

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

% **Reserved on : 05.08.2021**
Pronounced on : 06.10.2021

+ **BAIL APPLN. 1625/2021 and CRL.M.(BAIL) 552/2021**

SHRI TAHA TOUFIQ

.....Petitioner

Through: **Mr. Rajesh Gupta and Mr.**
Harpreet Singh, Advocates.

Versus

NARCOTICS CONTROL BUREAU (NCB)

..... Respondent

Through: **Mr. Subhash Bansal, Sr. Standing**
Counsel for NCB with Mr.
Shashwat Bansal, Advocate-NCB.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner seeking regular bail U/s 37(1)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1995 read with Section(s) 439 & 482 of Cr.P.C. in case No. VIII/9, 9A/DZU/2020 U/s 8/22/24/25/29 of NDPS Act.

2. Briefly stated, the facts of the case as per the prosecution complaint are that on 31-01-2020 on basis of secret information, 4200 Tablets of

Zolpidam (1.050 Kg) and 6000 Tablets of Alprazolam (1.200Kg) were recovered from a parcel bearing No. 535153356 lying at TNT India Pvt. Ltd. (Fedex Courier) near new Custom House, IGI Airport which was destined to Great Britain and the recovered contraband was seized as per law detailed in the panchnama in the presence of independent witnesses and was taken into safe custody and thereafter the consignor/accused Dipu Singh was apprehended from Lucknow and from his house, 12,000 Tablets of Tramadol (4.800 Kgs.) were recovered.

3. During investigation, accused Dipu Singh disclosed the names of other persons involved in the conspiracy including co-accused Tejas Patel, Sachin Makade, Barun Chauhan, Bablu Bhagwan Dangre. Further he disclosed name of Taha Toufiq (present petitioner), his mobile nos. 9889333201 & 7007832196, resident of 485/44, Rafik Enclave, Mohan Makin, Near Railway Bridge, Daliganj, Lucknow.

4. Consequent upon the recovery from the parcel and from the residence of accused Dipu Singh and also based on his voluntary statement tendered under section 67, NDPS Act, having reason to believe that accused Dipu Singh had admitted of committing an offence under section 8(c) of NDPS Act, 1985, and punishable under section 22, 25 & 29 of NDPS Act, he was arrested on 02-02-2020. In follow-up investigations, other accused persons namely, Tejas Patel, Sachin Makade, Barun Chauhan, Bablu Bhagwan Dangre had also tendered their voluntary statements respectively, and seizure of incriminating documents/electronic devices and other evidences were effected therefrom.

5. The present petitioner Taha Toufique was asked to join the investigation vide serving Notice dated 24-6-2020. The present petitioner joined the investigation on 04-08-2020, who revealed that he was in constant touch with Dipu Singh. The present petitioner in his voluntary statement tendered under section 67, NDPS Act on 04-08-2020 had admitted that he was in touch with accused Dipu Singh over phone and through WhatsApp chat communication by using his mobile No. 7007832196.

6. As per the Status Report filed by the NCB (respondent), the present petitioner while tendering his voluntary statement had admitted that he used to provide orders from his clients to Dipu Singh for consideration, and therefore, he was in constant touch with Dipu Singh over phone and through whatsapp communication.

7. It is further stated in the Status Report filed by the NCB (respondent) that during investigations, analysis of mobile of accused Dipu Singh was done and mirror image was obtained from SIFS. In the mobile phone mirror image of accused Dipu Singh huge chats regarding NRX medicines and address of consignee in foreign countries were found. The same chats were exhibited by petitioner Taha Toufiq. In the chats large number of address were found to which they were sending NRX medicines as disclosed by the accused.

8. On the basis of statement and call-details, the present petitioner Taha Toufiq was arrested under section 24 & 29 of NDPS Act on 4-08-2020. It was found that the present petitioner Taha Toufiq was in constant touch with co-accused Dipu Singh and there are several

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communications through WhatsApp which shows their involvement in illicit drug trafficking and is a part of larger conspiracy.

9. I have heard the Ld. counsel for the petitioner, Ld. Sr. Standing Counsel for NCB (respondent), perused the Status Report filed by the NCB (Respondent) and also perused the records of this case.

10. It is submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated in this case and on being called at the NCB office, he has been apprehended. It is further submitted by the Ld. counsel for the petitioner that nothing has been recovered from the petitioner and also from the search of his house. It is further submitted by the counsel for the petitioner that the only incriminating evidence against the petitioner is the mobile phone connection with co-accused Dipu Singh and the said mobile phone is not at all recovered from the present accused.

11. It is further submitted by him that the statement of the petitioner U/s 67 of the NDPS Act is not admissible in view of the decision in ***Tofan Singh Vs. State of Tamil Nadu***. He further submitted that the signature of the petitioner has been obtained on blank papers and the same were later on converted into documents. He further submitted that the petitioner is in J.C. since 05.08.2020.

12. It is further submitted by the Ld. counsel for the petitioner that the mobile phone No. 7007832196, which according to the NCB was being used by the petitioner from whom he used to chat with co-accused Dipu Singh is in the name of Sukh Anwar who is not traceable. It is further submitted by

the Ld. counsel for the petitioner that the petitioner after the arrest of Dipu Singh was called number of times for inquiry but there is no incriminating evidence against the petitioner/accused on record. He further submitted that as per the chats, the orders, according to the NCB were given by the petitioner but there is nothing on record to show that any actual delivery ever took place. It is further submitted by the Ld. counsel for the petitioner that the petitioner has been arrested only on the basis of the disclosure statement which is inadmissible and even nothing has been recovered on the basis of the disclosure statement of the petitioner.

13. On the other hand, Ld. Sr. Standing Counsel for NCB (respondent) has argued on the lines of the Status Report and further submitted that on 31.01.2020 on the basis of secret information, 4200 tablets of Zolpidem (1.050 Kg.), and 6000 tablets of Alprazolam (1.200 Kg.) were recovered from a parcel bearing No. 535153356 lying at TNT India Pvt. Ltd. (Fedex Courier) near new custom house IGI Airport which was destined to Great Britain and the recovered contraband was seized as per law detailed in the panchnama in the presence of the independent witness and was taken into safe custody and thereafter the consignor/accused Dipu Singh was apprehended from Lucknow and from his house, 12000 tablets of Tramadol were recovered. It is further submitted by the Ld. Sr. Standing Counsel for NCB (respondent) that during investigation he has disclosed the names of the other persons involved in the conspiracy.

14. He further submitted that the petitioner tendered his statement U/s 67 of the NDPS Act and admitted his guilt and his involvement with co-

accused Dipu Singh in providing the orders from his clients to co-accused Dipu Singh. He further submitted that the petitioner was in regular touch with co-accused Dipu Singh over phone and WhatsApp and there are various calls and WhatsApp messages.

15. It is further submitted by the Ld. Sr. Standing Counsel for NCB (respondent) that in WhatsApp communications there is a reference of medicines covered under the NDPS Act and tracking number of the consignment sent by them and also the WhatsApp messages between the petitioner and accused Dipu Singh which shows their involvement in trafficking of the medicines covered under NDPS Act.

16. He further submitted that in his statement recorded U/s 67 of the NDPS Act, the petitioner has admitted to the receipt of money in cash from co-accused Dipu Singh. He further submitted that from the call details and WhatsApp messages, it is evident that they are involved in trafficking of medicines.

17. It is further submitted by the Ld. Sr. Standing Counsel for NCB (respondent) that the petitioner has not produced his mobile phone with an intention to conceal the evidence against him. He further submitted that on the basis of the statement, call details and WhatsApp conversations, the petitioner was arrested and was found to be in constant touch with co-accused Dipu Singh.

18. He further submitted that the mobile No. 7007832196 used by the petitioner was in constant touch with co-accused Dipu Singh and the said

number was saved by co-accused Dipu Singh in his mobile as Taha Amity because the petitioner is a student of Amity University. He further submitted that the contention of the Ld. counsel for the petitioner that SIM was not in the name of the petitioner is of no-consequence as the chats between co-accused Dipu Singh and the petitioner were very frequent and the number was stored by co-accused Dipu Singh as Taha Amity.

19. He further submitted that IMEI number of the mobile set used for mobile connection No. 7007832196 was obtained from service provider and the mobile connection No. 7007832196 was being used in mobile set having IMEI No. 357328073033890 upto 04.02.2020 and on 04.02.2020 till 05.02.2020 the said SIM card was used in the mobile set with IMEI No. 865166041636630, CAF & CDR of mobile set with IMEI No. 865166041636630 was obtained from the service provider as per which the mobile set having IMEI No. 865166041636630 was used after 05.02.2020 for mobile connection No. 9076725933 and this mobile connection (9076725933) is registered in the name of present petitioner/accused Taha Toufique S/o Mohd. Toufique R/o 485/44, Lucknow, Lakad Mandi, Mohan Makin Road, Dali Ganj, Lucknow.

20. He further submitted that the location of this number also indicated that petitioner/accused Taha Toufique was in possession and using the No. 7007832196. This number was in regular contact with co-accused Dipu Singh which corroborates the involvement of the present/petitioner Taha Toufique with co-accused Dipu Singh. He further submitted that there is a

recovery of commercial quantity of medicines, hence there is a bar of Section 37 NDPS Act on the release of the petitioner/accused on bail.

21. In the instant case, no doubt, in view of the decision in ***Tofan Singh Vs. State of Tamil Nadu (2021) 4 SCC 1*** wherein it has been held that confessional statement made U/s 67 of the NDPS Act will not be admissible in evidence but at the same time there is a huge recovery of medicines which fall under the category of commercial quantity as per NDPS Act. The petitioner and the co-accused Dipu Singh were in constant touch with each other which is evident from the call records of the cell phone used by the petitioner.

22. In the present case, there is a recovery of commercial quantity of medicines from co-accused Dipu Singh who is also found to be delivering the medicines illegally over the orders placed through the present petitioner/accused and both accused are found to be connected through WhatsApp chat messages as well as through mobile phones. The chat conversation between the petitioner/accused and Dipu Singh reveals that they were indulging in supply of the narcotic drugs. The conduct of petitioner/accused in destroying the SIM before being interrogated by the NCB officials points towards the guilty mind.

23. As per the investigation, the petitioner/accused was using mobile No. 7007832196 and was in frequent contact with co-accused Dipu Singh. Even though, the said mobile phone was found in the name of some other person but was being used by the petitioner as indicated in the investigation.

24. The present case is a case of commercial quantity and the rigors of Section 37 NDPS Act are applicable. Section 37 of the NDPS Act regulates the grant of bail in cases involving offences under the NDPS Act. Section 37 reads as follows:

“(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.

(emphasis supplied)

25. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are :

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

26. The standard prescribed for the grant of bail is 'reasonable ground to believe' that the person is not guilty of the offence. Interpreting the standard of 'reasonable grounds to believe', a two-judge Bench of **Supreme Court** in *Union of India Vs. Shiv Shanker Kesari (2007) 7 SCC 798* held that:

"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

"7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."

(See *Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar* [(1987) 4 SCC 497] (SCC p. 504, para 7) and *Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.* [(1989) 1 SCC 532]

[...]

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given

situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315])

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”

(emphasis supplied)

27. Based on the above, the test which is required to be applied while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit an offence while on bail. Given the seriousness of the offence punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

28. As far as the arguments of the Ld. counsel for the petitioner regarding the absence of recovery of contraband from the possession of the petitioner is concerned, it cannot be said to be a ground for the non application of parameters of Section 37(1)(b) of NDPS Act in view of the judgment passed by the Supreme Court in the case titled as *Union of India Vs. Rattan Mallik* (2009) 2 SCC 624 and merely absence of possession does not mitigate the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

29. For the reasons noted hereinabove, the application lacks merit and the same is, therefore, dismissed. CrI. M.(Bail) 552/2021 is also disposed of accordingly.

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

RAJNISH BHATNAGAR, J

OCTOBER 06, 2021

Sumant

