



IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 29.08.2022

Order delivered on: 26.09.2022

+ BAIL APPLN. 2849/2021
PAPPU PASWAN Petitioner
Through: Mr. Krishna M. Singh, Advocate.

versus

STATE NCT OF DELHI Respondent
Through: Mr. Laksh Khanna, APP for State.
SI Jeetendra Singn, PS Mahendra Park
and IO ASI Vinod.

+ BAIL APPLN. 1011/2022
UPENDER Petitioner
Through: Mr. Yogesh Saxena, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Laksh Khanna, APP for State.
SI Jeetendra Singn, PS Mahendra Park
and IO ASI Vinod.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. Separate applications have been preferred on behalf of Pappu Paswan and Upender under Section 439 Cr.P.C. for grant of regular bail in FIR No. 494/2020 under Sections 20 of NDPS Act, 1985 registered at Police Station Mahendra Park.



2. In brief, as per the case of prosecution, on 25.08.2020, PCR call vide DD no. 28 was received at PS Mahendra Park regarding some illegal articles loaded in a vehicle. The same was marked to ASI Jagbir Singh who reached the spot alongwith Ct. Parveen. On reaching the spot i.e. Fruit Mandi, Azadpur, Delhi, complainant Pradeep Sharma informed that he is a Constable in Civil Defence and was posted in Fruit Mandi Azadpur, Delhi under APMC. During his duty hours, he noticed that a truck Tata Eicher 1109, bearing registration no. MH46AR-5558 was parked near Shed No. 7 & 9, water piau in Fruit Mandi, Azadpur and was open from back side. Many plastic bags were lying in the alleged truck which created doubt in the mind of the complainant as fruits are always packed in wooden box and it is vegetables which are generally packed either in jute bags or in plastic bags.

In view of above, Constable Pradeep Sharma intercepted Pappu Paswan (petitioner) and his associate Dharmender Kumar Mehto (driver of the truck) and asked them to show the built/memo of the items lying in the truck but they refused to show any document to him. Thereafter, a PCR call was made.

3. It is further the case of the prosecution that Ct. Praveen entered the truck and on checking, it was found that some of the plastic bags were filled with some thick substance between the bags of Soyabean and on touching and smelling, the substance looked like 'Ganja'. Twelve plastic bags, weighing 293 kg were accordingly found in the truck and seized and deposited in the Malkhana at the police station. The 55 Soyabean plastic bags were also taken in possession through seizure memo. Accordingly, FIR



No. 494/2020 dated 25.08.2021, under Section 20 NDPS Act, PS Mahendra Park was registered.

4. During further investigation, it was disclosed by petitioner Pappu Paswan that he works for one Rakesh @ Rahul (kingpin of the supply of contraband) and he helped the driver of the vehicle in supplying the contraband to the parties. It was further disclosed that the contraband was being brought to Delhi from Vishakhapatnam Andhra Pradesh and was loaded by Rakesh @ Rahul, Raja, Upender and Prasad etc. and was meant to be delivered to one Achhan Khan in Delhi.

5. It is further the case of prosecution that the truck owner company's head office is in Mumbai and the alleged truck in question was managed by the central division based at Hyderabad under Mr. Rahul Kumar Singh, Regional Manager who was also examined during investigation and revealed that the booking details of alleged Soyabean in the name of Upender Singh, were forwarded to him by driver Dharmender.

During investigation, it was also revealed that accused Rakesh @ Rahul lured the petitioner Dharmender to allow supply of contraband in the truck from Vishakhapatnam, Andhra Pradesh to Delhi on payment of Rs.1 lakh and with the condition that all the transportation cost would be borne by Rakesh @ Rahul and bill of the transport will be issued in the name of Kanhiya Grocery and Garments (company of petitioner Upender).

6. Learned counsel for petitioner Pappu Paswan submits that Pappu Paswan is in no manner connected with the alleged contraband (Ganja) recovered in the truck and was merely engaged as a cleaner in vehicle no. MH46AR-5558, which is registered in the name of Schedulers Logistics Pvt.



Ltd. at Panwal, Maharashtra. The petitioner is stated to have no association in loading/unloading or booking of the goods in the vehicle. It is further claimed that the petitioner had absolutely no knowledge or information regarding the contraband. It is further contended by learned counsel for the petitioner that petitioner Pappu Paswan is in custody since 25.08.2020 and is no more required for the purpose of any investigation as the chargesheet has already been filed. The main kingpins Rakesh @ Rahul and Achhan Khan are stated to be absconding.

7. Learned counsel for petitioner Upender submits that the petitioner is a businessman at Faridabad and had visited Vishakhapatnam for the purpose of booking of Soyabean and other items for Faridabad. The petitioner is stated to have been arrested merely on the basis of disclosure statement of co-accused. It is urged that the applicant/petitioner is in no manner connected with the transfer of the contraband and had genuinely disclosed his PAN/GST numbers at the time of booking. It is further contended that the petitioner did not have any role in the transportation of the contraband and was neither known to Pappu Paswan or Dharmender. It is also urged that no CDR has been placed on record by the Investigating Officer to support his association with co-accused.

8. Learned APP for the State vehemently opposes the bail applications and submits that the prosecution case is supported by the statement of one Abhey Pandey and the presence of petitioners alongwith Rakesh @ Rahul as well as co-accused is supported at the relevant time of loading. It is also urged that the proceedings under section 82 Cr.P.C. have been initiated



against the main accused Rakesh @ Rahul and NBWs were also issued against Achhan Khan.

9. 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.

10. The knowledge of the possession of contraband has to be gleaned from the facts and circumstances of a case.

This Court is cautious of the fact that physical possession means physical possession with animus, exercise of dominion and control as a result of concealment or personal knowledge as to existence of the contraband and the intention based on this knowledge.

In order to appreciate the contentions raised by the learned counsel for the petitioner, it is important to refer to the observations of the Hon'ble Supreme Court in *Madan Lal and Anr. v. State of Himachal Pradesh*,



(2003) 7 SCC 465, with reference to the concept of possession as occurring in Section 20 to 22 of NDPS Act.

“20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038 : AIR 1980 SC 52] to work out a completely logical and precise definition of “possession” uniformly applicable to all situations in the context of all statutes.”

11. It is pertinent to note that possession of contraband in the present case is from a private vehicle from a fruit mandi and the information in this regard had been received from Pradeep Sharma, Constable in Civil Defence. Petitioner Pappu Paswan as well as Dharmender Kumar Mehto (driver) were



present at the spot with the truck when alleged bags containing contraband were seized.

12. In the aforesaid context, the statement of ‘Rahul Kumar Singh, who was employed in Schedulers Logistics Pvt. Ltd. as Area Manager’, may also be noticed. He stated that Dharmender had been employed on vehicle no. MH46AR-5558 in June 2020 after verification. Further, Dharmender had informed him on 11/12.07.2020 regarding loading of vehicle on commission basis of customers while the same was parked at Vishakhapatnam. Further, from 04.08.2020 to 17.08.2020, the vehicle was parked without any loading and in between, one ‘agent Rahul’ kept dilly dallying and ultimately agreed to pay charges @ Rs.3000/- per day as halting charges. Further on 18.08.2020, ‘agent Rahul’ loaded soyabean for Delhi and the halting charges and freight charges were paid by ‘agent Rahul’ in the account of company. It is further clarified that by ‘Rahul Kumar Singh, Area Manager’ there was no information with respect to Pappu Paswan, who had been apprehended alongwith driver Dharmender Kumar Mehto.

13. It may also be appropriate to notice the statement of Abhey Pandey who was proprietor of Versa Traders from whom soyabean bags loaded in the truck were purchased. He stated that his mother Smt. Pushpa Pandey was the proprietor of M/s Shri Balaji Enterprises and on seeing bill no. 179, 180 and 1158, he confirmed that the aforesaid bills had been made by him. He further stated that about 7-8 days prior to recording his statement, a person who named himself as Guptaji from Bihar, visited alongwith his three associates whose names were disclosed as Upender (petitioner), Dharmender and Prasad. Upender had disclosed that he is from Haryana. Further the



aforesaid persons had discussed about purchasing 80-90 bags of soyabean. Thereafter, on 17.08.2020, a container no. MH46AR-5558 had reached outside his firm. Said Guptaji of Bihar alongwith five persons again visited his office which included aforesaid Upender (petitioner), Dharmender and Prasad, who had earlier visited the office. Apart from above, two other persons namely Raja and Paswan had also visited. The aforesaid persons were referring Guptaji as Rakesh @ Rahul. The aforesaid Guptaji informed him that the said container/truck belonged to him and the soyabean had to be loaded on the same day. When Abhey Pandey informed that he did not possess 80-90 bags of soyabean, they asked him to load 50 bags which were available in the godown. The GST number was further disclosed by the person who had disclosed his name as Upender and the payment of Rs. 50,400/- was made by said Guptaji. He also stated that on the asking of said Guptaji, Upender, Raja and Prasad, the driver of the container Dharmender as well as Pappu Paswan had loaded the bags on the backside of the container. When he asked them to load the bags below at a space ahead below the egg tray, they informed that some other articles also had to be loaded. He further stated that the container was driven by Dharmender while the person namely Paswan was seated with him. Further the aforesaid Guptaji, Upender, Prasad and Raja had separately left in a different car.

14. It may be observed that on the basis of aforesaid statement of Abhey Pandey recorded during investigation, the presence of Pappu Paswan as well as Upender duly stands corroborated at the time of loading of soyabean bags on the backside of the container, which were loaded after leaving some space for other articles to be loaded in front of soyabean bags. It would normally



generate a suspicion in case any other articles were to be loaded/concealed in the container ahead of the soyabean bags, which were transported. Also, the fact cannot be ignored that instead of the initial purchase of 80-90 bags, the same was reduced to 50 bags of soyabean by Upender, which were available at the aforesaid time. Upender also stood benefitted by the consideration which was paid by said Guptaji @ Rakesh @ Rahul for transportation with soyabean bags.

With respect to Pappu Paswan, it may be observed that he had never been employed by the company as a cleaner but travelled in the truck carrying contraband from Vishakapatnam. The presence of Pappu Paswan during the process of loading as well as at the time of recovery of the contraband from the truck indicates his knowledge of the contraband. The fact that Upender accompanied said Guptaji @ Rakesh @ Rahul, as referred in the statement of Abhey Pandey and Pappu Paswan was present with one Raja, reflects that the parties were known to each other and leads to a suspicion that petitioners had the knowledge of the contraband.

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.

The applications are accordingly dismissed.

(ANOOP KUMAR MENDIRATTA)
JUDGE

September 26, 2022/akc