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

+ **BAIL APPLN. 2683/2019**

VINAY KUMAR RAY Petitioner
Through: Mr. Vikas Gautam, Advocate

Versus

NARCOTIC CONTROL BUREAU Respondent
Through: Mr. Rajat Manchanda, Advocate with
Mr. Rajesh Manchanda, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **18.02.2020**

1. The present bail application has filed seeking regular bail in Sessions Case No. 427/2019.
2. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He was arrested on 29.03.2019 and since then have been in judicial custody. Learned counsel for the applicant further submits that from a reading of the prosecution case, it cannot be said that he was in conscious possession of the psychotropic substance i.e., methamphetamine. He submits that the applicant runs a courier agency in the name of *M/s Sai Enterprises* and for international couriers parcels, it has a tie up with *M/s Amrit Sea Air Express Pvt. Ltd.*, who are holding franchise of DHL Couriers.
3. It is submitted that one lady in the name of Anjali Verma (later identified as Dalini Singh) approached him for sending a parcel to New Zealand. The consignment was booked vide Airway Bill No. 7571728953.

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For the international courier, two IDs of the consigner are required however, aforesaid Dalini Singh had only one ID. The applicant checked the parcel, it contained prepacked nebulizer machine. To earn an extra profit, the petitioner provided copies of his own ID.

4. On 26.03.2019, the parcel was intercepted at the office of DHL Express and 390 grams of methamphetamine was found concealed in the nebulizer. The applicant's statement under Section 67 of NDPS Act was recorded.

5. Learned counsel for the respondent has vehemently opposed the bail application. It is stated that during investigation it was found that at the address of the sender, a shop exists. The accused *Dalini Singh* was sent by accused Kenneth Adams. Accused *Kenneth Adams* and *Chinedu Patricks* were partners in illegal trafficking of drug business and 70 grams of heroin was seized from the house of Kenneth Adams. It is further submitted that the extra charge taken by the applicant show his culpable mental state. It is further stated that Section 37 NDPS Act is applicable.

6. In Mohan Lal v. State of Rajasthan reported as (2015) 6 SCC 222, it was held that for the presumption of culpable mental state in terms of Section 35 of NDPS Act, the conscious and mental state of possession is necessary. It was further held that the presumption would operate in the trial against the accused only in the event circumstance therein are fully satisfied. An initial burden exists upon the prosecution and only when it stands satisfied, would the legal burden shift.

7. Prima-facie, I find force in the argument of learned counsel for the applicant that the applicant to earn extra profit provided his own ID. He had

checked the parcel and found nebulizer machine in it. Had the applicant known that it contained a psychotropic substance, he would not have provided his own ID.

8. A coordinate Bench of this Court in Anand Kumar Thakur v. Narcotic Control Bureau in BAIL.APPLN. 503/2018 decided on 20.08.2018, while relying on the decision in Mohan Lal (supra) in similar facts granted bail to the accused therein.

9. In view of the totality of the facts and circumstances, the applicant is admitted to bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the Trial Court and subject to the following conditions :-

(i) The applicant will not directly or indirectly make any inducement, threat or promises to the complainant or any witness during the trial or tamper with the evidence.

(ii) The applicant will not leave the jurisdiction of the National Capital Territory of Delhi without prior permission of the concerned Court.

(iii) The petitioner shall provide the I.O./SHO Police Station Narcotics Control Bureau with his mobile number and in the event of change of his residential address, shall inform the same to the I.O./SHO as well as to the concerned Court.

(iv) The applicant will remain regularly present before the Trial Court.

10. With the above directions, the bail application is disposed of.

DASTI.

MANOJ KUMAR OHRI, J

FEBRUARY 18, 2020/p'ma
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