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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21st May, 2021

Decided on: 27th May, 2021

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BAIL APPLN. 1215/2021

RAJENDER KUMAR

..... Petitioner

Represented by: Ms. Priya Kumar and Mr. Shubham
Napgal, Advocates.

versus

NCB

..... Respondent

Represented by: Mr. Subhash Bansal, Sr. Standing
Counsel for NCB with Mr. Shashwat
Bansal, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, petitioner seeks regular bail in the complaint filed by the Narcotic Control Bureau (in short 'NCB') being Crime No. VIII/07/DZU/2020 under Sections 8/21/29 Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act').

2. When notice was issued in this petition on 12th April, 2021 learned counsel for the petitioner at the outset stated that the prayer for interim bail is a typographical error and the petition be treated as one for regular bail for which notice was issued by this Court.

3. Learned counsel for the petitioner contends that the petitioner was only a driver of the vehicle and had no connection whatsoever with the transaction or with the person who was involved in the transaction. No

recovery whatsoever has been made from the petitioner. The fact that the petitioner was not involved in the offence is evident from the fact that the main accused tried to run away on apprehension but the petitioner did not try to run away. Petitioner has no criminal history and no previous conviction. The petitioner was not aware as to what was there in the packet and for what purpose the cash was being handed over. Even as per the case of the prosecution on the asking of the owner of the vehicle the petitioner gave the packet of cash which was lying in the car. Version of the so-called prosecution witnesses that the petitioner gave cash from his pocket is unbelievable. The rigours of Section 37 are not applicable as there is no reasonable ground to believe that the petitioner is guilty of the offence. Statement of the public witness Deepak Duggal cannot be relied upon as the same was recorded on 15th June, 2020 though the alleged recovery was made on 29th January, 2020. Further no reliance can also be placed on the statement of this witness for the reason admittedly the apprehension took place after 10.30 PM on a winter night and from a distance the transaction would not be visible to the public witness due to the low visibility. Reliance is placed on the decisions reported as MANU/DE/0819/2005 Kassu Ram vs. State; Mohd. Zuber vs. The State (NCT of Delhi), Bail Appln.3821/2006 decided on 30th October, 2006; 130 (2006) DLT 114 Karan Singh vs. The State (NCT of Delhi); MANU/DE/0581/2009 Dilbagh Singh vs. D.R.I.; Ravi Nadar vs. State of Chhattisgarh, MCRC No.6299/2018 decided on 3rd October, 2018 to contend that the petitioner being a mere driver of the vehicle and no recovery having been made from him, he cannot be said to be allegedly involved in the offence of possession of the narcotic drug.

4. Opposing the bail application, learned Senior Standing Counsel for

the respondent/NCB states that the petitioner is a co-conspirator and active participant in the offence as he had come to the place of the incident in the car along with the main accused who purchased the narcotic drug and the money was in the pocket of the petitioner which on the instructions of the main accused was given by the petitioner to Nicolas. Besides the members of the raiding team, statement of the public witness Deepak Duggal has been recorded in this regard. Further the petitioner had come along with the main accused and hence it cannot be said that he had no knowledge of the purchase of the contraband. Material witnesses are yet to be examined, hence no bail be granted to the petitioner.

5. The above noted complaint was filed by the NCB impleading Sukhwinder Singh, Rajender Kumar the present petitioner and one Nicholas Nzube Ukaegbu as the three accused. Case of the respondent/NCB is that on 29th January, 2020 the intelligent officer received a secret information that two persons will be coming near Big Park, Village Amrahi, Sector-19, Dwarka, Delhi in a Swift Desire car bearing No.HR-24T-7247 for purchase of heroine from a Nigerian. It was informed that the said two persons indulge in drug trafficking and huge quantity of narcotic drug may be recovered from their possession. The said information was reduced in writing and put up before the Superintendent, NCB who on perusal marked it to the Investigating Officer who constituted a team and carried out the raid. The raiding party along with the seal of NCB and other articles like stationery, DD Kit, weighing machine etc. left the office of NCB at about 9.00 hours and reached Dwarka at 10.00 hours. On the request of the Investigating Officer, Deepak Duggal joined the team as an independent witness. Two persons were observed in the car number given in the secret

information. Immediately thereafter one African person came at the spot on a maroon colour scooty bearing No.DL-11SU-1488 whereafter the occupant of the car came outside of the car and started conversation with the African person. Thereafter the person driving the car took out a bundle of currency notes from his pocket and gave to the African person and one polythene packet was handed over to the second occupant of the car by the said African person. The African person and the occupant of the car were encircled by the NCB team and the secret information was disclosed to them. The person who came on the scooty tried to run away by injuring the Investigating Officer by biting him however, he was overpowered with the help of the other team members. On inquiry the name and identity of the car occupants were found to be Rajender Kumar, the car driver, that is, the petitioner herein, and Sukhwinder Singh the other occupant of the car and Nicholas who came on the scooty. Notice under Section 50 NDPS Act was served and three of them were apprised of their legal rights whereafter the personal search of Nicholas was conducted which resulted in the recovery of one bundle of currency notes amounting to ₹1.40 lakhs which were kept in an envelope. Besides one Itel Mobile Phone was also recovered which was also taken into possession. Personal search of the petitioner was also conducted however, nothing incriminating was recovered. On the personal search of Sukhwinder Singh, one polythene packet was recovered from his coat which contained white coloured cylindrical shape capsules substance and one cut piece of same type of cylindrical capsule. On being asked Sukhwinder Singh disclosed that the recovered substance was heroine which was given to him by Nicholas. A small quantity of the same was tested with the help of drugfield test kit which gave positive result for heroine.

Thereafter the remaining capsules were also tested individually and they all gave positive result for heroine. The total weight of the recovered substance came to be 270 grams. Since all the capsules were found positive for heroine they were crushed and kept in the polythene and two samples of five grams each were drawn and marked as mark A-1 and A-2 and the remaining substance was tied with the string and packed and converted into pullanda. The Swift Desire car was searched and it was found containing insurance of the car issued in the name of Sukhwinder Singh, driving licence of the petitioner and passbook and chequebook of the saving bank account of Sukhwinder Singh were also found. Statement of Sukhwinder Singh was recorded under Section 67 NDPS Act who stated that he used to purchase heroine from African nationals in Delhi and sell the same in Sirsa region. He had come to Delhi in his car and after reaching Delhi he made a phone call to Nicholas who asked him to come at the spot with heroine. When Nicholas reached the spot on his scooty he handed over the polythene containing heroine to Sukhwinder Singh and Rajender Kumar made payment to the said accused.

6. As noted above, the car was owned by Sukhwinder Singh, the heroine was also taken from and found firstly in possession of Nicholas and then in possession of Sukhwinder Singh. Even as per the prosecution, the petitioner is the driver of the vehicle. To bring the petitioner within the ambit of a co-conspirator, even as per the statement of the public witness the only role attributed to him is that on the asking of Sukhwinder Singh he handed over the money from his pocket. In Dilbagh Singh (supra) this Court was dealing with the case where the contraband was transferred to a Tata Indica Car which reached the spot and was being driven by the petitioner therein. A

person namely Kouassi Nguessan Williams was in the rear seat of the said Tata Indica car which was parked at the spot wherein the contraband was transferred from the other car which reached the spot. Considering the fact that Dilbagh Singh in the said case was only driving the vehicle the Court came to the conclusion that he could not be said to be in conscious possession of the contraband as the occupant of the other car Opel Corsa in the said case dropped two black coloured polyphone carry bags on the rear seat of the Tata Indica car which was being driven by Dilbagh Singh.

7. In the present case also even accepting the statement of the public witness and the witnesses of NCB the petitioner only gave money from his pocket. The petitioner neither received the contraband nor was the contraband handed over to him. On the contraband being handed over to the co-accused Sukhwinder Singh he directed the petitioner to pay the money which he paid. At no point of time was the petitioner in the conscious possession of the contraband. Even as regards the charge of conspiracy the prosecution is required to show that the petitioner had knowledge that the money was being handed over for the purpose of purchasing the contraband. Further it is not even the case of the prosecution that the money belonged to the petitioner and the case of the prosecution is also that the petitioner was merely the driver of the car owned by Sukhwinder Singh. It is thus in the performance of his duty when the employer asked the petitioner to make the payment kept in his pocket that he handed over the payment to the African national and that too before the contraband was given to Sukhwinder Singh. Charge against the petitioner has already been framed. The petitioner is in custody since 30th January, 2020 and the trial is likely to take some time. The petitioner has no other involvements.

8. Considering the role assigned to the petitioner and the fact that the petitioner has no previous involvements and the trial is likely to take some time, this Court deems it fit to grant regular bail to the petitioner. It is, therefore, directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹50,000/- with one surety bond 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 the country without prior permission of the concerned court and in case of change of mobile phone number and/or residential address, the same will be intimated to the Court concerned by way of an affidavit.

9. Petition is disposed of.

10. Order be uploaded on the website of the Court.

MAY 27, 2021
‘vn’

(MUKTA GUPTA)
JUDGE