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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.06.2020

Pronounced on: 24.06.2020

+ BAIL APPLN. 307/2019

MOHD. HANIF

..... Petitioner

Represented by: Mr. Rakesh Kumar Khanna, Sr.
Adv. with Mr. Ali Mushtaq
Nawazish and Ms. Shefali Jain,
Advs.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Represented by: Mr. Subhash Bansal, Standing
Counsel with Mr. Shashwat
Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The instant bail application has been filed on behalf of Mohd. Hanif for grant of regular bail in SC No.37/17 arising out of NCB complaint no. VIII/15/DZU/15 registered by the Narcotics Control Bureau under Sections 21, 23 and 29 of NDPS Act, 1985.

2. It is alleged that a parcel with commercial invoice no.9479924042 was booked on 25.07.2016 at DHL Express Pvt. Ltd, Trinidad and Tobago in the name of Abdul Rehman, house No E-353, Khadda Colony Extension,

Jaitpur, Badarpur, New Delhi, India 110044. The said parcel was intercepted and seized on 27.07.2016 at Gatwick Airport, U.K. Accordingly, on 28.07.2016, Director General, Narcotics Control Bureau received a request from National Crime Agency UK for controlled delivery of a parcel which was destined to India in the name of Abdul Rehman, House No E-353, Khadda Colony Extension, Jaitpur, Badarpur, New Delhi-110044, Tel: 91-8010725693. Said information and request for control delivery operation of the consignment in question from the National Crime Agency, U.K. was forwarded to the Zonal Director NCB DZU on 29.07.2016 by the NCB Head Quarter for taking necessary action as per the provisions of section 50A of NDPS Act. Accordingly, on 01.08.2016 Zonal Director, DZU directed and authorized Sh. Rajeev Sehrawat IO to undertake the control delivery as per the provisions of section 50A of NDPS Act vide letters dated 01.08.2016 and on 03.08.2016 Zonal Director, DZU directed and authorised Sh. Rajeev Sehrawat IO to collect the consignment parcel from the captain of flight no BA 143, namely, Mr. Martin Taylor on the same day. In the intervening night of 03/04.08.2016 the consignment in question was brought by the Captain of British Airways Flight No.BA- 143 of British Airways at IGI Airport, New Delhi and Sh. Rajeev Sehrawat IO received the said

consignment from the Captain in sealed condition bearing seal no. BAO1508100 along with letter of request and Indemnity letter of the captain. After receiving the consignment Sh. Rajeev Sehrawat IO came back to the NCB/DZU office and deposited the parcel of the controlled delivery in Malkhana and entry was made in the Control Delivery register. Rajeev Sehrawat submitted his report dated 04.08.2016 before Sh. Jai Kishan Supdt. NCB/DZU. It is further alleged that on 04.08.2016 Rajeev Sehrawat IO constituted a team and left for the office DHL Okhla Phase III, New Delhi along with the parcel of the controlled delivery. Pursuant to reaching the DHL office, Rajeev Sehrawat IO along DHL staff attempted to deliver the said parcel to the Abdul Rehman (co-accused in the present case) however was unsuccessful as the address could not be located and the call was not answered. On 05.08.2016 Rajeev Sehrawat IO received information from DHL Okhla office that Abdul Rehman (co-accused) had telephoned at their office and enquired about the parcel in question and requested to send the delivery to his address. Accordingly, the NCB officials along with delivery man of DHL courier service and the parcel of controlled delivery left for House no E-353, Khadda Colony, Jaitpur Extension, Badarpur, New Delhi, i.e. the address mentioned on the parcel of controlled delivery and the DHL

staff called on the mobile number written on the said parcel and one person came to the vehicle of DHL and disclosed his name as Abdul Rehman. DHL staff obtained his signatures on the receipt slip and handed over the said parcel to him. Immediately on receiving of the parcel NCB team stopped him and Rajeev Sehrawat IO introduced himself and team members to that person (Abdul Rehman) and inquired about the said parcel. He disclosed that he had received the parcel on the instructions of his friend Hanif (petitioner herein) and the said parcel belonged to a friend of Hanif. Further informed that he had to take the parcel to Hanif and thereafter Hanif will take the parcel to Prince (Accused No.1) and handover the same to Prince. Sh. Rampal IO carried out the personal search of Abdul Rehman in presence of independent witnesses but nothing incriminating was recovered from his personal search. In preliminary inquiry, Abdul Rehman disclosed that the parcel was to be handed over to Hanif and he can get Hanif apprehended.

3. Thereafter, the same team members mentioned-above left from the spot i.e. House no. E-353, Khadda Colony, Jaitpur Extension, Badarpur, New Delhi (as disclosed by Abdul Rehman) along with both the independent witnesses and Abdul Rehman and reached Madanpur Khadar road near crossing at about 1340 Hrs. When the team reached at Madanpur Khadar

road i.e. public place near crossing, one person was already standing there and Abdul Rehman pointed out towards him and identified him to be Mohd. Hanif (petitioner herein). At that stage, Anand Kumar IO introduced himself and team members and thereafter Pardeep IO served a notice under section 50 of NDPS Act to Mohd. Hanif and carried out the personal search of petitioner in presence of independent witnesses but nothing incriminating was recovered from his personal search.

4. Further alleged that on information from Mohd Hanif, Prince (co-accused) was intercepted by the NCB team members from Janakpuri flyover near district centre and Sanjay Mehta IO carried out the personal search of Bartholomew Okoh @ Prince in presence of independent witnesses/but nothing incriminating was recovered from his personal search. Thereafter, the controlled delivery parcel bearing AWB no 9479924042 sealed with the seal of U. K. Boarder Agency, seal no BA 01508100 with seal intact condition was taken from Bartholomew Okoh @ Prince in presence of Abdul Rehman & Mohd. Hanif. The plastics polythene was cut opened without disturbing the seal affixed by the UK Border agency BA 01508100, a yellow colour box DHL Express, No-7 on which one way bill was affixed on one side, shipment documents affixed on top. On opening the box, one

white and green box was visible on which "*infrared blood circulation massager*" & one photo of massager machine was printed. The box was taken out and box was opened and it was found containing one infrared blood circulation massager machine of grey colour, made in china no CM 0109758428. The machine was taken out and on examining some hollow space was observed in the bottom of the machine. The machine was broken and it was found containing two black ball shaped packet rapped in black adhesive tape. The black adhesive tape of one of the packet was removed and thin transparent polythene packet was found. The thin polythene was also removed and a white polythene packet with tied mouth was found containing some white powder. A small quantity of powder was taken out and tested with the help of field testing kit which gave positive result for Cocaine. Similarly, other ball shaped packet was taken out. The black adhesive tape was removed and thin transparent polythene was found wrapped around it. The thin polythene was also removed and a white polythene packet with tied mouth was found containing some white powder. Accordingly, a small quantity of powder was taken out into polythene and was mixed and tested with the help of field testing kit which gave positive result for *Cocaine*. As the substance in both packets was of same colour,

texture and property and both gave positive test for "*Cocaine*" it was transferred homogenously and on weighing it came out to be 500 Grams.

5. Learned counsel appearing on behalf of the petitioner/accused submitted that Anand Kumar IO served Summon under Section 67 NDPS Act dated 05.08.2016 to petitioner and directed him to appear in the Office of N.C.B, DZU forthwith to tender his statement and in pursuance of the summons under section 67 of NDPS Act. Accordingly, he appeared before Sanjay Mehta IO on 06.08.2016 and tendered his statement under Section 67 NDPS Act. However, learned Special Judge failed to appreciate the fact that if the petitioner was directed to appear before the office of NCB on 05.08.2016 then why he would appear on 06.08.2016 on coming to the knowledge that NCB officials will arrest him. In such a case, it shows the bonafide intention of the petitioner to cooperate in the investigation and not run away. The petitioner had tendered his statement under duress and coercion. Therefore, the petitioner filed a retraction application before the Special Court, Patiala House, New Delhi and submitted that his statement was taken by NCB official under pressure, threat and his signature was obtained on various blank papers illegally as dictated by NCB officials.

6. Learned counsel for petitioner further submitted that in the present

matter, apart from retracted confession of accused persons, there is no material or evidence against the petitioner. A person cannot be convicted on the basis of a retracted confession. Moreover, present case is of a control delivery, which has not been undertaken by an authorized person. As per section 50A, it is the Director General of Narcotics Control Bureau or any other officer authorized by him in this behalf who may undertake control delivery of any consignment. In the present matter, Director General NCB authorized Zonal Director NCB Delhi Zonal Unit to undertake the control delivery. However, the control delivery was undertaken by Shri Rajeev Sehrawat IO which is against the law. In addition, neither the Director General nor the Zonal Director has been cited as a witness. Moreover, the official of National Crime Agency and pilot of British Airways, who had informed and handed over the control delivery have also not been cited as witness by the prosecution. Thus, present petitioner deserves bail.

7. To strengthen his arguments, learned counsel for the petitioner has relied upon the judgment delivered by the Hon'ble Supreme Court in the case of ***Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence: (2018) 8 SCC 271***, whereby held as under:

“13. In the present case it is accepted that apart from the

aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court.

14. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges levelled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence.”

8. This Court in umpteen numbers of cases has granted bail to the accused relying on the aforementioned judgments. Few of the judgments/orders are cited hereinbelow:

*i. Narotam Pradhan vs. State (NCT of Delhi): 2019 SCC
OnLine Del 6547*

*ii. Rajesh Sharma vs. Directorate of Revenue Intelligence:
2018 SCC OnLine Delhi 12372*

9. On the other hand, learned counsel for respondent submitted that the delivery of contraband parcel was effected on 05.08.2016 (whereas said

parcel was supposed to be delivered on 04.08.2016 by DHL). Relevant entries of conversations on 04.08.2016 and 05.08.2016 exist between the accused persons including petitioner herein. As per voluntary statement recorded under section 67 NDPS Act of Mohd. Hanif, petitioner herein, admitted of using the mobile number 8510072976.

10. As per Call Data Record (CDR) Mohd. Hanif (M-8510072976) was in constant touch with co-accused Abdul Rehman (M-7011600510) and Bartholomew Okoh @ Prince (M-8826039442) on 04.08.2016 and 05.08.2016 for the purpose of obtaining delivery of said parcel containing contraband. As per voluntary statement recorded under section 67 of NDPS Act of Bartholomew Okoh @ Prince, he admitted of using the mobile numbers: 8826039442 & 9999153613.

11. As per voluntary statement recorded under section 67 of NDPS Act of Abdul Rehman, he admitted of using the mobile numbers: 7011600510 & 8010725693. (This mobile number was provided by Prince (co-accused) to Abdul and this number was written on the Parcel through which DHL staff coordinated for delivery.)

12. Learned counsel further submitted that in the retraction statement of

Mohd. Hanif, he has stated, *“I have no concern or connection with Abdul Rehman or Bartholomew Okoh @ Prince.”* However, from CDR (record), it revealed that the present petitioner was in constant touch with other accused. In the rejoinder to present Bail Application, under para (xx), it has been stated that petitioner knew Prince and Abdul Rehman. Similarly, under voluntary statement of petitioner, he has stated to be knowing Prince through Medanta Hospital and Abdul Rehman, for the last three years. Hence, the presumption cannot be concluded that the petitioner has no connection or was not in touch with the other accused persons.

13. It is submitted that petitioner has indulged in trafficking/import & possession of contraband-commercial quantity of 500 gms. Cocaine in conspiracy with other accused persons. Therefore, on the basis of material on record, learned Trial Court prima facie has framed the charges against the accused persons and there is substantive evidence on record, i.e. CDR and public witnesses and the recovery of commercial quantity of contraband (500 gms. Cocaine) other than voluntary statements of accused persons; therefore, as per section 37(1)(b)(ii), there are no reasonable grounds for believing by this Court that the accused is prima-facielly not guilty of said offence and there are sufficient reasonable grounds to believe prima facielly

that accused is guilty of offence under NDPS Act, hence, accused does not deserve to be released on bail.

14. I have heard learned counsel for the parties and perused the material available on record.

15. Undisputedly, charges have been framed against the accused persons including petitioner herein. The recovered contraband from the parcel is 500 gms. Cocaine, (which is commercial quantity).

16. Further, statements of the accused including petitioner herein, recorded under section 67 of NDPS Act, corroborates the recovery of drug in the manner accused persons have dealt with which is admissible under section 27 of The Evidence Act. The CDR of the accused persons as mentioned above also corroborates that all three accused persons were in touch to receive the parcel as discussed interalia. On 05.08.2016, controlled delivery operation was undertaken in coordination with DHL Courier Staff. The consignee/accused Abdul Rehman @ Dablu received the parcel, at that moment he was intercepted and upon enquiry, he revealed that he had received the said parcel on instructions of petitioner in the presence of public witnesses. Accused Abdul Rehman made a call to petitioner and

petitioner came at Madan Pur Khadar near crossing to receive the said parcel and at that moment, he was intercepted by the team on the pointing of the accused Abdul Rehman. In preliminary inquiry, petitioner admitted that he had asked Abdul Rehman to receive said parcel on his behalf. Petitioner further revealed that he received the said parcel on instructions of Bartholomew Okoh @ Prince in the presence of public witnesses. Moreover, petitioner made a call to accused Prince on which he told petitioner to come at Janak Puri flyover, near Janakpuri Distt. Centre, New Delhi to deliver the parcel. Prince was waiting there to take the delivery of said parcel and he was intercepted while taking the delivery of the said parcel during operation at Janakpuri Flyover near Janakpuri District Centre. On checking the said parcel, 500 gms. of Cocaine was recovered from the foot massager concealed in two round shaped packets. The voluntary statements of accused persons recorded under section 67 of NDPS Act are inculpatory and admitted the delivery of parcel containing contraband.

17. In view of facts discussed above, the judgments relied upon by the petitioner are not applicable in the present case. Moreover, there is an embargo under section 37 of NDPS Act to grant bail, unless the case is established otherwise, however, the petitioner has failed.

18. After going through rival contentions of the parties and the material placed on record, I am of the view that section 37 of NDPS Act is applicable in the present case. Thus, not inclined to grant bail.

19. The petition is, accordingly, dismissed with on order as to costs.

20. Pending application, if any, stands disposed of.

21. It is hereby made it clear that the Trial Court shall not get influenced by the observations made by this Court while passing order in the present petition.

(SURESH KUMAR KAIT)
JUDGE

JUNE 24, 2020
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