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

Judgment reserved on : 06.11.2019
Date of decision : 02.03.2020

\+ BAIL.APPLN. No.1541/2019

PARAMJIT SINGH GULATI ..... Appellant

Through: Mr. Siddharth Luthra, Sr. Advocate with Mr. Aadarsh Priyadarshi, Mr. Saurabh Verma, Dr. Shelly Sharma, Adocates.

Versus

DIRECTORATE OF REVENUE INTELLIGENCE ..... Respondent

Through: Mr. Satish Aggarwala, Sr. Standing Counsel with Mr. Akshay Saxena, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant Paramjit Singh Gulati in custody since 20.07.2012 for the alleged commission of the offences punishable under Sections 29, 28 r/w Sections 23 & 29 and Section 22 r/w Section 29 & 25A r/w Section 29 of the NDPS Act, 1985 with which he has been charged on 05.11.2014 seeks the grant of bail in terms of Section 439 of the Cr.P.C., 1973. The applicant is alleged to have been

in criminal conspiracy with other persons named Atul Aggarwal, Vicky, Paramjit Singh @ Chotu, Pahalwan, Gaurav Ahlawat @ Rakoo and Gaurav Sharma (who have since not been arrested) to deal and possess and export various narcotics and psychotropic or controlled substances illegally out of India and in furtherance thereof allegedly attempted to export or transship out of India a consignment having concealed therein 151.98 kgs of Ketamine, a psychotropic substance included in the schedule of the NDPS Act, 1985 which consignment was scheduled to be exported on 18.07.2012 to Khairol Nizam Hasim, Penang, Malaysia under AWB No.618-28211901 dated 16.07.2017 and shipping bill No. 9880760 dated 17.07.2012 in the name of M/s Sagar Impex, 2533-18, 2nd Floor, Gali Laltain Wali, Naya Bazar, New Delhi (IEC Code No.0509044794), with allegations also against the petitioner herein of having been found in possession of 200 kgs of Ketamine in different solutions of rose water and liquid glucose etc illegally which was recovered on 19.07.2012 from his godown premises at Khasra No.755/2/1, Mundka Village, Delhi; and of having been found in possession of 25.5 gms of Ephedrine Hydrochloride; and 24.5 gms of Psedoephedrine Hydrochloride; and 215 gms more of Ephedrine Hydrochloride which were recovered on 19.07.2012 from two other premises i.e. the residential premises at G-48, Mansarovar Garden, New Delhi, the office godown premises at G-41 (basement), Bali Nagar, New Delhi both of which substances are declared to be controlled substances under Section 9A of the NDPS Act, 1985 and that the petitioner was in possession of the said controlled substances in violation of the provisions of the NDPS Act, 1985.

2. The brief facts set forth through the order dated 27.05.2016 in the bail application of the present applicant as detailed by the then Special Judge, NDPS, South District Saket are to the effect:-

"3. The brief facts of the case are that while acting upon a secret intelligence regarding a Delhi based drug syndicate engaged in export of narcotic drugs by way of concealment thereof in some consignments, the DRI officers had seized a consignment of about 151.980 KG of white colour crystal powder from the area of Air Cargo Complex, IGl Airport, New Delhi on 18.07.2012. The above consignment of white colour crystal powder was being exported to Malaysia and it was contained in three cartons/boxes bearing no. 19, 20 and 21, which further contained 38 cloth bags each weighing around 1.02 KG, and was a part of a big consignment consisting of 24 such corrugated boxes/ cartons contained in three palets. The secret information was that a consignment of drugs is being exported by concealment thereof in various handicraft items like lady purse, henna powder and imitation jewellery etc, and the above seized cloth bags, i.e. 38 cloth bags each contained in the above three cartons, were found to be having the marking of Neha Rachni Mehandi.

4. The investigation had led the DRI team to the applicant/accused Paramjit Singh Gulati and Atul Agarwal (accused no. 2), as it was found that the above export consignment was being exported by the above applicant/accused, as per the shipping documents seized in this case, and accused Atul Aggarwal was acting as his agent in the export of the above consignment. The DRI officers had conducted simultaneous searches at various premises of both the accused and from the residential premises at G-48, Man Sarovar Garden, New Delhi of applicant/accused also, they had recovered two different pouches Marked as EPH and PSE weighing 25.5 Grams

(gross weight) and 24.5 Grams (gross weight) respectively containing some white colour crystalline powder, a cash amount of Rs. 1,57,30,000/- (one crore fifty seven lacs and thirty thousand), 13 mobile phones of various brands and some documents. Two godowns of the applicant/accused situated at G-41 (Basement), Bali Nagar, New Delhi and at Khasra No. 755/2/1 at Mundka Village, Delhi were also raided and from the first godown also 215 Grams of white colour crystalline powder and further a cash amount of Rs. 3,50,000/- (three lacs and fifty thousand) were recovered and from the second godown, some solutions of rose water, liquid glucose etc. with suspected Ketamine v/eighing around 200 KG dissolved therein were recovered, with drums of refined glycerine, Ethyle Acetate etc.

5. During the tests conducted by the CRCL, New Delhi, subsequently, the samples taken out of the above seizure effected from the Airport, Cargo Complex have been found positive for Ketamine Hydrochloride, the samples taken from the white crystalline powder recovered from the two bags from the residence of applicant/accused at Man Sarovar Garden have been found positive for Ephedrine Hydrochloride and Pseudoephedrine Hydrochloride, the samples taken from the first godown of the applicant/accused have also been found positive for Ephedrine Hydrochloride and the samples taken from the above rose water solutions etc. found in the second godown of the applicant/accused have also been found positive for Ketamine Hydrochloride.

6. Ketamine Hydrochloride is a psychotropic substance presently included with the name of Ketamine at serial number 110A of the Schedule of the NDPS Act, Ephedrine Hydrochloride and Pseudoephedrine Hydrochloride are both declared to be "controlled substances" in terms of Section 9A of the NDPS Act, the possession or dealings etc. in respect of which is made punishable by Section 25A of the NDPS Act. The possession and dealings etc. in *manufactured narcotics drugs and psychotropic substances etc are punishable U/S 21 of the NDPS Act, Section 23 of the said Act deals with the illegal import or export etc. of narcotic drugs and psychotropic substances etc and Section 28 of the Act makes punishable any attempts to commit an offence under the said Act or to cause such offence to be committed.*

7. During investigation, the statements of both accused U/S 67 of the NDPS Act were also- recorded by the DRI officers and in these statements it is alleged to have transpired that apart from the above consignment of 151.980 KG of Ketamine intercepted at the above airport, previously also they both had sent some drug consignments out or India, which were concealed in the consignments declared as to be of Hina and Chaat Masala etc. and the above consignments were sent in the names of some fake firms/companies and they both had earlier exported about 1000 KG of contraband substances out of India. As per the above statements, all the above previous consignments were sent by the applicant/accused and the accused Atul Aggarwal was. given the task of packing and concealment etc. of the above drugs in the said consignments and for this job he was being paid by the applicant/accused @ 2.5/3 lacs for each consignment of about 100 KG. In pursuance of the disclosures made by them m their above statements and in the light of the information conveyed to the Canadian Authorities by the DRI officers from Delhi, a consignment of 300 KG of Ketamine concealed in a consignment declared to be of Chaat Masala was also intercepted at the premises of an airport at Canada by the Canadian Authorities.

8. The allegations in the complaint and the documents filed alongwith the same prima facie show that the above Ketamine Hydrochloride weighing 151.980 Kg was being attempted to be exported or being transshipped out of India by the accused Paramjeet Singh Gulati and Atul Aggarwal, in furtherance of a criminal conspiracy. The

subsequent recovery of 200 Kg of Ketamine Hydrochloride in dissolved form from the second godown in Mundka village of the accused Paramjeet Singh Gulati, the recovery of 25.5 Gms of Ephedrine Hydrochloride from the residential premises of accused Paramjeet Singh Gulati at Mansarovar Garden and further recovery of 215 Gms of the same substance from his office/godown premises in Bali Nagar and also the recovery of 24.5 Gms of Pseudoephedrine Hydrochloride from his above residential premises at Mansarovar Garden are also to be viewed with reference to the above criminal conspiracy, in pursuance of which the above prohibited substances were being possessed by the accused Paramjeet Singh Gulati."

3. The complaint filed by the DRI i.e. the respondent under Section 22(c), 23, 27(A) & 29 of the NDPS Act, 1985 dated 17.09.2012 states *inter alia* to the effect that during the course of the investigation in relation to a case of export of contrabands to various countries by the applicant and his alleged key associate Atul Kumar Aggarwal also charged vide order dated 05.11.2014 during the course of investigation on searches having been conducted at various premises on 18/19.07.2012 which led to the recovery of 151.980 kgs of Ketamine from one export consignment at IGI Airport and 200 kgs of Ketamine dissolved in a consignment of rose water from godown premises in relation to which both the petitioner herein and his associate Atul Aggarwal through their alleged respective statements dated 19/20.07.2012 tendered under Section 67 of the NDPS Act, 1985 allegedly *inter alia* admitted that they had shipped the consignment of Ketamine from India to Canada in container No.TGHU-2248673 which was covered under Shipping Bill

No.9245206 dated 05.06.2012 filed in the name of M/s Shiv Jyoti Sales Corporation. The letter rogatory/ Letter of request to the Competent Authority of Canada as per the provisions of Section 166-A of the Cr.P.C., 1973 for collection of evidence in Canada contained the facts of the case and the investigation required to be conducted in Canada was filed by the DRI i.e. respondent before the Court, which prayer was allowed on 16.01.2014 and the Letters Rogatory/ Letter of Request for legal assistance was issued by the Trial Court on 07.02.2014 for investigation in Canada, whereafter, vide note No.JLA-23327-15 dated 03.02.2015, the authenticated true copies of record held by the Canada Border Services Agency and Health Canada Department as requested by the Indian Authorities were supplied to the DRI.

4. In the follow up action which was pursuant to the seizure of the contraband at the IGI Airport which was attempted to be exported on 18.07.2012 to Malaysia in the name of M/s Sagar Impex, the DRI Officials recovered and seized 25.5 gms of Ephedrine Hydrochloride and 24.5 gms of Psedoephedrine Hydrochloride, amounting to Rs.1,57,30,000/- and 13 mobile phones of different brands and loose documents/ hand written papers and one spiral notebook from the premises at G-48, Mansarovar Garden, New Delhi and also recovered 215 gms of a white coloured crystalline powder and cash amounting to Rs.3,50,000/- from the godwon G-41 (basement), Bali Nagar, New Delhi apart from recovering Ketamine dissolved in different solutions of rose water and liquid glucose and

drums of refined glycerine ethyl acetate from the premises at Khasra No.755/2/1, Village Mundka, Delhi.

5. The petitioner submits that the allegations levelled against the petitioner relate to his alleged statement under Section 67 of the NDPS Act, 1985 before the officials of the DRI on 19.07.2012 which he submits has already been retracted by him on the first opportunity available to him and that the petitioner vide application dated 04.08.2012 had apprised the Court that he had been kept in illegal custody from 18.07.2012 to 20.07.2012 and was subjected to mental and physical torture and made to sign blank papers by the DRI officials.

6. *Inter alia* the petitioner submits that though the prosecution version is to the effect that the recovery of 25.5 gms of Ephedrine Hydrochloride , 24.5 gms of Psedoephedrine Hydrochloride, 215 gms of white coloured crystalline Ketamine dissolved in different solutions of rose water and liquid glucose etc and drums of refined glycerine ethyl acetate from his premises were recovered on 19.07.2012 at about 7.30 hours, assuming that they were so recovered, without admitting the same from the premises of the applicant, the applicant ought to have been arrested on 19.07.2012 itself but as per the prosecution version, the Investigation Officer did not arrest the applicant till 20.07.2012 which itself was an indicator that no contraband had been recovered from the premises of the petitioner.

7. *Inter alia* it has been submitted on behalf of the petitioner that there was no recovery whatsoever effected from him and there is no

link evidence that has been collected by the DRI i.e. the respondent to establish ownership/ source/ origin of the recovery and that the recovery of 215 gms of white powder suspected to be Ketamine, was as per the report of the CRCL, New Delhi indicated to be not Ketamine but Ephedrine Hydrochloride and Psedoephedrine Hydrochloride and that thus, false allegations have been levelled against the applicant.

8. The applicant submits that in as much as the DRI has admitted that his statement was recorded on 19.07.2012 coupled with the arrest of the petitioner on 20.07.2012 at 11.30 PM, the same itself brings forth the falsity of the prosecution version and indicates that the petitioner was in illegal custody of the DRI. The applicant has further submitted that pursuant to the permission granted by the learned Trial Court to the DRI to carry out further investigation and to file a supplementary complaint, after submission of the first complaint on 19.07.2012, the DRI filed the supplementary complaint on 15.09.2017 which vide order dated 29.10.2017 of the Trial Court had been directed to be treated as a supplementary complaint.

9. *Inter alia* the applicant has submitted that whereas as per the first complaint, recovery was allegedly made from a godown in the Village Mundka, Delhi, the DRI had wrongly alleged that the said godown belonged to the present petitioner namely Paramjit Singh Gulati but actually the said premises were owned by Paramjit Singh s/o Sh. Gurjit Singh and the DRI has mistakenly taken the accused to be the owner of the said godown. The applicant has further submitted

that though, as per the complaint filed by the DRI there was a suggestion that there were other persons involved, they had not been identified even after 7 years of the filing of the complaint which thus, led to the conclusion that the DRI had not fairly investigated the case. The applicant thus, submits that he has been undergoing serious medical problems, there is no probability of his getting involved in any unlawful and unwanted activity and he has been incarcerated ever since the date of his arrest and thus, be released on bail.

10. *Inter alia* the applicant submits that there is nothing on the judicial record to connect the petitioner to the allegations levelled against him and there is no document placed on record by the DRI, the respondent to even remotely suggest that the seized consignment shipment bill No.9880760 dated 17.07.2012 in AWB No.618-2811901 dated 16.07.2017 allegedly seized at the air cargo complex, IGI Airport on 19.07.2012 was given for export or booked by the petitioner, in as much as, the petitioner was neither the consigner nor consignee of the alleged consignment and was not allotted any IEC Code which was mandatorily to be given to an exporter for sending the consignment booked and that the petitioner has nothing to do with these consignments and has no connection with them at all.

11. The petitioner has further submitted that there was no contraband recovered from his residential premises nor from his godown nor was any corroborative evidence collected by the DRI to indicate that Paramjit Singh son of Sh. Gurjit Singh was an employee of the petitioner and that there was nothing on record to suggest that at

the given time, the salary of Paramjit Singh was paid by the petitioner in cash paid from his bank account. The applicant submits that in as much as nothing has been recovered or discovered at the instance of the petitioner nor from his possession, the twin embargos of Section 37 of the NDPS Act, 1985 does not apply in the instant case and that he be thus released on bail.

12. Through his written submissions, the petitioner has put forth the chart of alleged recoveries and submissions which read to the effect:-

Recovery	***What was recovered***	***Why section 37, NDPS not attracted***
Residential premises at G48, Near Mansarovar Garden, Near Overhead Tank, New Delhi (Residence of the Applicant).	*White colored crystalline Powder stated to be ketamine packed in two different pouches marked as "EPH" 25.5 grams gross weight and PSE (24.5 grams gross weight)* ***(Page 33)***	*Ephedrine Hydrochloride Pseudoephedrine are controlled substance and very small recovery even if assumed without admitting that it was recovered from the applicant, does not attract the bar of Section-37.* ***(Reliance placed on Niranjan Jayantilal Shah Vs. DRI 2013 SCC online Delhi 4608- Copy of the judgement is annexed herewith)***
G-41 (basement) Bali Nagar, New Delhi, (Godown)	*215 grams of white coloured crystalline powder suspected to be Ketamine*	*It was wrongly suspected to be Ketamine, test sample demonstrated that it was Ephedrine Hydrochloride* ***(Page 33, 37, 50 of the petition)****which is a controlled substance and very small recovery even if assumed without admitting that it was*

		recovered from the applicant, does not attract the bar of section 37 of ***NDPS. (See Niranjan Jayantilal Shah v. DRI 2013 SCC Online Delhi 4608)***
Godown situated at Khasra number 755/2/1, Mundka Vilage, Delhi.	*200 Kgs Ketamine dissolved in solution of rose water, liquid glucose, etc..*	*(i) During the search at Bali Nagar property, a rent agreement for Mundka property was allegedly found. The rent agreement was between Neetu Vats d/o Anoop Singh with one Paramjit Singh s/o Gurjeet Singh* ***(Chotu)****r/o House No. 4/3 Shivalik Apartments, Jallandhar, Punjab whereas the Applicant is Paramjit Singh, son of Late Gurbaksh Singh, a resident of Delhi.* ***(See Page 199 of the Petition r/w 333 of Additional Documents)****.* *(ii) Applicant though in custody of DRI was not taken to Mundka only co-accused Atul Aggarwal was taken* ***(Page 72 of Additional Documents)****. This was pleaded in Bail at* ***Page 79****.* *(iii) Discrepancies in Test Samples, which entitles the applicant not just to bail but also an acquittal. (detailed hereinbelow)* *(iv) Possession of Mundka godown was with namesake of the Applicant called Chotu @ Paramjit. Chotu's name figures throughout- See*

		Complaint ***(Page 36 & 42)****, Charge* ***(Page 82)****, Statement of PW-1 Manoj Thakur* ***(Page 124)****, Statement of PW-32* ***(Page 197, 198, 205 & 207)****. Ld. Trial Court wrongly records that Landlord introduced Chotu* ***(Page 78)****. Rent Agreement of Mundka is in name of Chotu but he has not been arrested so far* ***(Page 53)****.*
Recovery at the IGI Airport, New Delhi, and the shipment concerning supplementary complaint	*151.980 Kgs of Ketamine in the export consignment attempted to be exported by M/s. Sagar Impex.*	*Not even single evidence against the applicant, all evidence against the co-accused Atul Aggarwal.* *1. Co-accused Atul Aggarwal admits to forging documents of Sagar Impex* ***(See Page 43 of Petition)****;* *2. Parvez Ansari names Atul Aggarwal* ***(See Page 49 of the Petition)****;* *3. Raju Gupta names Atul Aggarwal, connects Atul to M/s. Sagar Impex, all payments made by Atul* ***(See Page 50 & 51 of the Petition)****.*

13. The applicant thus submits that apart from his confessional statement made whilst in custody and statement of the co-accused both

of which are inadmissible in evidence, the grant of bail to the petitioner ought not to be declined.

14. Through its reply filed on 06.09.2019, the DRI has submitted that the application seeking retraction of the confessional statement was filed by the applicant on 04.08.2012 with much delay and not at the earliest, that charges have already been framed against the applicant which suffice thus to attract the embargo of Section 37 of the NDPS Act, 1985, that the trial is in progress and the respondent has reiterated that 151.980 kgs of Ketamine in the export consignment had been attempted to be exported by the petitioner with the active connivance of the accused no.2 Atul Aggarwal on 18.07.2012 and in addition to the same 200 kgs of Ketamine dissolved with rose water seized on 19.07.2012 from the godown premises of the petitioner and that the petitioner is involved in one more case under the NDPS Act, 1985.

15. The respondent has further submitted that the information was received by it on 18.07.2012 at 3.00 PM and that the intelligence indicated that the residential premises of the petitioner and three addresses pertained to the respondent no.2. The respondent has further submitted that when the searches were conducted at seven premises on 19.07.2012, when the officers on the basis of the search warrant went to the premises of M/s Sagar Impex, they found that there was no firm by the name of M/s Sagar Impex and that the second floor was non-existent and that the investigation revealed that the petitioner was the king pin of the present case and that through his voluntary statement

dated 20.07.2012, the petitioner had admitted *inter alia* that goods seized at the Air Cargo Complex, New Delhi were sent by him and the print outs of emails of his email ID shown to the petitioner pertained to export consignments through which drugs and psychotropic substances were exported/ attempted to be exported and that the said email had been sent by the petitioner herein to the accused Atul Aggarwal and that the petitioner had been unable to explain as to why details of invoices/ packing list of export consignments and the money transfer were present in his mail, if he had nothing to do with the same.

16. *Inter alia* the respondent has submitted that Ketamine which had been disbursed in liquid form in the containers of different sizes had been obtained by the petitioner from one Mr. Pahlwan and he with the help of one employee namely Chotu mixed this Ketamine in rose water. *Inter alia* the respondent has submitted that the voluntary statement dated 20.07.2012 made by the petitioner was written in his own handwriting which was made by him in a leisurely manner and a non-compelling environment and that the medical report of the accused did not indicate any injuries on his body which itself was an indicator that there was no use of force in obtaining the statement of the petitioner.

17. The DRI i.e. the respondent has thus submitted that the consignment of Ketamine seized from Air Cargo Complex, the recovery of contraband from the residential premises of the petitioner at G-48, Mansarovar Garden, New Delhi, the recovery of Ketamine

dissolved in rose water from his godown at 755/2/1 Mundka Village, New Delhi belonging to the petitioner suffice to corroborate the secret information received and the recovery effected from the petitioner. The respondent has further submitted that the petitioner was operating email ID delhi.kumar@in.com as admitted by the petitioner in his statement dated 20.07.2012 and another email ID was operated upon by the petitioner was jeetgulati23@gmail.com and that documents retrieved from these email accounts were shown to the petitioner and he admitted that the documents pertained to hawala transactions and export of ketamine. The respondent has thus submitted that the petitioner having been engaged in unlawful activities with the help of his associates has played an active role in drug trafficking and thus, ought not to be released on bail.

18. *Inter alia* the respondent has submitted that there is sufficient evidence collected by the Investigating Agency to indicate that the petitioner had booked the consignment containing 151.980 kgs of Ketamine which had been seized from the Air Cargo Complex, New Delhi which the petitioner through his statement dated 19/20.07.2012 and accepted having procured from Mr. Pahlwan and which was being sent to Malaysia at the address given by Mr. Vicky and that the co-accused Atul Kumar Agarwal in his statement dated 20.07.2012 had stated that he had booked the said consignment on instructions of Shri Paramjit Singh Gulati and forged the various documents of M/s Sagar Impex to book the consignment through M/s Galleon Logistics by using their IEC and that on 28.07.2012, Mr. Arunesh Pagore also

accepted that on the request of Parvez Ansari, he had been allowed to use his IEC to export the consignment of M/s Sagar Impex.

19. The respondent has denied that the petitioner has been falsely implicated and has rather submitted that the petitioner was the king pin as per the investigation conducted and that he had been involved in the smuggling of the drugs since a long time and was also involved in the procurement of drugs and its supply thereof by concealing in rose water and other solutions to avoid detection by Government Agencies and was the master mind also in forging of documents of export and that 25.5 gms and 24.5 gms of Ketamine were recovered from his residential premises at G-48, Mansarovar Garden, New Delhi with cash of Rs.1.57 Crores, 13 mobile phones with 215 gms of Ketamine powder was recovered from his godown at G-41 (Basement), Bali Nagar, New Delhi along with cash of Rs.3.5 Lakhs and around 200 kgs of Ketamine dissolved in solution of rose water, liquid glucose etc was recovered from another godown of his at Khasra No.755/2/1, Mundka Village, New Delhi and that the petitioner had himself stated that one Mr. Paramjit Singh @ Chhotu actively participated in his illicit trafficking of Ketamine and other contraband substance and that Mr. Paramjit Singh @ Chhotu used to deliver the procured substances to Shri Atul Agarwal and was actively involved in concealing pouches and mixing Ketamine with different solvents.

20. *Inter alia* the respondent has stated that the admission regarding export of consignment through various CHAs by using the IEC of other firms was corroborated by Parvez Ansari, Arunesh Pagore,

Shobhit Jain and Nishant Kumar. *Inter alia* the respondent has submitted that the petitioner was summoned on 19.07.2012 and was not detained illegally and it was only after his statement on 19.07.2012 and 20.07.2012 after his admission of the commission of the crime that he was arrested on 20.07.2012, *inter alia* the respondent has submitted that the petitioner has always been provided the best treatment at AIIMS and that there is no delay also in conducting of the trial.

21. Through the rejoinder that has been submitted to the written submissions of the respondent, the petitioner has submitted that though the matter was listed on day to day basis for the trial in April 2019, only 37 witnesses had been examined out of the cited 83 witnesses. The petitioner has further submitted that the petitioner was never in conscious possession of any of the contraband substances and that there has never been any connivance between him and the co-accused Atul Agarwal and the entire prosecution version is based on assumptions and presumptions with no link against the petitioner nor with their being any direct or indirect link between the petitioner and the recoveries effected, if any.

22. The petitioner has also submitted that in relation to the alleged 200 kgs of Ketamine dissolved in rose water seized on 19.07.2012 from the godown on the premises of the petitioner, the petitioner was not in conscious possession of the same, which godown was in the conscious possession of one Chhotu who had run away from the custody of the respondent from the search of this godown as also so

indicated by the statement of the landlord Jaspal Singh and the panchnama prepared. *Inter alia* the petitioner has submitted that the statements that have been recorded of Sh. Arunesh Pagore and Parvez Ansari only indicate the involvement of the co-accused Atul Agarwal and do not incriminate the present petitioner who has been made a scapegoat.

23. Reliance is sought to be placed on behalf of the petitioner on the statement of Sh. Parvez Ansari dated 28.07.2012 made by the DRI vide which he *inter alia* stated to the effect:-

> ***"On being asked I state that I have filed S/Bill no 9880760 dated 17.01.2000 of M/s Sagar Impex 2533 -18 Second Floor Gali Laltanwali Naya Bazar, New Delhi-110006. Declare to export of Mehandi, Vanity Box, Bangles etc. To consignee M/s Khairol Nizam, Hasim No. 3-5-6, Flat Medan, Tengku Jelutong11600 Geogeoton, Penang, Malaysia by Singapore Air License on 19.07.2012. I came to know that above said shipment was intercepted by DRI officers and some contraband drugs concealed in the said shipment have been seized.***
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> ***On being asked I state that the said consignment was send tome by one Mr. Atul Kumar Aggarwal alongwith the documents related to the said export consignment that is in voice packaging list and fumigation certificate which I here produced before you duly signed by me.***
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> ***On being asked I state that Mr. Atul Aggrwal was introduced to me by one of my client Sh. Shiraj Walia @ Bittu who is engaged in the business of freight forwarding in the name of M/s Air Con Cargo, Laxmi Nagar, Preet Vihar, Delhi-92. Mr.Bittu told me during the month of Feb-March-2012 that Mr.Atul Aggarwal will be approaching me for clearance of his export consignment.***

On being asked I state that prior to the consignment for export pertaining to S/Bill no. 9880760 dated 17.07.2012 of M/s Sagar Impex I had billed two more S/bills in respect of export consignment of Sh. Atul Aggawal in the name of M/s Seventy Four Exim S/Bill No. 8949561, Invoice No.0064/2012 dated 18.05.2012 and M/s Marshneil Garment Export S/Bill No. 885802 invoice No. 0058/2012 dated 11.05.2012.

On being asked I state that I never verified the details of the exporter for whom I had filled and processed export documents for clearance with customs.

Today I have been shown statement dated 20.07.2012 of Mr.Atul Kumar Aggarwal I have gone through the same and in token of agreeing with the contents of the same I put my dated signature on the last page of the statement.

Today I have been shown the statement of Sh. Arunesh Pagore recorded on 23.07.2012 I have gone through the same and I agree to the contents and facts mentioned therein. I have put my dated signature on the last page of the statement in token of acceptance of the facts mentioned therein."

24. Reliance was also placed on behalf of the petitioner on the statement of Sh. Arunesh Pagore dated 23.07.2012 recorded by the DRI to contend that there is not a whisper in the said statement against the present petitioner.

25. Reliance has also been placed on behalf of the petitioner on a catena of verdicts, viz.:-

(i) ***"UOI Versus JAROOPARAM" 2018 (4) SCC 334***
(ii) ***"NIRANJAN JAYANTILAL SHAH Versus DRI" 2013 SCC OnLine Del 4608***

(iii) ***"TOOFAN SINGH Versus STATE OF TAMIL NADU" 2013 (16) SCC 31***

(iv) ***"SURINDER KHANNA Versus DRI" 2018 (8) SCC 271***

(v) ***"RAJESH SHARMA Versus DRI" 2013 SCC ONLINE DELHI 12372***

(vi) ***"MOHD. RAMZAN Versus STATE" (2005) 82 DRJ 435***

(vii) ***"RAJESH JAGDAMBA AWASTHI Versus STATE OF GOA" (2005) 9 SCC 773***

which reliance however is wholly misplaced in view of the factum that the facts thereof are not in *pari materia* with the facts of the instant case and are wholly distinguishable.

26. It is essential to observe that in Bail Appl. No.2149/2013 in ***"Atul Aggarwal Vs. DRI",*** a verdict of this Court dated 30.06.2015 in relation to the co-accused in the instant case itself, the bail application of that co-accused has been rejected.

27. As regards the submission made on behalf of the petitioner that the petitioner had retracted from the statement under Section 67 of the NDPS Act, 1985 on 04.12.2017, it is essential to observe that vide the verdict of the Hon'ble Supreme Court in CRL.A. No.1897/2019 in ***"Sujit Tiwari Vs. State of Gujarat & Anr."*** dated 28.01.2020 vide paragraph 9 has observed to the effect:-

> ***"9. We have gone through the statement made by the appellantunder Section 67 of the NDPS Act. Without going into thequestion whether the statement is admissible or not, as thismatter has been referred to a larger bench, we are, for thepurpose of this case, taking the statement into consideration even though the appellant has resiled from the same."***,

in as much as, the aspect of the admissibility of the statement in terms of Section 67 of the NDPS Act, 1985 has been referred to a larger bench of the Hon'ble Supreme Court, presently, the statement of the petitioner in accordance with Section 67 of the NDPS Act, 1985 in terms of Section 67 of the NDPS Act, 1985 which reads to the effect:-

> ***"67. Power to call for information, etc.—Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act,—***
>
> ***(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made thereunder;***
>
> ***(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;***
>
> ***(c) examine any person acquainted with the facts and circumstances of the case.",***

is taken into account despite the petitioner having retracted from the same on 04.12.2017.

28. On a consideration of the submissions that have been made on behalf of either side, without any observations on the merits or demerits of the trial in progress, it is essential to observe that even if the recoveries in relation to 25.5 gms of Ephedrine Hydrochloride; and 24.5 gms of Psedoephedrine Hydrochloride and 215 gms of Ketamine demonstrated to be Ephedrine Hydrochloride, may not be falling within any specified commercial quantity to attract the bar of Section

37 of the NDPS Act, 1985, it cannot be overlooked that the statement of the landlord Sh. Jaspal Singh PW-32 of the godown situated at Khasra No.755/2/1, Village Mundka, New Delhi *prima facie* indicates that he identifies the petitioner as being the person to whom he had given the basement on rent and that the person named Chhotu stated to be claimed by the petitioner to be the person in possession of the basement, was stated by Sh. Jaspal Singh in his testimony dated 12.04.2019 as being the person who used to work for the petitioner and PW-32 has also testified to seizure of the sum of Rs.3-3.50 lakhs from the drawer of the table on which he stated the petitioner used to sit and has testified also to the recovery of a polythene packet containing white powder from the same and thus, the contention at this stage on behalf of the petitioner that the documents in relation to lease of the property were executed between one Neetu Vats. d/o Sh. Anoop Singh with one Paramjit Singh s/o Sh. Gurjit Singh, the person named Chhotu who was alleged to be an employee of the petitioner, presently does not aid the petitioner, in as much as, the documents in the email in relation to the shipment effected in the name of M/s Sagar Impex, a fictitious sum are from the email ID of the petitioner and apart from the same, the statement under Section 67 of the NDPS Act, 1985 made by the petitioner is self inculpatory and presently has to be accepted to be correct.

29. In the circumstances, in as much as, the recovery of Ketamine is of a commercial quantity allegedly attempted to be exported by the petitioner in association of the co-accused persons with also

commercial quantity of Ketamine dissolved in solutions of rose water and liquid glucose having been allegedly recovered from the premises i.e. godown at Khasra No.755/2/1, Village Mundka, New Delhi which was testified by the landlord to have been rented out to the petitioner herein, presently, it cannot be concluded that the petitioner is not guilty of the commission of any offence punishable under the NDPS Act, 1985 in relation to which the charges had been framed against him vide order dated 05.11.2014 with additional charges having also been framed against the petitioner subsequently.

30. In the circumstances, there is no merit in the prayer made by the applicant vide the present application seeking release on bail despite the factum that the petitioner is in custody since 20.07.2012. The application is thus, declined.

ANU MALHOTRA, J.

MARCH 2nd, 2020

'Neha Chopra'