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

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Reserved on: 21st May, 2021

Decided on: 1st June, 2021

+ **BAIL APPLN. 732/2021**

GULBABU

..... Petitioner

Represented by: Mr.R.K. Giri, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr.Ravi Nayak, APP for State with
Mr.Chinmoy Biswal, DCP, Inspector
Ram Manohar and SI Abdul Barkat
PS Crime Branch.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, petitioner seeks regular bail in case FIR No.197/2020 under Sections 21/29 Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') registered at PS Crime Branch, Delhi.
2. Learned counsel for the petitioner contends that as per the prosecution case the petitioner was apprehended at 8.10 PM on 17th December, 2020 however, he was arrested only at 11.45 AM on 18th December, 2020 when the arrest memo was prepared. Thus the petitioner was kept in illegal custody all this time and documents created. Despite the fact there was no information given to the family by mobile phone or even through a messenger, the arrest memo notes the thumb mark of the wife of the petitioner in Column No.10. No DD entry has been recorded to show how the signatures of the wife of the petitioner had been obtained on the arrest memo. Though the apprehension is at 8.10 PM on 17th December, 2020, the

FIR was lodged only at 6.36 AM on 18th December, 2020 with the alleged contraband being in possession of the raiding team all this time. Further the case of the investigating agency is that the petitioner reached the Court at 2.00 PM when the thumb marks of the wife of the petitioner were taken on the arrest memo however, the arrest memo had been prepared at 11.45 AM and thus admittedly, at that time no intimation was sent to the family of the petitioner thereby violating the guidelines laid down by the Hon'ble Supreme Court reported as AIR 1997 SC 610 D.K. Basu vs. State of West Bengal. This is despite the fact that the petitioner's residence is at Suiwalan, Turkman Gate, Delhi which is close to office of the Crime Branch at Darya Ganj where the petitioner was kept the whole night as per the prosecution. Sections 41 and 42 of the NDPS Act have not been complied with. Search of the co-accused has been taken by a lady constable Janita Meena who was not authorised to take the search. Reliance in this regard is placed on the decisions reported as 1989 (1) Crimes 314 State vs. Jagmala Ram; 1994 CrI.J. 3702 State of Punjab vs. Balbir Singh; 1995 CrI.J. 875 Chhotu vs. State of Maharashtra; 1995 (97) Bom LR 398 Dilkush G. Sinal vs. State of Goa; 1995 CrI.J. 2300 State vs. Shakeel Ahmad; 2001 CrI.J. 165 Roy V.D. vs. State of Kerala and 2002 CrI.J 2013 Ayub Khan vs. State of Rajasthan. The site plan was purportedly prepared on the next day when no witness was present and cannot be looked into. The petitioner was in fact lifted from his house and falsely implicated in this case. The petitioner has clean antecedents and is not involved in any offence whatsoever prior to this case. Further the alleged recovery from the petitioner is also of intermediate quantity and hence the rigours of Section 37 NDPS Act are not applicable.

3. Learned APP for the State on the other hand contends that the site

plan was prepared when SI Arvind along with the Investigating Officer went to the spot. The allegations that the petitioner was picked up from the house and falsely implicated are baseless. The CDR of the petitioner shows his connection with the co-accused. Search of the co-accused was taken by the woman constable in the presence of the ACP and SI Arvind who constituted the raiding team. Sections 41 and 42 of the NDPS Act stand complied with and hence no case is made out for grant of bail to the petitioner.

4. The above noted FIR was registered after a secret information was received on 17th December, 2020 by SI Arvind Kumar at the office of Narcotics Cell, Crime Branch, Darya Ganj, Delhi that one person namely Pappu resident of Old Delhi was indulging in the sale and supply of heroin in Delhi and would be coming to supply heroin to someone near Pahwa Hyundai Motors, Rama Road, Moti Nagar, Delhi between 6.30 PM to 9.30 PM on the same day. This information was conveyed by SI Arvind Kumar to Inspector Ram Manohar and the informer was produced before him which information was further conveyed to ACP, Narcotics Cell who directed them to take appropriate legal action. The secret information was recorded vide DD No.52A at PS Crime Branch. At the instance of the informer the raiding team apprehended a lady and a man whose names were revealed as Praveen and Gul Babu @ Pappu, the present petitioner. They were informed about the secret information and notices under Section 50 NDPS Act were served on them separately and both of them were informed of their legal right of being searched before a Gazetted Officer or a Magistrate however, both of them refused. Since both were illiterate SI Arvind Kumar wrote their replies on the copies of their notices which they thumb marked.

5. Pursuant thereto information was given to ACP, Narcotics Cell at

about 8.30 PM who reached the spot at about 9.30 PM and in his presence a lady constable namely Janita Meena took the search of Praveen. During her search, one transparent polythene containing light brown colour powder tied with rubber band was recovered from her right hand. The light brown colour powder on testing with the field testing kit was found to be heroin. The said polythene was tied with rubber band and marked as 'A' and it weighed 150 grams. The recovered transparent polythene was kept in a rectangular plastic box and converted into a parcel with the help of adhesive tape and marked as Parcel-B and sealed with the seal of 'AK' which seal was then handed over to ASI Sudhir Kumar. Thereafter on the directions of the ACP personal search of Gul Babu @ Pappu was conducted by SI Arvind Kumar and from his hand one black colour polythene was recovered which contained four packets of ₹500 and one packet of ₹200. Each packet was found containing 100 notes. Thus the total amount was ₹2.20 lakhs. The five packets were kept in the same black colour polythene and thereafter kept in rectangular plastic box and converted into a pullanda with the help of adhesive tape and marked as Parcel-C. During further search a transparent polythene was recovered from the right side front pocket of the jeans of the petitioner which on opening the rubber band was found to contain light brown colour powder. On checking the same was found to be heroin and thus this polythene was also converted into Parcel-E by keeping in a plastic box and tying with the adhesive tapes. The recovered pullandas were seized and sealed with the seal of 'AK'.

6. According to the charge sheet, due to Covid-19 pandemic and lack of proper light at the spot, Praveen and Gul Babu @ Pappu were brought to the office of Narcotics Cell, Crime Branch, Old Kotwali Building, Darya Ganj,

Delhi from where a written report was prepared for registration of FIR under Sections 21/29 NDPS Act. The written report along with the pullandas with seizure memo were sent by Constable Rajesh to be handed over to the duty officer of PS Crime Branch at Pushp Vihar for registration of FIR and the rest of the items were handed over to SHO, PS Crime Branch at Pushp Vihar in compliance of Section 55 of the NDPS Act.

7. According to the charge sheet Gul Babu @ Pappu had supplied 150 grams heroin to Praveen. On investigation, the petitioner disclosed that the said contraband was recovered from his relative Jamal @ Maqbool resident of Mata Sundri Road, who is evading arrest. Two mobile phones were recovered from the petitioner, one registered in the name of the petitioner and the other provided by Jamal @ Maqbool which was registered in the name of one P. Shankar. One mobile phone was recovered from Praveen which was in the name of Mohammad Atiullah who was relative of Praveen. The call detail records of Gul Babu and Praveen showed that both knew each other and were in contact with each other and their locations showed that they were present at the spot just before the apprehension at about 8.00 PM on 17th December, 2020.

8. The transaction of sale of narcotics drug from Gul Babu and Parveen took place in presence of the raiding team, as also noted in the statement of the witnesses of the raiding team. The only non-compliance alleged by the learned counsel for the petitioner is of Sections 41 and 42 of the NDPS Act. Search of the co-accused Parveen was taken by a lady Constable and the same was to maintain the dignity, however the search was taken in the presence of the ACP concerned and it cannot be said that on that count the search is vitiated. Further, the search has not taken place inside any

building, conveyance or place but at the public place and hence, it cannot be said that Sections 41 and 42 of the NDPS Act have been violated. In case the search conducted by the Lady Constable would have been in the absence of senior officers, who were duly authorized to conduct the search, the judgments relied upon by the learned counsel for the petitioner would have been applicable. The search in the present case was conducted at the instance of the authorized officer, but by the Lady Constable qua accused Parveen as she was a woman in accordance with law.

9. As noted above, the petitioner was apprehended at about 8:00 p.m. on 17th December, 2020 thereafter the ACP, Narcotics Cell was called and on reaching the spot at 9:30 p.m. search was taken and the *pullandah* prepared whereafter both the accused were brought to the Narcotics Cell, Darya Ganj, where they were kept at night and the *tehrir* was sent for registration of FIR at PS Crime Branch which is located at Pushp Vihar in the morning at 5:00 a.m. on 18th December, 2020, whereafter, the FIR was registered at 6:36 hours on 18th December, 2020.

10. Once the accused were apprehended, kept in custody throughout the night, FIR registered in the morning at Police Station Crime Branch at Pushp Vihar, one fails to understand why the formal arrest was made at 11:45 a.m. as is evident from the Arrest Memo. Further, the Arrest Memo notes in Column No.2 "*his wife being informed*", as also has the right thumb impression of Begum, the wife of the petitioner. This Court had called for the case diaries wherein it is noted that the Investigating Officer SI Abdul Barkat, who was handed over the investigation at 9.00 A.M. arrested Smt. Parveen at 11:00 a.m. and Gul Babu @ Pappu at 11:45 a.m., whereafter they were taken to Tis Hazari Court, where Parveen's daughter Mariyam and Gul

Babu's wife were present in the Court Complex and information regarding their arrest were given to them verbally and their signatures and thumb impression obtained on the respective Arrest Memos. Thereafter, the two accused were produced before the learned ASJ who granted one day police custody remand.

11. What is disturbing in this case is that the residence of the petitioner is at Suiwalan, Turkman Gate, Delhi which is in the vicinity of the office of the Narcotics Cell, Crime Branch at Old PS Kotwali, Darya Ganj, however, how and when information was sent to the family is not clear in the case diary, and how the family of the petitioner reached the Court is also not clear. Even as per the case of the prosecution accused were apprehended around 8:00 p.m. and at 8:30 p.m. the ACP was called who reached the spot at 9:30 p.m. and after preparing the *pullandah* the accused and the raiding team reached office of the Narcotics Cell, Darya Ganj where throughout the night the two accused were under apprehension and not formally arrested. The ruqqa alongwith the contraband were sent only at 5:30 a.m. in the morning and the whole night it was in possession of the raiding team with the seal also being with a member of the raiding party. As per the status report, petitioner has no previous involvement much less in an offence under the NDPS Act. Considering the facts noted above particularly the belated arrest of the petitioner, this Court deems it fit to grant bail to the petitioner.

12. Consequently, the petitioner is directed to be released on bail on his furnishing personal bond in sum of ₹50,000/- with one surety of the like amount subject to the satisfaction of the learned trial Court/duty Magistrate, further subject to the condition that the petitioner will not leave NCT of

Delhi without the prior permission of the court concerned and in case of change of residential address and/or the mobile phone number, the same will be intimated to the Court concerned by way of an affidavit.

13. Petition is accordingly disposed off.

14. Police file alongwith Case Diaries be returned to the Investigating Officer forthwith.

15. Order be uploaded on the website of this Court.

CRL.M.(BAIL) 392/2021

Dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

JUNE 01, 2021

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