

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 18.08.2021

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Pronounced on : 20.09.2021

+ BAIL APPLN. 749/2021

AXAT GULIA

.....Petitioner

Through: Ms. Shushma Sharma, Adv.

Versus

CUSTOMS

..... Respondent

Through: Mr. Pramod Bahuguna, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. seeking bail in Complaint No. VIII(10)ACE/SIIB/Nayan/29/2017 under Sections 22/23 read with Sections 28/29 of the NDPS Act registered at Police Station IGI Airport.

2. Briefly stated, the case of the Customs (Respondent) is that the export Consignment of M/s. Nayan Overseas (IEC No. 0516522973)

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was booked for export through Custom by one co-accused Rohit Kumar which was handed over to accused Rohit Kumar by the present petitioner/accused. There were total 21 boxes in the consignment under the said shipping bills wherein it was declared that the consignment was containing readymade garments, bed-sheets. ceramic knobs and artificial anklets.

3. On examination of all 21 corrugated boxes, 1810 strips comprising of 70 tablets of each i.e. 1,26,700 tablets of psychotropic substances "Alprazolam" was found concealed in box no. 11 in commercial quantity (listed at S.No. 178 in the schedule of NDPS Act, 1985).

4. I have heard the Ld. counsel for the parties and perused the records of this case.

5. It is submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated. It is further submitted by her that co-accused Rohit Kumar has already been granted bail on 13.03.2020. She further submitted that the order of grant of bail to the co-accused has not been challenged by the Customs (Respondent). She further submitted that the petitioner seeks parity with the co-accused. She further submitted that the charge has already been framed in the instant case and the trial will take a long time. She further submitted

that the wife of the petitioner is suffering from 70% disability in her left arm.

6. On the other hand, Ld. counsel for the Customs (respondent) while opposing the bail application has submitted that the charges U/s 22(C), 23(C) and 28 read with Section 29 of NDPS Act 1985 for commercial quantity have been framed against the petitioner and therefore, embargo of Section 37 of the NDPS Act applies. He further submitted that the petitioner is not entitled to parity and relied upon the judgment of Apex Court titled as *State of Kerala Vs. Rajesh, Crl. Appeal No. 154-157 of 2020 dated 24.01.2020*.

7. It is further submitted by the Ld. counsel for the Customs (respondent) that the petitioner is also involved in another case titled as State Vs. Ashish Kumar and others, FIR No. 64/2018 P.S. Delhi Special Cell U/s 21/23/28 R/w Section 29 of NDPS Act which is pending trial before the Special Court, Patiala House Courts, New Delhi. He further submitted that the charge framed against the petitioner on 12.03.2020 has not been challenged either by the petitioner or the co-accused and the punishment prescribed for the commission of the offence is 20 years and not less than 10 years and fine of not less than Rs.1 Lakh.

8. In the present case, 21 corrugated boxes, 1810 strips comprising of 70 tablets of each i.e. 1,26,700 tablets of psychotropic substances

“Alprazolam” was found concealed in box No. 11 in commercial quantity which is listed at S.No. 178 in the schedule of NDPS Act, 1985. It is also pertinent to note that the recovered substance falls under the commercial quantity and embargo of Section 37 of the NDPS Act is applicable.

9. 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 of the 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.

10. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantially 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.

11. In the instant case, the petitioner is involved in one another case under the NDPS Act titled as State Vs. Ashish Kumar and others, FIR No. 64/2018 P.S. Delhi Special Cell U/s 21/23/28 R/w Section 29 of NDPS Act. As far as the contention of the Ld. counsel for the petitioner that the petitioner is entitled to parity is concerned, the same has no force in it. The perusal of the order of the co-accused shows that the Ld. ASJ while granting bail to co-accused Rohit Kumar has completely overlooked the underlying object of Section 37 that in addition to the limitation provided under the Cr.P.C. 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 uncalled for.

12. As far as the contention of the Ld. counsel for the petitioner that no steps has been taken by the Customs (respondent) to challenge the grant of bail to the co-accused, Ld. counsel for the Customs (respondent) has relied upon the judgment of Apex Court titled as *State of Kerala Vs. Rajesh, Crl. Appeal No. 154-157 of 2020 dated 24.01.2020* wherein, it has been specifically held in para No. 23 of the judgment that:

“The submission made by Ld. counsel for respondents that in crime No. 14/2018, the bail has been granted to the other

accused persons, and no steps have been taken by the prosecution to challenge the grant of post-arrest bail to the other co-accused persons, is of no consequence for the reason that the consideration prevailed upon the Court to grant bail to the other accused persons will not absolve the act of the accused respondent from the rigors of Section 37 of the NDPS Act.”

13. So, in view of the judgment (*supra*), the contention of the Ld. counsel for the petitioner that no steps has been taken by the Customs (respondent) to challenge the grant of bail to the co-accused is of no consequence. Therefore, looking into the entire facts and circumstances of this case and also keeping in view the fact that the petitioner is also involved in another case of similar nature, he is not entitled to bail. The bail application is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

SEPTEMBER 20, 2021

Sumant