter he absconded and his conduct also throws doubt on his involvement, as claimed by Mahender Singh Rana.

18. Mr. Katyal submits that the fact that the petitioner was in-charge of the warehouse/ Malkhana, where seized goods including drugs are kept, is only an aspect that raises doubts. As aforesaid, the stock taking is underway, and only after it is complete, it would be known whether the goods stored by the petitioner were stolen from the Malkhana, or not. However, it is not the case of the prosecution that only stolen goods from the Malkhana were supplied by the petitioner.

19. Mr. Katyal has also sought to contest the stand taken by the petitioner in paragraph 7 of his bail application, as quoted above. Mr. Katyal points out that the official residence of the petitioner is at Nauroji Nagar. However, the CDR of the petitioner's mobile phone shows that he did not visit Nauroji Nagar at all between 31.07.2016 and 01.08.2016.

20. Mr. Katyal submits that the custodial interrogation of the petitioner is necessary to unearth the source of supply of the goods allegedly made by the petitioner to Mahender Singh Rana, and the involvement of the petitioner in the said crime.

21. Having heard learned senior counsel for the petitioner and the learned APP, I am of the view that there is absolutely no merit in this petition. There is sufficient material available on record to, prima facie, indicate the involvement of the petitioner and the story set up by the petitioner, prima facie, does not appear to be convincing.

22. The fact that the petitioner had telephonically contacted the accused Mahender Singh Rana on 250 occasions since January 2016 clearly shows that they were both known to each other very well, and were in regular touch. Though the petitioner claims that Mahender Singh Rana was a regular customer of Customs seized goods, that by itself cannot be sufficient to explain the frequency with which the petitioner was in touch with him.

23. The claim of the petitioner is that the said Mahender Singh Rana was inimical towards him, and that is why the petitioner has been falsely implicated by Mahender Singh Rana. It does not stand to reason that somebody who is inimical to another person, should be in such frequent telephonic contact with the other person. Moreover, the CDR of the mobile phone of the petitioner shows that he received a call from the mobile phone of Kavita Rana, the daughter of Mahender Singh Rana on 01.08.2016 at about 11:45 a.m. By then, Mahender Singh Rana had been arrested in the crime. After receipt of that call, the petitioner left his office and has been absconding ever since. The story set up by the petitioner in paragraph 7 of the bail application is not supported by the CDR of his mobile phone.

24. I may also observe that the FSL report appears to have been obtained and it is established that the recovered drug was 'Mephedrone'. Possession of more than 50 gms. of 'Mephedrone' is considered as commercial quantity under the NDPS Act and the quantity recovered in the present case from the several accused is much higher. The co-accused Mahender Singh Rana claims to have been supplied over 20 Kgs. of the said drug by the petitioner.

25. The case involves recovery of large amount of the drug

‘Mephedrone’. The offence is serious, and from the status report, it appears that there was a well entrenched racket subsisting in relation to the supply and trading of the said drug, which was allegedly originating from the petitioner. In my view, the custodial interrogation of the petitioner is essential to establish the source from where the said drug was being procured by the petitioner for further supply. The entire conspiracy needs to be unearthed.

26. Observations made in this order are only prima facie in nature and for the limited purpose of considering the present application. The same shall not influence the final determination on merits.

27. In these circumstances, the petition is dismissed. The petitioner is directed to surrender forthwith.

SEPTEMBER 09, 2016

B.S. Rohella

VIPIN SANGHI, J