$~14

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

% Date of Decision: 5th July, 2019

\+ BAIL APPLN. 1102/2019

AMIT RANJAN ..... Petitioner

Through: Mr. Ashok K. Singh & Mr. Sandeep Kumar, Advocates

Versus

NARCOTIC CONTROL BUREAU, DELHI..... Respondent

Through:

**CORAM:**
**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**CHANDER SHEKHAR, J. (ORAL)**

1. This order shall dispose of the application filed by the petitioner under Section 438 read with Section 482 of the Code of Criminal Procedure, 1973 in complaint case SC No.81/2019 under Section 8 (C), 21(C), 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) for grant of anticipatory bail.

2. Briefly stated, the facts of the prosecution case are that on the basis of a secret information, two parcels, booked under Airways Bill Nos.2061262291 and 2061387436 and destined to USA and Canada respectively which were being sent by one Gaurav Mehta, were lying at DHL office and these parcels were suspected to contain narcotic psychotropic tablets. On this information, on 16.8.2018, a message was passed over the telephone to the Superintendent, Narcotics Control Bureau (NCB) and the said message was also reduced into

writing by the Investigating Officer, NCB. On 17.8.2018, on opening the parcels, the following articles were recovered.

> i) 4 strips of Ativan 2 mg, weighing 8 gms [As per CRCL report, the sample was found positive for Lorazepam).
> (ii) 4 packets of Lupins Katadol capsules [Flupirtine Maleate capsules weighing 100 mg [not under the NDPS Act]
> (iii) one packet of Testovira Depot, weighing 250 mg/ml (not under the NDPS Act)
> (iv) 40 strips of Omnacortil-20 tablets [Prednisolone dispersible tablets) [not under the NDPS Act]
> (v) 435 tablets of white colour round shaped, marked Adderall, weighing 143 gms. [As per CRCL report, the sample was found positive for Tramadol].
> (vi) one packet of 164 tablets, marked Hydro, weighing 75 gms. [As per CRCL report, the sample was positive for Tramadol]
> (vii) one packet of 192 tablets, suspected to be Hydrocodone, weighing 115 gms.[ [As per CRCL report, the sample was positive for Tramadol]. Hence the total weight of Tramadol recovered is more than 250 grams and the same is a commercial quantity.

3. Further, it is also learnt that Gaurav Mehta also sent narcotic psychotropic tablets from his office-cum-warehouse at K-121, West Patel Nagar, New Delhi continuously. Thereafter, the warehouse of accused Gaurav Mehta was searched and the following articles were recovered:

> (i) Vellum Tablets, weighing 1.36 kg. [As per CRCL report, the sample was positive for Tramadol].
> (ii) Xanax, weighing 60 gms. [As per CRCL report, the sample was negative).
> (iii) Alprazolam, total 126 strips [As per CRCL report, the sample was found negative).
> (iv) Lorazepam Tablet IP Lori-2 mg, total 73 strips (One

strip contain 10 tablets) [CRCL Report is negative.]
(v) Phentermine Tablet 375 mg, total 64 strips (One strip contain 10 tablets) [Test not available with CRCL]
(vi) V.C Don, total 10 strips [Test not available with CRCL].
(vii) Clonazepam Tablet IP, total 11.5 strips. [As per CRCL report, the sample was found positive).
(viii) Open tablets of blue colour, weighing 140 gms.[As per CRCL report, the sample was found negative).
(ix) While colour, blue colour dotted open tablets, weighing 325 gms. and 305 gms. respectively and while colour open tablets, weighing 185 gms.[As per CRCL report, the sample was found negative).
Hence, the total weight of Tramadol recovered was more than 250 gms. and the same is a commercial quantity.

4. During investigation, the accused, Gaurav Mehta, in his voluntary statement under Section 67 of the NDPS Act, disclosed that the medicines recovered from his house were provided to him by the accused, Bhaskar Khatnani and he further stated that the accused, Bhaskar Khatnani used to supply the medicines to him and was also paying Rs.1,000/- per packet. The accused, Gaurav Mehta further stated that the accused, Bhaskar Khatnani used to give him 20/25 packets per week. Gaurav Mehta stated that he, on the directions of accused Bhaskar Khatnani, used to pick tablets from Laxmi Nagar, which were provided by the accused Manish Kumar through accused Amit Ranjan (petitioner herein) who was well-known to accused Bhaskar Khatnani. Gaurav Mehta further stated that he also lifted the medicines from the house of accused Bhaskar Khatnani. Accused Gaurav Mehta admitted that the parcel recovered from DHL, destined to the USA and Canada, were sent by

him, which were containing Narco Psychotropic tablets.

5. On the basis of the statement made by the accused Gaurav Mehta, the co-accused Bhaskar Khatnanai was apprehended and his house was searched, from where the forged printed stickers of medicines, namely, Xanax, Alprozolem tablet, Hydrocodone Bilartrate, Acetaminophen tablets and Zolpidem Tratrate were recovered.

6. On the preliminary inquiry from the accused Bhaskar Khatnani, he disclosed that one Manish Mohan of Vinay Pharmaceuticals was providing these tablets to the accused Gaurav Mehta through him or directly to accused Gaurav Mehta. Accused Bhaskar Khatnani further disclosed that Manish Mohan would be sending medicine carton to him and he would receive it at Gate No.2, Laxmi Nagar Metro Station. Bhaskar Khatnani further disclosed that the petitioner herein is an associate of Manish Mohan, who is involved in the medicine business and used to arrange medicines from Mumbai.

7. Thereafter, a search was conducted by NCB team near Gate No. 2, Laxmi Nagar Metro Station, Delhi and following medicines containing Narcotic Psychotropic Substances were recovered:

(i) V.C. Don Tablets, weighing 12kgs, total 2000 strips, 20,000 tablets (Hydrocodone) [As per CRCL report tested positive for Tramadol.]
(ii) Ativan 2 mg Lorazepam, total 168 strips, 5040 tablets [As per CRCL report tested positive for Lorazepam.
(iii) Phentermine K-25, total 1000 strips, 10,000 tablets [Test not available at CRCL.]
(iv) Lypin-10 JDT-3423 Zolpidem Tartrate tablets I.P, weighing 600 grams, total 300 strips, 3000 tablets [As per

CRCL report tested positive for Zolpidem.]

Hence, the total weight of Tramadol recovered was more than 250 gms., which is a commercial quantity.

8. On the basis of recovery made at Laxmi Nagar Metro Station, Manish Mohan was arrested. On the disclosure of Bhaskar Khatnani, co-accused Pulkit Kumar was also arrested by NCB on 18.8.2018.

9. The recoveries made were of commercial quantity and hence Chapter V-A of the NDPS Act is applicable to all.

10. Learned counsel for the petitioner stated that the petitioner has been falsely implicated in this case and is apprehending arrest at the hands of the NCB.

11. The respondent has already filed the status report/reply to the bail application, wherein it is stated that during the investigation conducted by NCB, several notices under Section 67 of the NDPS act were issued against the petitioner but the petitioner was not traceable. Non-bailable warrants have already been issued against the petitioner and he has not joined the investigation as yet.

12. During the financial investigation by the NCB, it was found that a sum of Rs. 69,36,943/- was transferred from the account maintained by accused Pulkit Kumar to the account of the petitioner Amit Ranjan.

13 As per the NCB investigation, all the accused persons are part of a conspiracy as they are connected with each other which is evident from their respective statements as well as from the recoveries made by the NCB.

14. There is no dispute that in this matter, the quantity involved is a commercial one and the rigours of Section 37 of the NDPS Act are applicable. Section 37 of the NDPS Act reads as under:

> "37. **Offences to be cognizable and non-bailable.—**
> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)
> (a) every offence punishable under this Act shall be cognizable;
> (b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
> (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

15. In ***Saju v. State of Kerala***, 2001(1) SCC 378, the Supreme Court observed as under:

> "8. ...It is a settled position of law that act or action of one of the accused cannot be used as evidence against other. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the Court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as

evidence against the other."

16. In ***Mir Nagvi Askari v. Central Bureau of Investigation***, (2009) 15 SCC 643, it was ruled in the same vein that while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, it must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same.

17. The Supreme Court in the case of ***Mohd. Amin v. CBI,*** (2008) 15 SCC 49 has held as under:

> "74. The principles which can be deduced from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participators in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy."

18. Further, in ***Union of India v. Ram Samujh and Anr.***,(1999) 9 SCC 429, the Supreme Court observed as under:

> "8. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,
> (i) there are reasonable grounds for believing that accused is not guilty of such offence; and
> (ii) that he is not likely to commit while on bail,

> are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the spirit with which the Parliament, after due deliberation, has amended."

19. In ***Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy***, (2000) 9 SCC 549, the Supreme Court has held as under:

> "6. In the light of Section 37 of the Act no accused can be released on bail when the application is opposed by the public prosecutor unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail. It is unfortunate that matters which could be established only in offence regarding compliance with Sections 52and 57 have been pre-judged by the learned single Judge at the stage of consideration for bail. The minimum which learned single Judge should have taken into account was the factual presumption in law position that official acts have been regularly performed. Such presumption can be rebutted only during evidence and not merely saying that no document has been produced before the learned single Judge during bail stage regarding the compliance of the formalities mentioned in those two sections.
> 7. We may also observe that learned single Judge has not recorded a finding in terms of Section 37of the Act which is sine qua non for granting bail to an accused involved in the offence under the Act."

20. It is also a fact noticed by the Courts that generally, the conspiracy is hatched in secrecy and it may be difficult, if not

impossible, to obtain direct evidence to establish the same. The acts of various parties to the conspiracy will infer that they were done with reference to common intention, hence, it is held, time and again, that the conspiracy can be proved by indirect circumstantial evidence, which is of an impeccable nature. It is also not necessary that all the conspirators should know each other and also every detail of the plot, so long as they are co-participators in the main object thereof and it is also not necessary that all of them should participate from the inception of the stratagem till the end, the determinative factor, being unity of object or purpose and their participation at different stages.

21. As per the provision of Section 37 of the NDPS Act, it is mandatory that before the petitioner is entitled to be released on bail, the Court has to be satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such an offence and that he is not likely to commit the same again while on bail.

22. As far as the present case is concerned, accused Bhaskar Khatnani in his statement under Section 67 of the NDPS Act, disclosed that he knew Pulkit Kumar for the last 8-9 months. Bhaskar Khatnani further disclosed that 4-5 months ago, Pulkit Kumar told him that he was having online orders for narcotic drugs and psychotropic substances from the USA and asked Bhaskar Khatnani that if he could supply the same, he would place the order upon him since Bhaskar Khatnani was aware that Gaurav Mehta was supplying medicines made from narcotic drugs and psychotropic substances to the USA by illegal means. Bhaskar Khatnani used to take orders from

Pulkit Kumar and would place the same on Gaurav Mehta and Gaurav Mehta further used to send the medicines to the USA. Bhaskar Khatnani further disclosed to Gaurav Mehta that Amit Ranjan (petitioner herein) is keeping a big stock of narcotic medicines. On the reference of Bhaskar Khatnani, Gaurav Mehta used to take medicines from the petitioner and was sending the same to the USA.

23. It is *prima facie* evident from the NCB investigation that all the accused persons are part of a conspiracy and they are connected with each other in view of their respective statements as well as from the recoveries made by the NCB.

24. A bare perusal of the alleged statement of the co-accused Pulkit Kumar recorded under Section 67 of the NDPS Act also demonstrates that, Pulkit Kumar was in contact with Amit Ranjan who was also involved in such business deals. Upon intensive scrutiny of the bank accounts of both Pulkit Kumar and Amit Ranjan by the NCB, it was noticed that across various instances, an amount of Rs.72,55,720/- was transacted between them.

25. Further, taking into consideration that there had been huge transfer of funds to the Account No. 344605000036 of NGA Infotech (OPC) Pvt. Ltd. maintained by petitioner Amit Ranjan from Account No.1412397511 of TOCSYS Technosolution Private Limited maintained by accused Pulkit Kumar to the tune of Rs.69, 36,943/- between 11.09.2017 till 16.05.2018 impliedly, *prima facie*, shows that the petitioner was involved in the aforesaid illegal trade and had full knowledge about the conspiracy in place.

26. During investigation, it was revealed that Amit Ranjan was a native of village – Parasi, near Chaturbhuj Asthan, Baghan Bigha, Nalanda, Bihar-803118. However, when summons under Section 67 of the NDPS Act was sent to his house, it was informed that he does not reside there and no further information about his whereabouts could be collected. Presently his whereabouts are unknown.

27. As stated above, NBWs were already issued against accused Amit Ranjan and he has not joined the investigation despite repeated notices. The investigations in the present matter are at an initial stage.

28. In view of the aforesaid discussions, it is evident that the NCB seized Narcotic Drugs/ Psychotropic substances from two different locations in Delhi from the possession of two persons. These seizures were made on the basis of disclosure statements of Gaurav Mehta and Bhaskar Khatnani which also prove that there was an organized network working behind the sales of Narcotic Drugs/Psychotropic substance, as the seizures of the NCB related to the present matter involves commercial quantity, which is covered under the Chapter V-A of NDPS Act 1985.

29. There is no doubt that the anticipatory bail may be granted when there is material on record to show that prosecution was inherently doubtful or where there is material on record to show that there is a possibility of false implication. However, when the element of criminality is involved; the custodial interrogation is required and/or the other aspects and facts are required to be unfolded in investigation, the applicant is not entitled for anticipatory bail.

30. It is also well-settled law that while considering the question of grant of anticipatory bail, the Court *prima facie* has to look into the nature and gravity of the alleged offence and the role of the accused. The Court is also bound down and must look into, while exercising its power to grant bail, the antecedents of the applicant and also the possibility of the applicant fleeing from justice, apart from other factors and parameters in view of the facts of each and every case.

31. In the matter of ***Dr. Subhash Kashinath Mahajan v. State of Maharashtra & Anr.***, in Criminal Appeal No.416/2018, decided on 20.3.2018, the Supreme Court has held as under:

> "112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:
> (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
> (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
> (iii) The possibility of the applicant to flee from justice;
> (iv) The possibility of the accused's likelihood to repeat similar or other offences;
> (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
> (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
> (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is

> implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
> (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
> (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
> (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

32. Now, reverting back to the facts of the case, I do not find anything on record, at this stage, to satisfy this Court that there are grounds, or more to say, reasonable grounds, believing that the petitioner is not likely to commit such an offence again and is also not likely to commit the same while on bail.

33. The custodial interrogation of the petitioner is also required in this case, specifically, to unearth and connect the wires of conspiracy, more so, their *modus operandi* as well as involvement of the petitioner and other persons.

34. The investigation is at the initial stage. The petitioner is stated to have not co-operated in the investigation as the NBWs were issued against him and he has not joined investigation despite repeated

notices. Hence, taking into consideration the conduct of the petitioner as well as transfer of huge funds and nature and gravity of the accusations, the stage of the investigation and the alleged role of the petitioner, this Court does not find any merit in the anticipatory bail application of the petitioner. The anticipatory bail application is, accordingly, dismissed.

**CHANDER SHEKHAR, J**

**JULY 05, 2019**
**tp**