



IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 13.09.2022

Order delivered on: 28.09.2022

+ **BAIL APPLN. 84/2022**

MOHD AKHTAR @ RAJA

..... Petitioner

Through: Mr. Vikas Gautam, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Aman Usman, APP for State.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. An application has been preferred on behalf of the petitioner under Section 439 Cr.PC for grant of regular bail in FIR No.63/2015 under Sections 18/21/25/29 of the NDPS Act, 1985.

2. In brief, as per the case of the prosecution, during monitoring of interception of mobile numbers, suspectedly used by drug peddlers, it was revealed that members of drug syndicate are in touch with each other and indulge in drug trafficking in Delhi, Punjab, J & K and Rajasthan. Further, on receiving secret information on 18.11.2015, a trap was laid at Burari crossing where Durgesh @ Mangal handed over a packet containing 1 kg white coloured heroin to Harjinder Singh. Both of them were apprehended and 1 kg heroin was recovered from the scooty of Durgesh @ Mangal at the spot. The Verna car used by Harjinder and the scooty used by Durgesh @



Mangal were seized at the spot. Also, many mobile numbers and sim cards including 8558054298, which was under interception were seized. Further, accused Durgesh @ Mandal disclosed that he along with Mohd. Akhtar @ Raja (petitioner herein), a resident of Jafrabad, Delhi used to supply narcotic drugs to various drug suppliers in Delhi and Punjab. He also disclosed that Mohd. Akhtar @ Raja used to get supply from one Sehjad as well as from a Nigerian national in Vikaspuri. He also disclosed that Mohd. Akhtar @ Raja had kept huge quantity of heroin, opium and alprazolam at his rented house in Laxmi Nagar, Delhi. Accordingly, on the house search of Durgesh @ Mangal at 1/184, Laxmi Nagar, 2 kgs of opium and 1kg alprazolam were recovered at the instance of Durgesh @ Mangal. During investigation, Ubah Casmir Amobi, a Nigerian national was arrested on 19.11.2015 from Vikas Puri at the instance of Durgesh @ Mangal and 300 gms of heroin was recovered. Further, on disclosure of Durgesh @ Mangal, Ashwani @ Abu Bakr was arrested on 20.11.2015 near Seelampur, Delhi wherein he came to receive a consignment of heroin from Mohd. Akhtar @ Raja. One swift car along with 3 mobile handsets and many sim cards were recovered from Ashwani @ Abu Bakr. Also 500 gms of heroin was recovered from the house of Ashwani @ Abu Bakr at Punjab.

During investigation, Mohd. Akhtar @ Raja was arrested from Darya Ganj on 25.11.2015. On 27.11.2015, after taking police remand, 525 gms of heroin was recovered from his newly purchased flat at Seelampur, Delhi. Further, on disclosure of Mohd. Akhtar @ Raja, accused Shabir Ahmed Bhat @ Sehjad was arrested on 29.11.2015 in his Eco Sports car in New Friends Colony and 1.8 kgs of heroin was recovered on search of his car. Also, on



01.12.2015, Ezech Chinedu Joseph and his associate Ugo Geoffery Franklin were arrested in Zeta car in New Friends Colony and 1 kg of heroin was recovered from their possession. One Imamudin was also arrested on 03.12.2015 from Jungpura Extension and 400 gms of heroin was recovered from him.

3. Thus, as per investigation complete chain of 9 drug suppliers was established with the arrest of aforesaid persons. Charge-sheet was accordingly filed and charge is stated to have been framed against the accused.

4. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and is in custody since 25.11.2015. It is further submitted that no contraband was recovered from the possession of the accused on 25.11.2015 when he was arrested and the alleged recovery has been effected only during the police custody remand. It is also urged that the recovery was effected from house No.7/14, Second Floor, Gali No.5/10, near New Moon Public School which was opened with a key alleged to have been recovered from the personal search of the petitioner on 25.11.2015. However, the entries of the aforesaid key have not been reflected in the Malkhana Register as per Entry No.2665 in the Register. It is also urged that the police did not comply with the provisions of Sections 41, 42 (1) & (2) of NDPS Act, 1985 without any valid authorization. Reliance is also placed upon '*State of Punjab Vs. Balbir Singh*' 1994 (3) SCC 299, orders passed by Delhi High Court in '*Deepak Pandey Vs. State*', Bail Application No.903/2019. It is also submitted that certain voice calls conversations are relied by the investigating agency but there is no whisper about dealing of



drugs. Reference made to the judgment passed in '*Chenna Boyana Vs. State of Maharashtra*' 2007 (1) AD SC 119, '*Sujit Tiwari Vs. State of Gujarat*', CrI. Appeal No.1897/2019 and '*Desh Raj Vs. Central Bureau of Investigation*', CrI. M. No.36767/2012. It is also urged that the trial is likely to take some time and accused is in custody for a period of about 7 years. Reliance is also placed upon '*Supreme Court Legal Aid Committee representing under Trial Vs. Union of India*' 1995 SCC (CrI.) 39.

5. On the other hand, the application has been vehemently opposed by the learned APP for the State. It is pointed out that during the course of interception, incriminating voice calls of accused were intercepted in the office of Special Cell regarding drug trafficking activities and FSL report has been obtained. It is also urged that the mandatory provisions of the NDPS were duly complied with prior to affecting the recovery. It is also pointed out that pursuant to the disclosure statement after initial arrest of Durgesh @ Mangal, the other members of the drug syndicate were arrested and heavy recoveries have been made. It is also pointed out that the present petitioner already stands convicted in FIR No.38/2006 under Sections 21/29 of the NDPS Act registered at Police Station Narcotics Branch and FIR No. 55/2008 under Sections 21/29 of the NDPS Act registered at Police Station Special Cell, Delhi. It is also submitted that during investigation, financial investigation of the property suspectedly acquired by accused persons including Mohd. Akhtar @ Raja by the money derived from sale proceeds of narcotic drug was identified i.e. house No.7/14, Second Floor, Gali No.5/10, near New Moon Public School and scooty No. DL5S BS 9252 and have been frozen in accordance with law. It is further submitted out that CDR



connectivity of petitioner from his Mobile No.7837353762 and 9988631853 with accused Ashwani @ Abu Bakar on mobile No. 9592872613 and 8196941672, with accused Durgesh @ Mandal on his mobile No. 8591524237 and accused Shabir Ahmed Bhat @ Sehjad on his mobile No. 9891861453 stands disclosed which corroborates that the drug syndicate was operating in close connectivity with each. It is also urged that there is a genuine apprehension that the petitioner is likely to flee in case he is released on bail. It is also pointed out that ownership documents of the house of the petitioner and statement of previous owner who had sold to Mohd. Akhtar @ Raja also stand recorded.

6. I have given considered thought to the contentions raised.

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.*

Based upon the precedents, the test which this Court is required to apply while granting bail is whether there are reasonable grounds to believe that accused is not guilty of such an offence and whether he is likely to commit any offence while on bail.



7. It may be noticed that a big drug syndicate was uncovered during the course of investigation in the present FIR No.63/2015, whereby identity of nine accused stands established and heavy quantities of heroin/opium/alprazolam have been recovered. The recoveries effected from different accused also reflect deep connectivity in running the drug syndicate and trafficking of narcotics substances.

So far as the applicant Mohd. Akhtar @ Raja is concerned, his name was revealed in the statement of co-accused Durgesh @ Mangal and further on his arrest from Darya Ganj on 25.11.2015 and after police custody remand on 27.11.2015, 525 gms of heroin stands recovered from his newly purchased flat bearing No. 7/14, Second Floor, Gali No.5/10, near New Moon Public School, Chauhan Bangar, Seelampur, Delhi. The challenge to the alleged recovery on the ground that the entry of key of the premises recovered from the personal search was not reflected in the Malkhana register can be duly looked into during the course of trial on the examination of the concerned witnesses. At this stage, apart from the aforesaid recovery, co-accused Shabir Ahmed Bhat @ Sehjad was arrested on his disclosure, from whom a further recovery of 1.8 kg of heroin was made from the search of his Eco Sports car. It is also pertinent to notice that on the basis of the CDR details, there appears to be clear connectivity between the petitioner along with other co-accused Ashwani @ Abu Bakr, Durgesh @ Mangal as well as Shabir Ahmed Bhat @ Sehjad. Also, earlier involvements of the applicant Mohd. Akhtar @ Raja have been pointed out in FIR 38/2006 under Sections 21/29 of the NDPS Act, 1985 Police Station Narcotic Branch and



FIR No.55/2008 under Sections 21/29 of the NDPS Act, 1985 Police Station Special Cell in which the petitioner stands convicted.

8. In the facts and circumstances, merely because the petitioner has been in custody since 25.11.2015 cannot be the sole ground for releasing him on bail. It also needs to be ascertained in case the delay in trial can be attributed to the prosecution or if the accused themselves have been responsible for delay in trial apart from situation arising out of Covid-19 pandemic. The restrictions placed under sub-Section (2) of Section 37 of the NDPS Act are to be kept in mind even while considering the prayer for bail on grounds of delay in conclusion of trial. The petitioner has failed to demonstrate if there are grounds to believe that he is not guilty of the offence alleged against him, for being admitted to bail in the light of corroborating evidence on record indicating his connectivity with drug syndicate. It has been observed by Hon'ble Supreme Court of India in '*NCB vs. Mohit Aggarwal*', 2022 SCC OnLine SC 891 that the length of the period of custody or the fact that chargesheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the applicant under Section 37 of the NDPS Act.

9. In the facts and circumstances, considering the evidence on record, I am of the considered opinion that no grounds for grant of bail are made out in the light of twin conditions laid down in Section 37 of the NDPS Act.

Application is accordingly dismissed.

However, considering the facts and circumstances, learned Trial Court is directed to make an endeavour to conclude the proceedings preferably



NEUTRAL CITATION NO: 2022/DHC/004011

within nine (09) months from the date of receipt of this order, subject to the condition that no adjournments are sought on behalf of the accused.

A copy of this order be forwarded to the learned Trial Court for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

SEPTEMBER 28, 2022/A

