

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

+ **BAIL APPLN. 85/2021**

Date of decision: 15th March, 2021

IN THE MATTER OF:

EDWIN EMEKA IGBOKWE

..... Petitioner

Through Mr. Adarsh Priyadarshi with
Mr. Saurabh Verma and Mr. Puneet
Ahuja, Advocates

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through Mr. Subhash Bansal, Senior Standing
Counsel with Mr. Shashwat Bansal,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This application under Section 439 CrPC read with Section 37 of the Narcotics Drugs & Psychotropic Substances Act (in short 'NDPS Act') is filed by the petitioner seeking regular bail in complaint case No.SC/225/2017 titled as NCB v. Ikechukwu Chukwubuikem Stanley & Ors. pending in the Court of Special Judge, NDPS Act, Patiala House.

2. The petitioner had filed a bail application before the learned Special

Judge NDPS, who by order dated 16.12.2020 had rejected the bail application of the petitioner. The petitioner is in judicial custody since 30.01.2017.

3. Shorn of details, the facts leading to this bail application are as follows:

a) On 28.01.2017, Investigating Officer Sh. Rajeev Sehrawat received a secret information that one parcel booked under Airway Bill No.5112788656 is lying with DHL Express Pvt. Ltd. Courier Company 71/3, Rama Road, Delhi which has been booked for Spain and the same might be containing narcotics. The information was reduced into writing and was put up before the Superintendant NCB who directed for further action as per law.

b) A team was constituted for search and seizure proceedings and after completing the necessary formalities, the parcel booked under Airway Bill No. 5112788656 was produced. The card board box was wrapped with adhesive tape. The particulars of the consignor mentioned on the parcel was shown as Anand Kumar, B-101, B Block, Phase-I, Qutab Vihar, New Delhi (copy of the PAN Card and Voter ID of *Anand Kumar Thakur* was attached with the parcel). The particulars of the consignee was mentioned as Mr. Johnson Kamara Calle Eume 5 Piso 13 B 291011, Malaga Spain.

c) The parcel in question was opened and was found containing two carton boxes with the words 'Roneo Shock Absorber' and two set of musical style hair horn. When the two boxes were opened shock absorbers were found. The shock absorbers were cut open and substance was removed. The recovered substance was tested and

found positive for heroin. Since substance recovered from both shock absorbers were of similar nature, colour, texture and found positive for heroin, the substance of both shock absorbers were collected at a place in a polythene and it was found to be 575 grams. Necessary formalities were done and proceedings were recorded in the panchnama.

d) The parcel was booked on the ID of accused *Anand Kumar Thakur* and was booked from DTDC Courier Agency, Dwarka Mod, Dwarka, New Delhi. The investigating team visited the DTDC Courier Company on 28.01.2017 and issued summons under Section 67 of the NDPS Act to accused *Anand Kumar Thakur* for further enquiries. During preliminary enquiries accused *Anand Kumar Thakur* informed the team that the parcel in question was booked by a Nigerian, namely, Ikechukwu Chukwubuikem Stanley (hereinafter referred as '*Stanley*').

e) A team of NCB officers went for arresting *Stanley* but he ran away. *Stanley* was ultimately stopped by the NCB Officers with the help of a passerby near Vipin Garden area. It is stated that *Anand Kumar Thakur* also reached the spot and identified *Stanley* as the same person who brought the parcel in question and booked the same. Notice under Section 67 of NDPS Act was given to the accused *Stanley* for further enquiries.

f) *Stanley* disclosed that the parcel in question was given to him by one Nigerian person, namely, Edwin Emeka Igbokwe (hereinafter referred to as 'the petitioner') R/o R3/113, Upper Ground Floor, Nawada Housing Complex, Uttam Nagar, New Delhi. *Stanley* also

disclosed that he can identify the house of the petitioner and there is every possibility for recovery of contraband from his house.

g) A team of NCB officers along with accused *Stanley* went to the house of the petitioner. The NCB team requested 3-4 passerby to be witness of the proceedings, to which one Shri Jugal Kishore Sharma joined the proceedings voluntarily. It is stated that NCB team reached the Upper Ground Floor of H.No. R-3/113, Nawada Housing Complex, and the door was opened by a dark complexion African person, who was identified as Edwin Emeka Igbokwe (the petitioner herein) by *Stanley*.

h) Notice under Section 50 of the NDPS Act was served upon the petitioner and he was apprised of his legal rights. After the personal search of the petitioner, the house of the petitioner was searched. On search, the following items were recovered from the house of the petitioner:

- i. *One Black & Red colour long rectangular box having mark as RONEO, Shock Absorber.*
- ii. *Broken shock absorber machinery part with its broken pieces.*
- iii. *Two screw drivers.*
- iv. *One Honda Company M/cycle shocker.*
- v. *Two cutters.*
- vi. *One steel scale.*
- vii. *Two iron saws.*
- viii. *Three scissors.*
- ix. *One pliers.*
- x. *One Iron Hammer.*
- xi. *Two brown colour tape.*
- xii. *One solding machine.*
- xiii. *One hanging weighing machine.*

- xiv. *One green colour tool box.*
- xv. *One small size weighing machine of Nova Co.*
- xvi. *One tester.*
- xvii. *Two fast cleaner tubes.*
- xviii. *One chhaini.*
- xix. *One pressure squeezing/holding machine of Delta Co.*
- xx. *Empty polythene packets.*
- xxi. *One sheet of sticker "Best Quality"*
- xxii. *Two sheets of Hologram "Original".*

Panchnama was prepared for the same and were taken into possession for further investigation.

- i) It is stated that during investigation *Stanley* disclosed his three mobile numbers i.e. 9560259467, 8800795536 and 8368242276. He also disclosed that one mobile number 7827287839 was provided to him by the petitioner for making inquiry about the parcel in question. Call detail records of all the telephone numbers were obtained.
- j) It is stated that investigation in respect of mobile numbers of *Stanley* revealed that the three mobile connections were issued in the name of unknown persons were obtained on the basis of forged documents. It is stated that *Stanley* was hiding his actual identity for the purpose of committing the crime so that he could not be traced out by the investigating agency.
- k) That during investigation of case, the petitioner disclosed his mobile number 8447054608. CDR and CAF of the said mobile number was also obtained from the service provider and it was found that the said mobile connection was issued in the name of Mona Tiwari, R/o B-75, Police Station Quarters, Sector-12, R K Puram, New Delhi. In order to complete the investigation on this aspect

Notice under Section 67 of the NDPS Act was issued to the said Mona Tiwari but said notice was returned unserved with the report that no such person was residing at the given address. It is stated that the petitioner was using a mobile connection issued in the name of unknown persons which was obtained on the basis of forged documents. It is stated that the petitioner was using this number with the intention to hide his actual identity from the investigating agency. It is stated that the petitioner provided a mobile connection No.7827287839 to *Stanley* for the purpose of drug trafficking. It is stated that the petitioner was involved in the drug trafficking and with the intention to hide his identity from the investigating agency he was using mobile connections which were obtained on the basis of forged documents. Similarly, *Anand Kumar Thakur* was also using numbers on the basis of false/forged documents.

1) It is stated that a perusal of the call detail report of mobile numbers of *Anand Kumar Thakur*, *Stanley* and the petitioner reveal that they were in touch with each other by using mobile connections which were obtained in the names of unknown persons with forged documents in order to hide their actual identity from the investigating agency as they were involved in the drug trafficking.

4. Charges have been framed for offences under Section 21, 23 and 29 of the NDPS Act. The petitioner filed bail application before the learned Trial Court which has been dismissed by order dated 16.12.2020.

5. Mr. Adarsh Priyadarshi, learned counsel for the petitioner states that the petitioner is in judicial custody from 30.01.2017 which is more than four years. He would contend that the petitioner has been arrested on the basis of

disclosure statement of accused *Stanley* which is not admissible in law in view of the judgment of Tofan Singh v. State of Tamil Nadu reported as **(2020) SCC OnLine SC 882**. He would state that the consignee and the owner of the courier company i.e. *Anand Kumar Thakur* was in touch with *Stanley* and not with the petitioner. He states that *Anand Kumar Thakur* has been granted bail by this Court on 20.08.2018 in BAIL APPLN.503/2018 and the petitioner was also entitled to bail on the ground of parity. He states that the petitioner is being unnecessarily implicated in the case.

6. Learned counsel for the petitioner states that the petitioner is a mechanic and the shock absorber which has been recovered at his instance is used in this business. He further states that the shock absorbers recovered from his house may be similar to the one in which contraband was found but is not identical. It is stated that the broken machinery parts have been found in the possession of the petitioner which is not sufficient to implicate the petitioner and connect him to the offence. Learned counsel for the petitioner further states that no recovery of any contraband has been made from the petitioner who has clean antecedents. He would state that the petitioner has already been in custody for four years and that the petitioner is entitled to bail.

7. *Per contra*, Mr. Subhash Bansal, learned Senior Standing Counsel for the respondent/NCB would contend that the search at the house of the petitioner resulted in recovery of the same type of rectangular box having mark as 'Roneo Shock Absorber'. It is contended by the counsel for the respondent/NCB that apart from the material that has been seized from the premises of the petitioner, the petitioner's call detail records (CDR) also shows that the petitioner was in constant touch with the co-accused *Stanley*.

It is contended that the petitioner is a foreign national having no roots in society and may abscond. It is also stated that the way the drugs were being packed/concealed inside shock absorbers shows that the petitioner and everybody involved are experts in the field and the possibility that the petitioner will indulge in such acts if released on bail cannot be ruled out. He would state that the disclosure statement read with the recovery and call records brings out a *prima facie* case against the petitioner and therefore the petitioner is not entitled to bail.

8. Heard Mr. Adarsh Priyadarshi, learned counsel for the petitioner and Mr. Subhash Bansal, learned Senior Standing Counsel for the respondent/NCB and perused the material on record.

9. The material on record discloses that on the basis of a secret information, a parcel booked under the Airway Bill No.5112788656 lying with DHL Express Pvt. Ltd. Courier Company 71/3, Rama Road, Delhi which was being sent to Spain was intercepted. On examination of the parcel it was found to contain carton boxes with roneo shock absorbers and two sets of musical style hair horn inside the box. The shock absorbers have been found to have concealed 575 grams of heroin which is a commercial quantity attracting the rigour of Section 37 of the NDPS Act. It is stated in the complaint that when *Anand Kumar Thakur*, on whose documents the parcel was picked, was interrogated, he disclosed that the co-accused *Stanley* brought the parcel. The said *Anand Kumar Thakur* led to the identification of *Stanley*. *Stanley* after being apprehended has given a voluntary statement disclosing that the box was given to him by the petitioner. The petitioner's house was searched. On search, one black and red colour rectangular box (roneo shock absorber) was recovered apart from

broken shock absorber machinery parts.

10. It is pertinent to mention here that co-accused *Stanley* was using three mobile numbers 9560259467, 8800795536, and 8368242276. He also disclosed that one mobile number was provided to him by the petitioner. The CDR of the said mobile number was taken. It was found that the petitioner was using mobile number 8447054608. The CDR records of the mobile numbers reveal that the petitioner and *Stanley* were in touch with each other before the recovery of the heroin.

11. The quantity of heroin recovered in the case is 575 grams of heroin which is a commercial quantity. Section 37 of the NDPS Act makes the offences under the NDPS Act cognisable and non-bailable. Section 37 of the NDPS Act reads as under:-

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;
(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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

12. It is well settled that the jurisdiction of a Court to grant bail for

offences under NDPS Act, bail in cases of recovery of commercial quantity is circumscribed by the provision of Section 37 of the Act. The bail can be granted only when there are reasonable grounds for believing that the accused is not guilty of the offence and he is not likely to commit any offence when released on bail. The parameters for grant of bail to accused involved in the offence under NDPS Act have been laid down in a number of judgments. The Supreme Court in Collector of Customs v. Ahmadalieva Nodira reported as (2004) 3 SCC 549 has observed as under:

"6. As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to

justify satisfaction that the accused is not guilty of the alleged offence....."
(emphasis supplied)

13. In Union of India v. Rattan Malik reported as (2009) 2 SCC 624, the Supreme Court has observed as under :

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding

as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail." (emphasis supplied)

14. In State of Kerala & Ors. v. Rajesh & Ors. reported as (2020) 12 SCC 122, the Supreme Court has observed as under :-

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

15. Applying the law laid down by the Supreme Court in the present case, it appears that the drugs were being sent in a very organised manner. Drugs were deftly packed and sent concealed in shock absorbers shows that the operations were well planned. The panchnama of the items recovered from the house of the petitioner includes a black and red coloured rectangular box marked as "roneo shock absorber", the same type of shock absorber in which the contraband was recovered. Another broken shock absorber with broken pieces was also recovered from the petitioner. Tools which could be used for opening shock absorber and placing the contraband into the shock absorber were also recovered. Weighing machines, seals of hologram and other instruments have also been recovered. The CDR of the phone numbers recovered from the accused would show that the petitioner was in constant touch with *Stanley* who had brought the parcel to *Anand Kumar Thakur*.

16. It cannot be said at this point of time that the petitioner was not involved in the offence and the way in which the operation was being carried on shows that the possibility of the petitioner indulging in the same activity again cannot be ruled out. Further, the petitioner is a Nigerian and does not have roots in the society and therefore his chances of absconding also cannot be ruled out.

17. In the Status Report it is mentioned that the co-accused *Stanley* was released on interim bail but he has jumped bail and has been declared as a Proclaimed Offender on 07.09.2019. Witnesses in the present case are yet to be examined. The ingredients of Section 37 of the NDPS Act are therefore satisfied. Therefore, this Court is not inclined to grant bail to the petitioner at this juncture.

18. Accordingly, the application is dismissed.

SUBRAMONIUM PRASAD, J

MARCH 15, 2021

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