

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment Reserved On: 03.02.2020
Judgment Pronounced On: 11.02.2020

+ **BAIL APPLN. 78/2020**

Ganesh Pun

..... Petitioner

Through: Mr. Nitin Sehgal and Mr. Alok,
Advocates.

versus

UNION OF INDIA

..... Respondent

Through Mr. B. S. Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J.

1. Vide this order I shall dispose of a bail application filed u/s. 439 CrPC by the petitioner **Ganesh Pun** in Case No. SC 29/201 u/s. 8 (c) & 22 (b) of NDPS Act.

2. Ld. Counsel for the petitioner has prayed for bail on the ground that petitioner is innocent and has been falsely implicated. It is submitted that petitioner was apprehended by the respondent on 15.11.2018 and since then he is in custody except for the period of around two months when he was granted interim bail in this case. The Ld. Court of Shri Ajay Kumar Jain, Spl. Judge /NDPS, New Delhi dismissed the bail application of the petitioner on 16.11.2019.

3. As per the allegation, on 12.02.18 at 11:00 hours a secret information was received by NCB that a parcel destined to USA contains narcotic drugs. Thereafter raid was conducted at Blue Dart office and one suspected parcel was produced by one Aashish Gupta incharge of the office showing name of the consigner as Sushma Chetri on the parcel. It is further alleged that on opening of the said parcel, six polythene packets having 200 tablets of Nitrazepam weighing about 108 grams were recovered. It is further alleged that on investigation, it was found that said Sushma Chetri had sold the property whose address was mentioned on the parcel and had shifted to some other place. When the NCB officers reached at her new address, the said Sushma Chetri was found with her husband Ganesh Pun (petitioner) and on search of their house huge quantity of psychotropic substance/tablets were found and separate case was registered against them. It is submitted that though the search and seizure memo was made on 12.02.2018 but no sample was drawn at that time and this violates the standing order No. 01/88, 02/ 88 and 01 /89 issued by Govt. of India. It is submitted that the samples were also drawn by the prosecution after a delay of about more than a year. Procedure laid down in section 50 of the act was also not followed. It

is further submitted that the parcel was booked on 08.02.2018 but the dealing clerk has identified the petitioner in NCB office on 25.09.2018 i.e. after about more than seven months. No TIP of the petitioner was conducted as per law.

4. It is next submitted that the alleged recovery is not of commercial quantity. The prosecution has filed the charge-sheet before the concerned court. The charge has also been framed against the petitioner and the case is now listed for prosecution evidences. It is prayed that since the petitioner is innocent and falsely implicated and is not required for the purpose of investigation and there are contradictions in the prosecution version, he be, therefore, released on bail in the interest of justice.

5. Ld. Advocate for the UOI has opposed the bail application on the ground that allegations against the petitioner are serious in nature.

6. I have considered the rival submissions. Learned Counsel for the petitioner has relied upon '**Sanjeev Kumar Saxena vs. State Government of Delhi, 2008 (4) JCC (Narcotics) 195**'. I have gone through the above case law. However, the same is distinguishable on the basis of facts and circumstances stated therein. It may further be noted that in the present case, the petitioner is also involved in another

FIR relating to recovery of psychotropic substance from his residence at Kolkata.

7. As discussed earlier, the prosecution version is that on 12.02.2018 a secret information was received by NCB that a parcel bearing Airway bill no. 6053235871 lying at DHL, Express India (P) Ltd., 71/03, Rama Road, Industrial Area, Delhi is suspected to contain narcotics drugs. In pursuance of the information, a team of NCB officers was constituted and it reached at DHL, Express India (P) Ltd., 71/03, Rama Road, Industrial Area, Delhi and from the search of said parcel 200 numbers of Psychotropic Tablets, weighing 108 grams were recovered. The said parcel was destined to USA and consigner of the parcel was mentioned as Sushma Chetri, Arabinda Pelly, Patulia, Titagarh, West Bangal, Kolkata-70019 mobile no. +91-9123704743 and the consignee name was mentioned as Mrs. Michele Barnett 5701, Kinsley Circle, PLANO, TX-75093 USA email-mbgnnett33@gmail.com. A letter was sent to Kolkata Zonal Unit, Kolkata for taking follow up action. Vide letter dated 20.04.2018 IO,NCB/Kolkata Zonal Unit had informed that the Sushma Chetri has sold the said property and was residing at Flat No. 1C, Block-71, Green Field City, Kolkata/24 Pargana and thereafter shifted to another Flat No. 2D,

Block No. 72, Green Field City, Maheshtala with her husband namely Ganesh Pun.

8. The NCB/DZU team along with the NCB/Kolkata Zonal Unit team had, thereafter, gone to the Flat No. 2D, Block No. 72, Green Field City, Maheshtala, Kolkata and Sushma Chettri along with her husband Ganesh Pun (petitioner) were found present there. The said house was searched by the NCB team and huge quantity of psychotropic substance/tablets were found and a separate case was registered by the NCB/ Kolkata Zonal Unit against accused Ganesh Pun. The details of the Psychotropic Tablets recovered from the house of the accused Ganesh Pun are as under:

RECOVERY FROM GANESH PUN IN CALCUTTA;

Tablets in Loose form:-

1. 88 Nos i.e. 51 Gram (Gross) of White Coloured Nitrosun 10 Tablets containing Nitrazepam.
(500 Grams is commercial Quantity)
2. 275 Nos. i.e. 56 Gram (Gross) Off White Coloured Clonotril-1 Tablets containing Clonazepam.
(100 Grams is commercial Quantity)
3. 90 Nos. i.e. 8.5 Gram (Gross) Yellow Coloured Ativan Tablets containing Lorazepam.
(100 Grams is commercial Quantity)
4. 270 Nos. i.e. 85 Gram (Gross) Pink Coloured Alzolam-1.00 tablets containing Alprazolam.
(100 Grams is commercial Quantity)

5. 1260 Nos. i.e. 263 Gram (Gross) Small White Coloured Zolfresh Tablets Containing Zolpidem.
(250 Grams is commercial Quantity)
6. 360 Nos. i.e. 100 Gram (Gross) Blue Coloured Stilnoct Tablets Containing Zolpidem.
250 grams is commercial Quantity.

Tablets recovered in Strip Form:

1. 02 Strips each of 10 tablets of Nitrosun-IO (10 Mg) Tablets Containing Nitrazepam.
 2. 06 Strips each 08 Tablets of Spasmodon (400 mg) Tablets containing Tramadol.
 3. 02 Strips each of 15 Tablets of Clonotril -1 (1 mg) Tablets containing Clonazepam.
 4. 04 strips each (97 tablets) of Ativan (2 mg) Tablets containing Lorazepam.
 5. 14 Strips each of 10 tablets of Alzolam -1.00 (1 mg) Tablets containing Alprazolam.
 6. 03 Strips each of 10 tablets of Trika-1 (1 mg) Tablets containing Alprazolam.
 7. 03 strips (37 tablets) of Zolfresh (10 mg) Tablets containing Zolpidem.
 8. 03 Strips (40 Tablets) of Stilnoct (12.5 mg) tablets Containing Zolpidem.
9. Sushma Chettri had made her voluntary statement and disclosed that the mobile number and the Photo ID attached with the parcel bearing AWB No. 6053235871 was in her name and the same were attached with the recovered parcel by his husband Ganesh Pun (petitioner) while sending the said parcel.
10. Ganesh Pun in his voluntary statement has disclosed that he has booked the parcel bearing No. AWB 6053235871 and had concealed 200 tablets (Nitrosun 10) in a plastic sewing machine and booked the said parcel by using the ID of his wife. The booking Clerk of Blue

Dart & DHL has also made a statement that the petitioner Ganesh Pun along with his wife had come to his office for booking the parcel containing sewing machine to be sent to Mrs. Michele Barnett 5701. Kinsley Circle. PLANO. TX-75093 USA. After booking of the said parcel, he had prepared the AWB No. 6053235871 and performa invoice and further sent the said parcel to Blue Dart & DHL destined to USA. He also identified the accused Ganesh Pun who was also present at NCB/KZU office as the same person who had booked the recovered parcel.

11. It was, however, contended by Ld. Counsel for the petitioner that petitioner has been granted bail in the subsequent case registered at Kolkata. However, Ld APP clarified that petitioner has been granted default bail because he was in custody for 183 days and statutory period for filling chargesheet was over.

12. Perusal of the facts appearing on record prima facie reveal that petitioner is dealing with narcotics drugs. He has tried to send the drugs by concealing the same in a parcel. Later on, a raid was conducted at his residence in Calcutta and huge quantity of psychotropic tablets were recovered from there. Ld. Counsel for the petitioner has submitted that petitioner has been granted bail in the

other case. However, the Ld. APP has clarified the fact that it was a default bail granted by Court since charge sheet was not filed within the statutory period. So far as minor discrepancies or contradiction in prosecution version are concerned, these will no doubt be considered by the Ld. Trial court at the appropriate stage but these cannot be examined at this stage as the law is well settled that at the time of bail, the evidence need not be discussed or analyzed in detail.

13. In view of the above facts appearing on record and nature of offence, no grounds for grant of bail to the petitioner are made out. The bail application is, therefore, dismissed.

BRIJESH SETHI, J

FEBRUARY, 11, 2020

Amit