

(VIA VIDEO-CONFERENCING)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 09.07.2021

%

Pronounced on : 22.07.2021

+ BAIL APPLN. 2302/2019

MOHAMMED YAKOOB

.....Petitioner

Through: Mr. J.S. Kushwah, Advocate

Versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Rajesh Manchanda, SPP for
NCB.

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 bail in case No. VIII/06/DZU/2018 U/s 8(c), 21, 23 & 29 of NDPS Act pending in the court of Shri Ajay Kumar Jain, Special Judge, NDPS, New Delhi.

2. In brief, the facts of the case are that on 04.03.2018, a secret information received by Shri B.L. Bairwa, Intelligence Officer that two passengers may be apprehended with some Narcotic Drugs at IGI Airport.

BAIL APPLN. 2302/2019

Page 1 of 5

In pursuance of that on 04.03.2018, the intelligence officer along with the team proceeded to IGI Airport and apprehended two persons Taukir Alam and present petitioner Mohd. Yakoob. The baggage of accused Taukir Alam was searched and from the said baggage, two brown colour carton boxes were found and on opening the first carton box, a black colour polythene bag was found in the said box and on the side of the said polythene bag, packets of biri (Bharat Special Company) were kept and in the center, a black colour polythene was lying containing flips of wheat rice and was also containing phensedyl codeine cough syrup 100 ml bottle (10 mg codeine in each 5 ml) were concealed and on counting the same, they were found to be 50 in numbers and similarly, second carton box was opened and on opening, phensedyl 100 ml of 49 bottles were found and that way total 99 bottles were found from the baggage of Taukir Alam having batch No.PHB7236.

3. Thereafter, the baggage of present petitioner Mohd. Yakoob was opened and one brown colour carton was found and on opening the said brown colour carton the same also found to contain flips made of wheat rice in the side and was also containing phensedyl codeine cough syrup 100 ml bottle (10 mg codeine in each 5 ml) concealed and on counting the same, it was found 148 in numbers having batch No.PHB7217.

4. I have heard the Ld. counsel for the petitioner, Ld. SPP for the respondent (NCB) and perused the records of this case.

5. It is submitted by the Ld. counsel for the petitioner that out of 99 bottles only one-one bottle for two samples were taken out and kept

BAIL APPLN. 2302/2019

separately and the remaining 97 bottles were kept in a carton in the case of Taukir Alam (co-accused) and similar is the case of petitioner Mohammed Yakoob from whom allegedly 148 bottles were recovered and one-one bottle for two samples were taken out and the remaining 146 bottles were seized and sealed. Ld. counsel for the petitioner submits that the procedure followed by the NCB (respondent) is not a proper procedure in drawing the samples and the NCB (respondent) should have drawn the samples from each recovered bottle which has not been done in the instant case and this is in complete violation of the sampling procedure and it cannot be said that all the bottles were containing the contraband as alleged. It is further submitted by the Ld. counsel for the petitioner that this violation in drawing the samples is a reasonable ground for the acquittal of the accused. He has placed reliance upon **Sujit Tiwari Vs. State of Gujarat and Another 2020 (1) Crimes 141 (SC) and Edward Khimani Kamau Vs. Narcotics Control Bureau 2015 (8) LRC 313 (Del).**

6. On the other hand, it is submitted by the Ld. SPP for the NCB (respondent) that the recovery relates to commercial quantity of contraband and there is an embargo of Section 37 of the NDPS Act. He further argued that in total 247 bottles were recovered from their baggage which they were taking to Riyadh. It is further submitted by the Ld. SPP that there is no infirmity in drawing the samples as all the bottles were of the same size and had same label. He further submitted that the charges have been framed on 06.07.2019 and the framing of the charge has not been challenged by the petitioner or the co-accused. It is further submitted by the Ld. SPP that the recovery has been effected from the bag which the petitioner was carrying

BAIL APPLN. 2302/2019

and the recovery of the seized contraband is not from the person of the petitioner so the provisions of Section 50 of the NDPS Act does not apply and the case of the petitioner is covered under the judgment of **Vijay Singh Chandubh Jadeja Vs. State of Gujarat and Virender Kumar Vs. State of Himachal Pradesh**. It is further submitted by the Ld. SPP that there are no violation of any mandatory condition and all the contentions raised by the petitioner are matter of trial.

7. In the instant case, the main argument raised by the Ld. counsel for the petitioner is that there is infirmity in drawing of the samples and the proper procedure has not been followed by the NCB (respondent) at the stage of drawing the samples. The Ld. counsel for the petitioner has argued that the samples should have been drawn from each of the bottles allegedly recovered from the petitioner. This argument of the Ld. counsel for the petitioner, though, appears to be somewhat attractive but in the facts and circumstances of the present case, keeping in view the recovery effected from the petitioner fails to cut any ice.

8. In the instant case, as per the prosecution 200 bottles of phensedyl codeine cough syrup were recovered. The seized bottles were of the same size and were having batch numbers on them i.e. batch No. PHB7217 & PHB7236. Therefore, in these circumstances, since these were cough syrup bottles which are ordinarily available in the market for treating cold and cough, cannot be said to have different concentration of medicines as they are prepared under the same formulation as per their batch numbers. Therefore, in my opinion, there is no infirmity in the manner in which the

sample has been drawn. As far as the non compliance of mandatory provisions of Section 50 of the NDPS Act is concerned, the same is a matter of trial. The application lacks merits and the same is, therefore dismissed.

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

RAJNISH BHATNAGAR, J

JULY 22, 2021

Sumant

