

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

Reserved on : 16.01.2020
% *Pronounced on* : 28.02.2020

+ **BAIL APPLN. 3033/2019**

GAURAV MAVI

..... Petitioner

Through: Mr. Dayan Krishnan, Sr.
Advocate with Ms. Niharika
Kaul and Mr. Indresh
Udadhay, Ms. Sanjeevi
Sheshadri, Mr. Sukrit Seth,
Advocates.

versus

STATE

..... Respondent

Through: Mr. M.S. Oberoi, APP for the
State with Insp. Ved Prakash
and SI Satender, PS Mehrauli.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. This is an application filed under Section 439 Cr.P.C for grant of regular bail to the applicant /petitioner in case FIR No. 349/19 under Sections 33/38/58 of Delhi Excise Act & 20/21/29 of NDPS Act, registered at Police Station Mehrauli, New Delhi.

2. As per the case of the prosecution on 09.06.2019 a raid was conducted by the ACP/Excise Intelligence Bureau alongwith his team at Dhan Mill, 100 Foota Road, Chhattarpur. During the raid, raiding party recovered huge amount of liquor, cash around Rs. 4.04 Lakh. During the personal search of the co-accused Pulkit Rastogi by ACP/EIB, 17 dark brown colour small tablets from the right pocket of his trouser in a plastic transparent polythene were recovered and 20 pink colour tablets from the left pocket of his trouser in a transparent polythene was also recovered. The same was tested with the Narcotic Field Testing Kit and were confirmed as Charas and morphine.

3. Co-accused Pulkit Rastogi disclosed that the main organizer of the party was petitioner who had instructed co-accused Pulkit that in case of more such tablets of charas and morphine, he can contact the petitioner. ACP/EIB alongwith the co-accused Pulkit Rastogi went in the parking area where a Land Cruiser bearing No. DL-1CT-4678 belonging to the petitioner was found parked. In the said Land Cruiser three persons were sitting and from the boot of the Land Cruiser 24 bottles of Absolute Vodka Imported 750 ML were found and Bottled in Ahus Sweden was written on them, Ballantines finest blended scotch whisky 22 bottles 750 ML, White Rhino brewing co.-24 bottles (330 ml), Moet & Chandon ice imperial champagne 2 bottle (750 ml), Jagermeister cold macerated essence matured in oak 2 bottle (750 ml), Luca bosio vineyards-1 bottle (750 ml), an orange and a grey bag was also found which was checked and found to contain Rs. 139000/- and a passport of the petitioner and a number of visiting cards were also

found in the said grey bag. Thereafter the ACB/EIB informed the local police who seized the articles produced by ACP/EIB and sealed the same with the seal of 'YD' and registered the present case.

4. During the investigation owner of the premises stated that they used to give their place for rent and one Nitin Bindra from We Dance group approached them to organize the said event which was organized on 08.06.2019 and the invoice was raised in the name of the petitioner and the payments were cleared through bank transfer by the petitioner. It has also come in the investigation that the mails regarding the confirmation of booking were sent to the petitioner. Statements of Shashi Shekhar and Nitin Bindra who had obtained permission and arranged music band to organize the programme was recorded who stated that the petitioner was present in the party and was running the party as organizer with co-accused Pulkit Rastogi. The weight of the morphine tablets recovered from the co-accused is 6.2 grams (Approx.) which has been mentioned in the information U/s 57 of the NDPS Act which was sent to senior officers on 10.06.2019.

5. I have heard the Ld. counsel for the petitioner, Ld. APP for the State and given my thoughtful consideration to the matter.

6. It is submitted by the Ld. counsel for the applicant/petitioner that there are no specific allegations in the FIR against the applicant/petitioner and he was not even present at the place of incident. He further submitted that the investigating agency is acting against the petitioner only on the basis of the disclosure statement made by co-accused Pulkit Rastogi in whose disclosure statement the

name of the petitioner has come up for the first time. He further submitted that it is co-accused Pulkit Rastogi from whom the psychotropic substances were recovered. He further submitted that the charge sheet has already been filed and there are no chances of the petitioner to tamper with the evidence. It is further argued by the Ld. counsel for the petitioner that all 7 accused except co-accused Pulkit Rastogi have been granted regular bail.

7. It is further submitted that there is no recovery of any kind of any narcotic substance from the person or property of the petitioner. He further submitted that the petitioner has been falsely implicated on the basis of the disclosure statement of the co-accused which is inadmissible in evidence. It is further submitted that there is no compliance of Section 50 of the NDPS Act as far as co-accused Pulkit is concerned.

8. It is further submitted that ACP/EIB was under an obligation to comply with the mandatory requirement of Section 50 of the NDPS Act which has not been done. It is further submitted that the recovery was not a chance recovery as stated by the prosecution and as per the case of the prosecution there was a prior information on the basis of which a raiding party was prepared. It is further submitted that the morphine was not weighed immediately after the same was seized and this is violation of para 2.3 of the Standing Order 1/89 issued by the Government of India, Ministry of Finance on 13.06.1989. It is further submitted that the petitioner was not the organizer of the party and even otherwise there was a proper license obtained from the Joint

Commissioner of Police (Licensing) for serving liquor. It is further urged that the entire case against the petitioner is based upon the disclosure statement which do not lead to any recovery during the petitioner in police custody. It is further submitted that the petitioner is in J.C. since 18.10.2019 and there are no chances of his absconding or tampering with the evidence.

9. On the other hand, it is urged by the Ld. Addl. PP for the state that the petitioner was one of the chief organizer of the party and co-accused Pulkit Rastogi in whose possession the narcotics and psychotropic substances were found disclosed that it was the petitioner who provided the narcotics and psychotropic substances to him at the party for selling the same to the persons who came to attend the party and the petitioner also provided two weighing machines for weighing the psychotropic substances before selling.

10. It is further submitted by the Ld. Addl. PP for the state that the Land Cruiser car bearing No. DL-1CT-4678 found at the place of occurrence with huge amount of liquor belongs to the petitioner and mobile phone, wallets and a personal diary having the organizing details of the party were also recovered from the Land Cruiser of the petitioner. It is further urged by the Ld. Addl. PP for the state that the petitioner is an influential person and he may tamper with the evidence if released on bail.

11. It is further submitted by the Ld. APP for the State that the petitioner does not have clean past antecedents and he has 14 cases registered against him. He further urged that the petitioner is the

main organizer of the party and drugs and liquor were served and sold at his behest and he further urged that the invoice in question was raised in the name of the petitioner and the payment was also made by him. He further urged that the petitioner had provided two weighing machines to co-accused Pulkrit Rastogi to weigh the narcotic substance before selling the same to the potential customers. He further urged that huge quantity of liquor and personal documents of the petitioner were recovered from the Land Cruiser which belongs to BOP Pvt. Ltd. and the petitioner is connected with BOP group of companies. He further urged that the petitioner may tamper with the evidence and threaten the witnesses if enlarged on bail.

12. At this juncture it may be mentioned that the Supreme Court in *Basheer @ N.P. Basheer v. State of Kerala* MANU/SC/0117/2004 : 2004 Cri LJ 1418 noticed that as a consequence of the Amending Act coming into force on 2.10.2001, the sentencing structure has undergone a drastic change. The Act introduced the concept of "commercial quantity" in relation to narcotic drugs or psychotropic substances by adding Clause (vii-a) in Section 2, which defines this term as any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. Further, the expression "small quantity" is defined in Section 2, Clause (xxiii-A), as any quantity lesser than the quantity specified in the Notification. Under the rationalised sentencing structure, the

punishment would vary depending on whether the quantity of offending material was "small quantity", "commercial quantity" or something in between. This is the effect of the rationalisation of sentencing structure carried out by the Amending Act 9 of 2001, in Section 27. A notification was issued on 9.10.2001, specifying in respect of 239 narcotic drugs and psychotropic substances, as to what would be "small quantity" and "commercial quantity". The application of strict bail provisions was also restricted only to those offenders who indulged in serious offences. Thus, Section 37 was amended so as to limit its rigors to offences involving "commercial quantity" and to those where a minimum term of imprisonment of 10 years or more was prescribed under the Act. Neither to before, Clause-b of Sub-section 1 of Section 37 provided as under:

"37. Offences to be cognizable and non-bailable. - Not with standing anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a)...

(b) no person accused of an offence punishable for "a term of imprisonment of five years or more under this Act", 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.

The said clause w.e.f. 2.10.2001 was amended to read as follows:

(b) Offences to be cognizable and non-bailable. - Not with standing anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a)...

(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.

13. Thus, the legislature clearly indicated that in cases other than those involving "commercial quantity" , bail may be granted to the accused persons in appropriate cases.

14. In the instant case, the petitioner is in J.C. since 18.10.2019. All the recoveries of contraband have been effected

from the co-accused Pulkit Rastogi as well as from the car of the petitioner which according to the prosecution was found parked at the place of incident. No psychotropic substance was recovered from the car of the petitioner. The petitioner has been arrested on the basis of the disclosure statement of co-accused Pulkit Rastogi from whom charas and morphine were recovered.

15. It has been argued by the Ld. APP that the petitioner does not have clean past antecedents and he has 14 cases registered against him. However, the perusal of the status report shows that none of those 14 cases are under the NDPS Act. Therefore, looking into the entire facts and circumstances of the case and also the fact that the petitioner is in J.C. since 18.10.2019 and 7 co-accused who had been booked U/s 33/38/58 Delhi Excise Act have been granted bail, the application is allowed and the petitioner is admitted to bail on his furnishing a personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount subject to the satisfaction of the concerned court below. The application is disposed of accordingly.

16. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.

RAJNISH BHATNAGAR, J

FEBRUARY 28, 2020

Sumant