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

+ **BAIL APPLN.2507/2017**

RAKESH SHARMA

.....Petitioner

Through: Mr. M. Prabhakar , Advocate

versus

NCT GOVT OF DELHI

....Respondent

Through: Mr. Amit Ahlawat, APP for the State
with Inspector Sunil Kumar, P.S: Crime
Branch.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

06.12.2017

Crl. M. A. No. 20124/2017 (Exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

Bail Appln. No. 2507/2017

1. By way of the present petition filed under Section 438 of the Criminal Procedure Code, 1973 (hereinafter referred as 'Cr.P.C.'), the petitioner seeks **grant of anticipatory bail** in respect of FIR No. 0198 dated 09.11.2017, under Section 21/25/29 of The Narcotic Drugs and Psychotropic Substances Act (hereinafter referred as 'N.D.P.S.'), registered by Crime Branch, New-Delhi.
2. Briefly stated the facts of the case are that on 09.11.2017 at around 04:45 am, a secret information was received in the office of IGIS/Crime Branch that one Ajay Kumar (co-accused) along with his associate Mukesh Kumar (co-accused) and truck driver

Fantoosh Yadav (co-accused) with the active assistance of the petitioner/Rakesh Sharma, who is the transporter, were carrying an illegal quantum of codeine syrup hidden along with the other items in the truck bearing No. HR 38T3541 belonging to the petitioner. On the basis of the said information, the raid was conducted by the raiding team, whereby 10,600 bottles of codeine syrup were recovered from the truck, which were hidden among the electronic items. Therefore, the case was registered against the petitioner for the offence under Sections 21/25/29 of NDPS Act.

3. The learned counsel for the petitioner contended that the allegation made against the petitioner is false and fabricated; that the truck bearing no. HR 38T3541 was provided by the petitioner to Ajay/co-accused in good faith, for the purpose of transportation/commercial transaction; that the said truck was affixed with the GPS for tracking the movement of the truck and the tracking report falsifies the allegation that the offending vehicle was intercepted at 07:05 am on 09.11.2017 at Ma Anandmayee Marg, opposite Okhla Phase 1; that the contraband might have been planted in the truck when the truck was at halt, at Baba Fateh Singh Marg Kalkaji extension Govindpuri, from 02.43 am to 03.19am; that the said report states that the offending vehicle at the time of interception was at Golf Course Road, Sector-18, Dwarka, New Delhi, where it was at halt at 5:39 am and stayed there till 12:00 noon; that no commercial transaction has been done by the petitioner with the contracting party prior to that incident and on such instances, the present petition should be allowed.

4. Per Contra, learned APP vehemently opposed the present petition thereby contending that 10,600 bottles of codeine syrup packed in 53 packets, which is a commercial quantity, were recovered from the said truck; that the other co-accused are in the judicial custody and the custodial interrogation of the petitioner is necessary to unearth the alleged offence. Hence, the present petition is liable to be set aside.
5. I have heard the learned counsel for the parties and perused the material available on record.
6. Perusal of the record shows that when the raid was committed by the raiding team, some documents were recovered from the truck which represented that the truck contained only electronic items and thereafter, the police officials conducted the search of the entire truck. On search, 295 cardboard cartons were found containing something like coils and 13 medium-sized brown boxes made up of cardboard containing something like iron plates and five medium sized boxes containing metallic things. Inside each of the cupboard boxes, four trays containing 25 plastic bottles were found bearing mark Abbott on the printed tape in each bag i.e. 10,600 bottles. These bottles were marked with PHENSEDYL manufactured by Abbott Healthcare Pvt. Ltd. of 100 Mls, each % Mls which contained 10 mgs of codeine phosphate. It is observed that the quantum of contraband recovered is of commercial quantity which comes within the ambit of Section 2(viia) of the NDPS Act which defines this term as any quantity greater than a quantity specified by Central Government by

notification in the official gazette.

7. It is further observed that, the huge quantity of cough syrups bottle, Schedule 'H' drug containing narcotic substance, were transported without any valid document for such transportation or without fulfillment of any of the statutory requirements either under the provisions of Drugs & Cosmetics Act or under the provisions of the N.D.P.S. Act. The said contrabands were transported and thereby recovered from the truck provided by the petitioner and it cannot be simply presumed that such transportation was for therapeutic practice. Therefore, if the said requirement meant for therapeutic practice is not satisfied that the entire 100 ml. content of the cough syrup containing the prohibited quantity of codeine phosphate is meant for human consumption, the same would certainly fall within the penal provisions of the N.D.P.S. Act. Looking at the graveness of the crime as leveled against the petitioner and keeping in view that the investigation is at its preliminary stage, the court is not inclined to grant anticipatory bail to the petitioner.
8. Hence, the present petition stands dismissed.
9. Observations made in the order shall have no impact on the merits of the case during trial.

SANGITA DHINGRA SEHGAL, J

DECEMBER 06, 2017

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