

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

Reserved on : 04.10.2021

%

Pronounced on : 23.11.2021

+ **BAIL APPLN. 3248/2021**

NAVEED UMMER SHEIKH

..... Petitioner

Through: Mr. Vikas Gautam, Advocate.

Versus

NARCOTIC CONTROL BUREAU THROUGH: SHRI MUKESH

MALIK PROSECUTOR NCB

.... Respondent

Through: Mr. Shashwat Bansal, Advocate.

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 regular bail in Session Case No. 470/2019 pending trial in the Court of Shri Ajay Kumar Jain, Special Judge/ASJ, New Delhi in the case titled as NCB Vs. Naveed Ummer Sheikh filed under Sections 22/23/29 NDPS Act.

2. Briefly stated, the facts of the case are that on the basis of secret information dated 07.05.2019, the present petitioner was apprehended at IGI Airport and from his baggage 1.6 Kg of contraband namely methaqualone, was recovered. But the petitioner/accused during

BAIL APPLN. 3248/2021

Page 1 of 5

preliminary enquiry, revealed that recovered substance is methamphetamine. Samples were drawn and sent to CRCL and the sample tested positive for methamphetamine.

3. I have heard the Ld. counsel for the petitioner, Ld. counsel for the NCB (Respondent), perused the Status Report and also perused the records of this case.

4. It is submitted by the Ld. counsel for the petitioner that the NCB first on testing found the sample positive for methaqualone. However, it was found to contain methamphetamine as per CRCL report which clearly creates doubt over the manner in which the sample was seized and tested at CRCL laboratory. It is further submitted by the Ld. counsel for the petitioner that the search, seizure and subsequent investigation and arrest is in sheer violation of judgment of Apex Court in case titled as Mohan Lal Vs. State of Punjab 2018 SCC Online SC 974. It is further submitted by the Ld. counsel for the petitioner that this Court vide order dated 13.10.2020 allowed the petitioner/accused to withdraw the bail application with the direction to the trial court to examine star witnesses, in particular, the public witnesses in the next four months.

5. It is further submitted by the Ld. counsel for the petitioner that the testimony of PW 1 and PW 3 does not inspire credibility and there is inherent defect in drawing the samples. It is further submitted by the

Ld. counsel for the petitioner that the samples have been drawn in violation of Section 52 A of the NDPS Act and also in violation of the directions passed by this Court in **Amani Fidel Vs. NCB, Crl. Appeal No. 1027/2015**.

6. It is further submitted by the Ld. counsel for the petitioner that the statement of the petitioner U/s 67 of the NDPS Act is not admissible and despite the presence of the CCTV cameras no footage has been placed on record to show that the trolley belonged to the petitioner. He further submitted that since public witnesses have been examined and there is inherent defect in the withdrawal of samples, therefore, there is no likelihood of conviction in the said case, therefore, bar U/s 37 of the NDPS Act stands lifted and the petitioner is entitled to bail.

7. On the other hand, it is submitted by the Ld. counsel for the respondent (NCB) that the samples were drawn at the spot and were tested from DD kit which is not so perfect in testing. However, the name of the drug was disclosed by the petitioner/accused at the spot itself and the same has been mentioned in the Panchnama. He further submitted that the report of CRCL also confirms that the recovered contraband was methamphetamine and there is no infirmity in sealing and sending the sample to CRCL.

8. It is further submitted by the Ld. counsel for the respondent (NCB) that the judgment of Mohan Lal (supra) is not applicable in the present case as the secret information was received by IO Rampal and thereafter on the direction of the superintendent, IO R.K. Maurya apprehended the petitioner with contraband and recorded his statement U/s 67 of the NDPS Act and arrested the petitioner and the complaint on completion of investigation was filed by IO Deepak Attri.

9. It is further submitted by the Ld. counsel for the respondent (NCB) that the petitioner was apprehended from the airport and his presence is duly proved through his passport, visa, travel ticket as well as passenger manifest. He further submitted that PW 1 and PW 3 have supported the case of the prosecution. He further submitted that the baggage was apprehended before the petitioner presented the same for checking purposes therefore, there was no baggage tag. He further submitted that the prosecution has no enmity or motive to falsely implicate the petitioner.

10. In the instant case, the contention of the counsel for the petitioner that the testimonies of the independent witnesses i.e. PW 1 and PW 3 have been recorded and they do not inspire confidence, in my opinion, at this stage, in depth analysis of the testimonies of these two witnesses to come to the conclusion as to whether they inspire confidence or not or whether by sifting their evidence incriminating

evidence can be culled out from their testimonies would not be proper and might prejudice the case of either of the parties.

11. In the present case, the petitioner was apprehended at the airport which is evident from the travel documents. As far as the question of violation of mandatory provisions are concerned, the same are all matter of trial and cannot be looked into at this stage. Ld. counsel for the petitioner further raised the contention with regard to the violation of mandatory circulars and procedure while drawing the samples and placed reliance on the judgment **Amani Fidel (supra)** but the same is also of no help to him as the procedural defect or violation of any circular would be a matter of trial and the judgment **Amani Fidel (supra)** is after the trial and is not on the point of bail on the above said grounds. The entire procedural defect in this regard would be tested when the evidence is led in this case and this is not the stage where any opinion can be given in favour or against the manner in drawing the samples. The recovered quantity is a commercial quantity hence bar of section 37 applies. In these circumstances, no ground for bail is made out. The bail application is, therefore dismissed.

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

RAJNISH BHATNAGAR, J

NOVEMBER 23, 2021

Sumant

BAIL APPLN. 3248/2021

Page 5 of 5