

(VIA VIDEO-CONFERENCING)

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

% Reserved on : 10.09.2021
Pronounced on : 09.11.2021

+ BAIL APPLN. 3149/2020

KELVIN GEORGE KATINDASA Petitioner

Through: Mr. J.S. Kushwaha, Advocate.

versus

NARCOTICS CONTROL BUREAU Respondent

Through: Mr. P.C. Aggarwal, 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. read with Section 37 of the NDPS Act seeking regular bail in SC No. 139/2019 registered under Sections 9A/25A/29 of the NDPS Act at police Station Crime Branch, Delhi.

2. Briefly stated, the facts of the case are that on 10.01.2019, on the basis of secret information, petitioner Kelvin George Katindasa was intercepted at IGI airport while he was travelling to Dar-Es-Sallam via Doha and during search, 24.5kg of Pseudoephedrine was recovered.

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3. In his statement u/s 67 NDPS Act, petitioner disclosed that he came to Delhi along with his brother Nagary and stayed at hotel Venus, Mahipalpur, Delhi and on 09.01.2019, Nagary asked him to go to INA market to collect the suitcase and thereafter petitioner collected the suitcase of Pseudoephedrine from Chinedu and Kelvin (petitioner) was supposed to hand over this suitcase to Nagary at Tanzania. On 18.02.2019 accused Nagary was also intercepted at Mumbai airport on the basis of LOC. Accused Nagary also accepted his guilt. The mobile phones of accused persons were examined and it was revealed that they were in touch with others and shows that they were the members of international drug syndicate and involved in drug trafficking.

4. I have heard the Ld. counsel for the petitioner, Ld. counsel for the respondent (NCB), perused the records of this case and the Status Report/Reply filed by the respondent (NCB).

5. It is mainly contended by the Ld. counsel for the petitioner that in the instant case, after the recovery of alleged 5 packets, the contents of all the packets were transferred in a transparent polythene and mixed homogeneously and after that two samples of 25 gram each from the mixture were taken. He further submitted that the manner in which the samples were drawn was not as per law as the sample were not taken from each packet and this is totally a violation of law in drawing the sample of drugs.

6. He further submitted that the petitioner is a young person who has been falsely implicated in the present case. He further submitted that while issuing notice U/s 50 NDPS Act, the mandatory provisions of Section 50 NDPS Act have not been followed. He further submitted that in the instant case the embargo of Section 37 NDPS Act is not applicable. He further submitted that the petitioner is having clean past antecedents and is not a previous convict and there is no other criminal record against him in any police station. He further submitted that the NCB (respondent) will take long time in concluding the matter, so no purpose would be served by keeping the petitioner behind the bar.

7. Ld. counsel for the petitioner has relied upon the following judgments:

- (a) Judgment dated 13.03.2020, passed by this Court in CrI. Appeal No. 1027/2015 titled as Amani Fidel Chris Vs. Narcotics Control Bureau.
- (b) Ram Narayan Vs. State 2005 [2] JCC [Narcotics] 170.
- (c) Sujit Tiwari Vs. State of Gujarat and another 2020 (1) Crimes 141 (SC).

8. On the other hand, it is submitted by the Ld. counsel for the respondent (NCB) that the allegations against the petitioner are grave and serious in nature. He further submitted that the bail of the co-

accused has been dismissed by this court vide order dated 24.11.2020. He further submitted that the petitioner is a part of drug syndicate dealing in drug trafficking and the petitioner is a foreigner and he may abscond, if released on bail.

9. Ld. counsel for the respondent (NCB) has relied upon the following judgments :

- (a) State of Gujrat Vs. Salimbhai Abdulgaffar Sheikh & Ors. (2003) 8 SCC 50.
- (b) State through Secretary, Central Narcotic Department, Lucknow Vs. Syed Amir Hussain (2002) 10 SCC 88.
- (c) Achint Navinbhai Patel alias Mahesh Shah Vs. State of Gujarat & Anr. (2002) 10 SCC 529.
- (d) Supdt. Narcotics Control Bureau Chennai Vs. R. Paulsamy 2001 SCC (CrL.) 648 (SC).
- (e) State of Madhya Pradesh Vs. Kajad-IT 2001(7) SC 560.
- (f) Intelligence Officer, Narcotics C. Bureau Vs. Sambhu Sonkar & Anr. AIR 2001 SC 830 (SC).
- (g) Babua alias Tazmul Hossain Vs. State of Orissa -2001 AIR SCW 682 (SC).

- (h) UOI Vs. Aharwa Deen 200 VI AD (SC) 155.
- (i) UOI Vs. Ram Samuj & Anr. 1993 (3) CC Cases (SC) 22.
- (j) UOI Vs. Thamisharasi & Ors. 1995 SCC (Crl.) 665 (SC).
- (k) Heera Lal Vs. State 2003(2) CC Cases (DHC)170.
- (l) Md. Ahshan Vs. The State (NCT of Delhi) 2004 (1) JCC 13.
- (m) Mohd. Asmahil @ Mohd. Ismail @ Iqbal Bhai Vs. NCB-Crl. M (M) No. 354/2002 decided by Delhi High Court on 15.04.2002.
- (n) Sanjeev Kumar Vs. NCB-Crl. Misc.(M) No. 3962/2002 decided by Hon'ble Mr. Justice RC Chopra of DHC on 17.02.2003.

10. As far as the judgments relied upon by the Ld. counsel for the petitioner are concerned, they are distinguishable on facts and circumstances and it is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts and circumstances of each case. The ratio of one case cannot be applied mechanically to other case without considering their factual situation and circumstances because a slight difference in the facts or additional facts makes a lot of difference in precedential value of a decision.

11. In the instant case, on 10.01.2019 a secret information was received and petitioner was intercepted at IGI airport while he was

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travelling to Dar-Es-Sallam via Doha and during search 24.5 Kg. of Pseudoephedrine was recovered from his bag. The petitioner during investigation tendered his voluntary statement U/s 67 NDPS Act and admitted the recovery. The petitioner was supposed to hand over the suit case containing Pseudoephedrine to his co-accused at Tanzania which was seized from his possession. During investigation, mobile phone of the petitioner and other co-accused persons were examined and it was found that they were in constant touch with each other.

12. As far as the contention of the counsel for the petitioner that the manner in which the samples were drawn was not as per law as the sample were not taken from each packet and this is totally a violation of law in drawing the sample of drugs and the other contention that while issuing notice U/s 50 of the NDPS Act the mandatory provisions of Section 50 NDPS Act have not been followed, both the contentions are liable to be rejected as they relate to violation of the procedural aspects which can only be looked into during the course of trial and cannot be deeply analyzed at the stage of bail.

13. The other contention of the counsel for the petitioner is that embargo of Section 37 of NDPS Act is not applicable as the substance recovered is neither a narcotic drug nor a psychotropic substance. In the instant case, there is a recovery of huge quantity of Pseudoephedrine i.e. 24.5 Kg. which was recovered from the

possession of the petitioner while he was present at the IGI airport for travelling to Tanzania. The Supreme Court in the case of **Union of India Vs. Prateek Shukla, Criminal Appeal No. 284 of 2021 decided on 08.03.2021** has cancelled the bail of the petitioner who was found in possession of controlled substance namely acetic anhydride.

14. In the instant case, looking into the allegations against the petitioner, quantity of the substance recovered and also the fact that the petitioner is a foreigner and bail of the co-accused has been dismissed by this court vide order dated 24.11.2020, no ground for bail is made out, the bail application is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

NOVEMBER 09, 2021

Sumant