



IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 18.05.2022

Order delivered on: 03.06.2022

+ BAIL APPLN. 744/2022
GANESH PUN

..... Petitioner

Through: Mr. Karan Verma, Advocate with Ms.
Sushma Sharma, Advocate.

versus

UNION OF INDIA NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Sr. Standing
Counsel for NCB with Mr. Shashwat
Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. This is an application under section 439 of Cr.P.C filed on behalf of the applicant/petitioner seeking regular bail in NCB No.VIII/03/DZU 2018 SC No. 29/2019 registered under sections 8(c) and 22(b) of NDPS Act.

2. In brief, as per the case of prosecution, NCB on 12.02.2018 searched a courier parcel bearing Airway Bill No.6053235871 at DHL Express India (P) Ltd., 71/03 Rama Road, Industrial Area, Delhi. On examination of the said parcel, the sender details were mentioned as Sushma Chetri, Arabinda Pelly, Patulia, Titagarh, West Bengal, Kolkata and the Receiver's name was reflected as Mrs. Michele Barnett, 5701, Kinsley Circle, Plano TX-75093,



USA. Upon opening of the said parcel, it was found to contain a cardboard packet wrapped in a yellow coloured plastic of DHL, which on opening contained a small size plastic Sewing Machine of white colour with Mark 'Ming Hui'. The sewing machine, on disassembling, was further found to contain transparent packets with white-coloured tablets which were pasted inside the sewing machine with brown-coloured adhesive tape. All the 6 transparent polythenes were removed and the white-coloured tablets in each packet were marked Nitrosun-10. On search on internet, the said tablets were found to be of Psychotropic Substance under the name of Nitrazepam (At No. 221 as per Notification dated 16-07-1996). Since the tablets were similar and all were marked Nitrosun-10, the total quantity of tablets was counted which came out to be 200 and weighed 108 grams. The seizure proceedings were conducted in the presence of independent witnesses and a *Panchnama* was drawn on 12-02-2018.

During investigation, efforts were made to locate Sushma Chetri, who along with her husband Ganesh Pun (i.e. the petitioner) was found at Kolkata. From the search of the flat, further huge quantity of psychotropic substance tablets was found and a separate case was registered by the NCB, Kolkatta.

3. During investigation, on 25.09.2018, summons under Section 67 of NDPS Act were issued to Sushma Chetri and in pursuance thereof, she tendered her voluntary statement wherein she revealed that mobile number and Photo ID attached with parcel belonged to her and the same were attached with the seized parcel by her husband Ganesh Pun while sending the seized parcel. Also, statement of Ganesh Pun was recorded who revealed



that he had booked the recovered parcel and concealed 200 tablets (Nitrosun-10) in a plastic sewing machine and booked the same by using the ID of his wife Sushma Chetri. The petitioner was further identified by Arun Adhikari, Booking Clerk at Blue Dart & DHL.

4. Learned counsel for the petitioner submits that the petitioner is in custody since 15.11.2018 except for a period of interim bail. The earlier application is stated to have been dismissed by this Court vide order dated 11.02.2020. It is further submitted that the application for regular bail was further again withdrawn before this Court vide on 30.11.2021.

On merits, the prosecution case is assailed on the following grounds:-

- (i) Nitrosun-10 is a medicine used to cure insomnia and is easily available in the market;
- (ii) No sample was drawn at the time of seizure of the alleged contraband on 12.02.2018 in violation of Standing Orders No. 01/88, 02/88 and 01/89 issued by the Government of India;
- (iii) Executive Magistrate has no power to certify the inventory under Section 52-A of the NDPS Act;
- (iv) Executive Magistrate, Rajouri Garden exceeded its jurisdiction and had no jurisdiction to certify the correctness of inventory as the alleged seizure was made within the jurisdiction of Tis Hazari Court whereas the office of the NCB is within the jurisdiction of Patiala House Courts;
- (v) There is delay of 324 days in drawing the samples;



- (vi) The substance from each of the pouches was mixed in a single packet before drawing any sample and, therefore, identity of substance in each pouch was lost;
- (vii) The present case falls under the category of intermediate quantity and, as such, embargo under Section 37 of the NDPS Act is not attracted;
- (viii) The presumptions under Section 35 & 54 of the NDPS Act are not attracted.

5. On the other hand, the application has been vehemently opposed by the learned counsel for the respondent. It is urged that the earlier application was dismissed vide a detailed order by this Court on 11.02.2020 and another application was withdrawn on 30.11.2021. It is urged that in absence of any change in circumstances, the order cannot be reviewed. The petitioner is also stated to be facing separate trial under NDPS Act qua huge quantity of contraband recovered from his house at Kolkata.

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

The earlier bail application was dismissed vide detailed order dated 11.02.2020 passed by Hon'ble Mr. Justice Brijesh Sethi. It was noticed that the petitioner is dealing with narcotic drugs and a huge quantity of psychotropic tablets was also separately recovered, in respect of which a case stands registered at Kolkata, in which he was released on default bail. The bail was further denied observing that so far as minor discrepancies or contradictions are concerned, these will be considered by the learned Trial Court at the appropriate stage but the same cannot be examined at this stage



as the law is well settled that at the time of bail, the evidence need not be discussed or analyzed in detail. It was noticed that identity of the petitioner also stands established by the Booking Clerk.

The learned Trial Court vide order dated 15.09.2021 has again denied the bail, considering the gravity of offence and the fact that the sentence even for the intermediate quantity is ten years.

Thereafter, another application for bail filed on behalf of the petitioner was dismissed as withdrawn before learned Predecessor on 30.11.2021. I am of the considered view that it may be inappropriate to reconsider the view taken by Hon'ble Mr. Justice Brijesh Sethi while disposing the earlier bail application, without any change in circumstances, merely on the ground that the petitioner/accused is in custody. The discrepancies, if any, in the case of the prosecution can be appropriately looked into after the examination of the material witnesses by the learned Trial Court. The accused also appears to be illegally dealing in psychotropic substances as he also faces prosecution in another case wherein commercial quantity was recovered from his residence.

Reliance may also be placed upon *State of M.P. v. Kajad*, (2001) 7 SCC 673 wherein it was observed that successive applications are permissible in changed circumstances but without change in circumstances, the second application would be deemed to be seeking review of the earlier judgment, which is not permissible under criminal law. Reference therein was also made to *Hari Singh Mann v. Harbhajan Singh Bajwa*, (2001) 1 SCC 169.



For the aforesaid reasons, the application is dismissed. Nothing stated hereinabove shall tantamount to an expression on the merits of the case.

However, considering the fact that the petitioner/accused is in custody for a considerable period, learned Trial Court is directed to conclude the trial expeditiously in a time bound manner, within a period of six months.

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

(ANOOP KUMAR MENDIRATTA)
JUDGE

June 03, 2022/A