



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

% **Reserved on : 10.01.2022**
Pronounced on : 12.04.2022

+ **BAIL APPLICATION NO. 1339/2021**

MOHD. HANIF

..... Petitioner

Through: Mr. Kanhiya Singhal, Advocate.

Versus

NCB

..... Respondent

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

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 37 of the NDPS Act, 1985 seeking regular bail in SC No. 37/2017 in Case No. VIII/15/DZU/2016 under Sections 21/23/29 of the NDPS Act, 1985.

2. In brief the facts of the case are that that a parcel with commercial invoice no. 9479924042 was booked on 25.07.2016 at DHL Express Pvt. Ltd. Trinidad & Tobago in the name of Abdul Rehman, House No. E-353, Khadda Colony Extn., Jaitpur, Badarpur, New Delhi-110044, India. The said Parcel was intercepted and seized on 27.07.2016 at Gatwick Airport, UK.



On 28.07.2016, Narcotics Control Bureau received a request from National Crime Agency UK for controlled delivery of said parcel. Consequent to request from National Crime Agency, UK, Director General NCB authorised Zonal Director, DZU who further authorised Sh. Rajeev Sehrawat, IO to undertake the controlled delivery in coordination of NCA, UK as per the provisions of section 50A, NDPS Act. On 03.08.2016, the Parcel was received by authorised I.O. at New Delhi. Further, on 05.08.2016, controlled delivery operation was undertaken in coordination with DHL Courier Staff. The consignee/accused Abdul Rehman @ Dablu received the parcel, at that moment he was intercepted and upon enquiry he revealed that he had received the said parcel on instructions of Mohd. Hanif (Petitioner herein) in the presence of public witnesses. Accused Abdul Rehman made a call to Mohd. Hanif and accused Hanif came at Madan Pur Khadar near crossing to receive the said parcel and at that moment he was intercepted by the team on the pointing of the accused Abdul Rehman. In preliminary inquiry, accused Hanif admitted that he had asked Abdul Rehman to receive said parcel on his behalf. Accused Hanif further revealed that he received the said parcel on instructions of Bartholomew Okoh @ Prince in the presence of public witnesses. Accused Mohd. Hanif made a call to accused Bartholomew Okoh @ Prince on which he told Mohd. Hanif to come at Janak Puri flyover, near Janakpuri Distt. Center to deliver the parcel. Bartholomew Okoh @ Prince was waiting at Janakpuri flyover near Distt. Centre to take the delivery of said parcel and he was intercepted while taking the delivery of the said parcel of controlled delivery operation at Janakpuri Flyover near Janakpuri Distt. Center. On checking the said parcel, 500 grams of Cocaine was recovered



from the foot massager concealed in two round shaped packets. The contraband was seized as per procedure. Hence, the instant Case No. VIII/15/DZU/2016 under Sections 21/23/29 of the NDPS Act was lodged.

3. I have heard the learned counsel for the petitioner, learned Sr. Standing Counsel for respondent and perused the status report filed by the respondent.

4. It is submitted by the learned counsel for the petitioner that the petitioner has been falsely implicated and is in judicial custody since 06.08.2016 and has undergone about 4 years 9 month. It is further submitted that the prosecution has examined only 7 witnesses till date and the trial will take a long time to conclude. It is further submitted that the petitioner was arrested only on the pointing out of other co-accused (Accused no. 3) Abdul Rehman herein and no actual contraband was recovered from the petitioner. It is further submitted that apart from retracted confession of accused persons, there is no material or evidence against the petitioner, moreover, the present case is of a control delivery, which has not been undertaken by an authorized person as section 50A stipulates that it is the Director General of Narcotics Control Bureau or any other officer authorized by him in this behalf who may undertake control delivery of any consignment. It is further submitted that in the present matter, Director General NCB authorized Zonal Director NCB Delhi Zonal Unit to undertake the control delivery, however, the control delivery was undertaken by Shri Rajeev Sehrawat IO. It is further submitted that neither the Director General nor the Zonal Director has been cited as a witness and even the official of National Crime Agency and pilot



of British Airways, who had informed and handed over the control delivery have also not been cited as witness by the prosecution. Ld. counsel for the petitioner has placed reliance on *Tofan Singh vs. state of Tamil Nadu in Criminal Appeal no. 152 of 2013 dated 29th October 2020*.

5. On the other hand, learned Sr. Standing Counsel for respondent submitted that the recovered contraband from the parcel is 500 grams of Cocaine, which is of commercial Quantity. It is further submitted that, Mohd. Hanif/petitioner alongwith other accused persons have admittedly indulged in trafficking/import and possession of contraband- commercial quantity of 500 gms of Cocaine in conspiracy with each other and thus, the embargo under section 37 NDPS Act shall be applicable. It is further submitted that the trial is under process and that the public witnesses had witnessed the proceedings and the operation of controlled delivery, hence, they are crucial witnesses in the case, who are yet to be examined under trial. It is further submitted that the voluntary statements tendered under section 67 NDPS Act have been written by accused in their own handwriting and admitted the factum of deeds as per their own knowledge, which further corroborates the recovery of contraband in the manner accused persons have dealt-with. It is further submitted that as per the voluntary statement tendered under section 67 NDPS Act by Mohd. Hanif, he has admitted to using the mobile no. 8510072976 and as per Call-data record (CDR) Mohd. Hanif (Mobile no. 8510072976) was in constant touch with Abdul Reliman (Mobile no. 7011600510) and Bartholomew Okoh @ Prince (Mobile no. 8826039442) on 04.08.2016 and 05.08.2016 for the purpose of



obtaining delivery of said parcel containing contraband. It is further submitted that there are relevant entries in the CDR showing conversations between Hanif, Prince and Abdul Rehman and from the CDR, it is revealed that the accused Hanif was in constant touch with other accused persons. It is further submitted that in the previous bail application of present petitioner/accused, namely, ***Mohd. Hanif vs. Narcotics Control Bureau (Bail Appl. No. 307 of 2019), decided on 24.06.2020***, this Court after having gone through the facts, circumstances and grounds, was pleased to dismiss the said bail application of accused with detailed observations qua his involvement in conspiracy for the offences charged against him as well as keeping in view the totality of the facts and circumstances of the case, nature of allegations and the material on record. It is further submitted that all the contentions raised by the petitioner herein have already been dealt with by this court in the previous order dated 24.06.2020 and dealing with the same in the present application would be an abuse of process of law as there is no change in the circumstances since dismissal of the previous bail application. It is further submitted that since the trial is yet to conclude, any observations qua the evidential facts of the case shall vitiate the sanctity of criminal-trial proceedings. Learned Sr. Standing Counsel for respondent has placed reliance on ***State of Kerala Etc. vs. Rajesh Etc. (2020 SCC Online SC 81)***, wherein, the Hon'ble Supreme Court has categorically interpreted the mandate and rigors of section 37 NDPS Act, and thereby denied for grant of bail to accused person. Reliance is also placed upon ***Collector of Customs v. Ahmadalieva Nodira, [(2004) 3 SCC 549]*** and ***Union of India vs. Rattan Malik, [(2009) 2 SCC 624]***.



6. Learned Sr. Standing Counsel for respondent has laid much emphasis upon the order dated 24.06.2020 vide which the previous bail application filed by the present petitioner was dismissed by this court after careful consideration of the facts and circumstances of the case, nature of allegations and the material on record, with detailed observations qua his involvement in conspiracy for the offences charged against him. It is pertinent to note that all the contentions raised hereinabove by the learned counsel for the petitioner have already been dealt with and comprehensively discussed and findings in this regard have also been given by this Court vide order dated 24.06.2020. The contentions raised in the present matter appear to be a replica of the contentions raised in the previous bail application and the same stands threadbare discussed vide the aforesaid order. There is no change in the circumstances since dismissal of the previous bail application except of the fact that one more year has elapsed. In view of the above, the bail application is devoid of any merit and therefore, deserves to be dismissed.

7. However, learned Trial Court shall make all endeavours to expedite the trial.

RAJNISH BHATNAGAR, J

APRIL 12, 2022/ ak