

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

% Reserved on: 10th January, 2017
Decided on: 12th January, 2017

+ **BAIL APPLN. 1647/2016**

GOVIND RATHI & ANR

..... Petitioner

Represented by: Mr. Shubham Gupta,
Mr. Praween Gupta, Adv.

versus

NATIONAL CRIMES BUREAU

..... Respondent

Represented by: Mr. P.C. Aggarwal, Adv.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Petitioners Govind Rathi and Basant Rathi seek bail in complaint case titled as '*NCB Vs. Puran Chand & Ors.*'. The above-noted complaint was lodged after a team of NCB DZU seized 5.6 Kg of hashish from Courier company ISE Courier Pvt. Ltd. Joshi Road, Karol Bagh, run by the two petitioners pursuant to an information received. As per the input, one Ashok Lamba was apprehended at Nepal who was trying to send charas/hashish from Kathmandu to India by courier parcels. From the search of the courier parcels sent from Kathmandu, it was found that in the cover pages of the religious diaries sent, hashish was concealed. A total quantity of 5.600 kg hashish was recovered.

2. Learned counsel for the petitioners submits that the petitioners cooperated with the investigation and were rather witnesses to the recovery

of the contraband. They had no knowledge about the contraband being concealed in the parcels, thus were not in conscious possession of the same. Both the petitioners cooperated with the investigation and appeared before the NCB officers as and when called. They had no relation with the courier company at Kathmandu i.e. ISE Kathmandu and did not forge any documents. They had received pre-paid bills of entries which they submitted to get the goods released from the customs and according to ISE Kathmandu the same were split in three packets to save duty/tax. Thus, at best the petitioner could be conspirators with the co-accused at Kathmandu only to the extent of evasion of duty and not for possession of the contraband.

3. A perusal of the record reveals that ISE Courier Company, Kathmandu had originally booked the consignment under airway bill No. 6195 in the name of Ashok Lamba, however the petitioner got cleared the said parcel on three different airway bills and bills of entries i.e. Airway bill No.5534 in the name of Padamganesh Jee vide bill of entry No.603060, Airway bill No. 5533 in the name of Shreekrishna Sadan vide bill of entry no. 603061 and Airway bill No. 5535 in the name of Surya Jee vide bill of entry No. 603062. During investigation, the names and addresses of the consignees i.e. Padamganesh Jee, Shreekrishna Sadan and Surya Jee were tried to be located, however they were non-existent. As per the investigation, this was not the first parcel received from Ashok Lamba and earlier also parcels were received by the petitioners from Ashok Lamba. Ashok Lamba had been arrested at Nepal who disclosed all these facts where after recoveries were made from the petitioners and their statements were recorded under Section 67 of the NDPS Act.

4. Contention of learned counsel for the petitioners is that the investigating officer was in touch with the petitioners prior to the alleged seizure of 5.6 kgs of hashish and thus they had ample opportunities to replace the contents of parcel or destroy them, had they known the contents of parcel. The contraband having been recovered from the possession of the petitioners, presumption under Section 35 of the NDPS Act has to be raised and it will be for the petitioners to rebut the same during the course of trial. Further duty, where leviable, is paid by the courier company on behalf of the importer or exporter before taking delivery of the parcel. Charge for offences punishable under Section 29 read with Section 8 of the NDPS Act and Section 20(b)(ii)(c) read with Section 29 NDPS Act has already been framed against the petitioners.

5. In view of the bar under Section 37 of the NDPS Act, this Court has no material to come to the conclusion that if released on bail, the petitioners will not indulge in similar activity again. Hence, I find no reason to grant bail to the petitioners.

6. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 12, 2017
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