

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

Reserved on : 07.10.2021

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Pronounced on : 23.11.2021

+ **BAIL APPLN. 3208/2020**

DIPTI PURTY @ SUNITA

..... Petitioner

Through: Mr. Harsh Prabhakar, Advocate
(DHCLSC)

versus

STATE

.... Respondent

Through: Mr. Raghuvinder Verma, APP for the
State with SI Surender.

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 case FIR No. 44/2015 under Sections 18/29/61/85 of NDPS Act registered at P.S. Special Cell Delhi.

2. Briefly stated, the facts of the case are that some mobile numbers i.e. 9582461280, 9654123551, 7351687855 and few others used by suspicious persons suspectedly indulging in illegal activities were under lawful interception in the office of Special Cell/NR, Sector-BAIL APPLN. 3208/2020

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06, Rohini, Delhi. During interception of these mobile numbers, efforts were made to identify these suspicious persons from technical surveillance. During this process users of above mentioned mobile numbers were found indulged in drug trafficking activities and they used to visit Delhi frequently. Although users of these mobile numbers were very cautious about their conversation and they used code words and sometimes they communicate through SMS but some time they were heard talking about quality, rate and quantity of drugs.

3. SI Jeetendra Tiwari was deputed to monitor the interception of above mobile numbers and he used to brief Insp. Attar Singh about the outcome of said interception. Insp. Attar Singh, himself also used to monitor the interception and he had lodged DD No. 34 dated 27/06/2015 in Special Cell/NR and said DD entry was put up before ACP/Special Cell. SI Jeetendra Tiwari had deputed his sources to collect intelligence about members of above syndicate.

4. On 28/06/2015, at about 05:00 PM, SI Jeetendra Tiwari had received secret information in office of Special Cell/NR through one of sources already deployed by him that Musfique Alam, a resident of Bihar and one lady, a resident of Assam, who used to supply opium from Assam and thereafter they further used to hand over the same to one of their contact in Delhi, would come at about 06:00 PM to 07:00

PM, near ISBT, Kashmiri Gate, Foot-over bridge, towards Yamuna side.

5. SI Jeetendra Tiwari immediately reduced aforesaid information in writing upon a separate piece of paper and told Inspr. Attar Singh about the said information in his office and introduced him with the informer. Inspr. Attar Singh verified said information from informer and he further passed said information to ACP/ Special Cell/NR, telephonically at his residence who directed to take appropriate action as per law. SI Jeetendra Tiwari lodged DD No. 07 at 05:15 PM in this regard and later on copy of the said DD entry and information recorded on a separate piece of paper was put up before ACP/Special Cell/NR through Insp. Attar Singh.

6. A raiding party led by SI Jeetendra Tiwari, apprehended Musfique @ Babloo S/o Faruk Alam R/o H No 134, Mandel, Anchal Baisi, Distt Purnea, Bihar and a lady as Dipti Purtti @ Sunita (present petitioner) w/o Jochef Purtti R/o Ward No-03, Golaganth, Assam. SI Jeetendra Tiwari disclosed the identity of police to both the accused persons. Written notices u/s 50 NDPS Act were served upon them in this regard. Mushfiqe Alam was made to understand the contents of notice and meaning of gazzetted officer and magistrate. They did not express their desire to be searched before any gazzetted officer or magistrate or to take search of any member of raiding party or police

vehicle prior to their own search. Both of them express their inability to write. On this, SI Jeetendra Tiwari recorded their refusal in this regard upon original copy of notice u/s 50 NDPS Act in his own hand writing.

7. Thereafter SI Jeetendra Tiwari took bodily search of Mushfique Alalm. SI Jeetendra Tiwari took a brown (khaki) colour pithoo bag from Mushfque Alam and checked it. On checking one transparent jar having black colour substance in semi-solid form was found in the said bag alongwith the cloths. Recovered substance was checked with testing kit and it was found to be opium. On weighing upon electronic scale, opium alongwith transparent jar was found 5.250 kgs. Thereafter, SI Jeetendra Tiwari took one red and green bag from petitioner Dipti Puriti on which TATA NANO was written, out of which, one transparent jar was taken out in which one black colour semi-solid substance was recovered. Recovered substance was checked with testing kit and it was found to be opium. On weighing upon electronic scale, opium alongwith transparent jar was found 5.200 kgs. Said transparent jar was marked as 'B'. Same were taken into possession through seizure memo. Thereafter following proper procedure seal was put on seized contrabands and seal was handed over to W/HC Arti, No. 496/SB.

8. SI Jeetendra Tiwari prepared rukka and sent it through SI Raj Singh No. 6395/D to PS Special Cell for getting FIR lodged. SI

Jeetendra Tiwari also handed over all six sealed parcels, one FSL form and carbon copy of seizure memo of opium to SI Raj Singh to hand over the same to SHO PS Special Cell for countersealing the case property and depositing of the same in malkhana. SI Raj Singh departed from spot at about 08:30 PM on 28/06/2015. SI Raj Singh had handed over six sealed parcels, one FSL form having seal of JT alongwith carbon copy of seizure memo to Insp. Udaiveer, SHO PS Special Cell who counter sealed the case property with his seal of SHOSPLCELL1 and deposited the same in Malkhana.

9. Thereafter, SI Sandeep Kumar arrested accused Mushfique Alam and accused Dipti Purti (present petitioner). Their detailed disclosure statements were also recorded. SI Sandeep Kumar informed telephonically to Inspr Attar Singh about disclosure statements of the arrested accused persons. Thereafter, as per the directions of the senior officers, SI Sandeep Kumar along with the arrested accused persons and staff departed to GPO Kashmiri Gate in pursuance of the disclosure statement made by accused Mushfique Alam.

10. After reaching GPO, Kashmiri Gate, SI Sandeep Kumar alongwith the accompanied staff apprehended Rahis. SI Sandeep Kumar disclosed his identity to the accused Rahis. Thereafter, SI Sandeep Kumar told him about the disclosure statement of Mushfique Alam and Dipti Poorti. Thereafter, a notice u/s 50 NDPS Act was served upon Rahis. SI

Sandeep Kumar took a blue colour bag from Rahis and checked it. On checking one transparent jar having black colour substance in semi-solid form was found in said bag alongwith the cloths. Recovered substance was found to be opium. On weighing upon electronic scale, opium alongwith transparent jar was found 5.250 Kgs. Samples were sealed and FSL form was filled.

11. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report and also perused the records of this case.

12. It is submitted by the Ld. counsel for the petitioner that the petitioner is in J.C. since 28.06.2015. About 10 more prosecution witnesses are yet to be examined. It is further submitted by the Ld. counsel for the petitioner that owing to inordinate delay in the completion of the proceedings, the constitutional rights of the petitioner is being violated and he relied upon the Judgment of the Supreme Court of India in Criminal appeal No. 98 of 2021 titled as Union of India Vs. K.A. Najeeb delivered on 01.02.2021; 1993 SCC OnLine Raj 243 Angrej Singh Vs. State of Rajasthan; 2010 (2) RCR (Criminal) 566 Dalip Singh Vs. State of Punjab.

13. It is further submitted by the Ld. counsel for the petitioner that the petitioner is a woman with no past criminal antecedents and she is not in a position to influence the witnesses. He further submitted that

there is a breach of mandate of Section 52 A of the NDPS Act. He further submitted that the samples which have been sent to FSL for forensic examination were not drawn in the presence of Metropolitan Magistrate and the said samples were not utilized for the purpose of being sent to the FSL for expert opinion.

14. On the other hand, it is submitted by the Ld. APP for the State that the petitioner is a part of the drug syndicate and the CDR connectivity of the petitioner through her mobile No. 8474870182 with other co-accused persons clearly establishes the active connection and participation of the petitioner in the sale and purchase of drugs. He further submitted that the recovery from the co-accused persons including the petitioner is commercial in nature and thus bar U/s 37 of the NDPS Act is applicable.

15. In the instant case, as per the prosecution 5.200 Kg. of opium was recovered from a red & green bag which was being carried by the petitioner and the material on checking was found to be opium and the quantity of opium recovered was under the category of commercial quantity.

16. It was mainly contended by the Ld. counsel for the petitioner that there is a violation of mandatory provisions of the NDPS Act like sampling being not done in a proper manner which is violation of Section 52 A of the NDPS Act and the samples which were recovered

were not utilized for the purposes of sending to FSL for expert opinion. As far as these two contentions of the Ld. counsel for the petitioner are concerned, the same require evidence and is a matter of trial as to whether the sample was as per the mandate of law or not. Therefore, the judgment delivered on 13.03.2020 by the Co-ordinate bench of this Court in the case of *Amani Fidel Chris V. Narcotics Control Bureau* is not applicable at this stage as the said judgment is on acquittal after the evidence.

17. As far as the question of delay is concerned, no doubt there is a delay but one cannot lose sight of the fact that for the last two years all the proceedings mostly the evidence has taken a back seat due to the Corona Pandemic and looking into the serious allegations, the petitioner cannot be given any benefit of the said delay.

18. In the present case, the recovered opium from the possession of the petitioner is 5.200 Kg. which is a commercial quantity so rigors of Section 37 of NDPS Act applies in this case.

19. 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.

20. 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)

21. 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. Looking into 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.

22. In the instant case, the petitioner was found carrying a red & green bag and when it was searched it was found to contain 5.200 Kg. of opium which is a commercial quantity, so rigors of Section 37 are applicable in this case. So keeping in view the entire facts and circumstances, the petitioner is not entitled to bail. The present bail application is accordingly dismissed.

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

RAJNISH BHATNAGAR, J

NOVEMBER 23, 2021

Sumant

