



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

% Reserved on: 26th August, 2021
Decided on : 7th February, 2022

+ **BAIL APPLN. 1610/2021**

GAURAV MENDIRATTA Petitioner
Represented by: Mr.Sumit Sharma, Advocate.

Versus

NARCOTICS CONTROL BUREAU Respondent
Represented by: Mr.Rajesh Manchanda, Special P.P.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the petitioner seeks bail in Sessions Case No. 335/2019 under Sections 22 and 29 of the NDPS Act instituted on the complaint of the respondent.

2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. Co-accused Mohan Kumar and Birpal have already been granted regular bail by this Court vide orders dated 23rd March 2020 and 6th August 2020 respectively, hence, the petitioner is also entitled to be released on bail. While granting bail to Mohan Kumar and Birpal, this Court noted that there is no recovery from the said accused and the only evidence against them is the statement under Section 67 of the NDPS Act. While granting bail to Mohan Kumar, this Court did not rely upon the prosecution version that the parcel originated from Agra in view of the consignment slip marked as Annexure-5 on page 70 of the charge sheet which showed the address of the courier company i.e. Apex Courier at Mahipalpur, Delhi. Further, there is no mention of any consignment slip in



the seizure memo or the panchnama in the main charge sheet. The Court also noted the difference in the colour and weight of the samples taken and sent to the laboratory. The alleged consignment Note No. 20235315 was generated in Delhi and not Agra. The total weight of the parcel was 25.460 kg and the weight of the contraband was 21.960 kg. By no stretch of imagination, the packing material can be equivalent to 3.5 kg. No calls or chats have been found between the petitioner or the co-accused or any other person. Nothing incriminating was recovered from the premises of M/s. Golden Belly Farms, Uttar Pradesh. Statement of the petitioner recorded under Section 67 of the NDPS Act was not voluntary as the same was taken after continuous custody with NCB officials and had been retracted at the earliest opportunity and in any case, cannot be relied upon in view of the decision of the Hon'ble Supreme Court reported as (2021) 4 SCC 1 Tofan Singh Vs. State of Tamil Nadu.

3. It is further contended that the prosecution has surreptitiously chosen to make Satpal who was working in 'Welcome Courier' as a witness and not an accused even though the money was substantially paid by Satpal to co-accused Brij Bhushan Bansal and he was in contact with the said accused and both of them knew each other for the last 4-5 years. Further, even as per Satpal, the main accused Brij Bhushan Bansal indulged in similar transactions earlier also. There are material differences in the statements of the various accused and witnesses recorded under Section 67 of the NDPS Act which go to the root of the matter. The petitioner has been in custody since 22nd January 2019 and the trial is likely to take some time. There is no recovery of contraband nor any money trail has been found from the present petitioner. The petitioner has a previous enmity with the respondent as he was falsely implicated earlier also and in one case, he has been acquitted and



in another case, he is on bail. The petitioner is 75 years old and suffering from various life threatening diseases due to which, the petitioner was granted interim bail and he surrendered on 20th March 2021 which concession he did not misuse. The petitioner be thus released on bail.

4. Learned Special P.P. for the NCB states that the petitioner is involved in the commission of offence relating to commercial quantity of 5000 tablets of Alprazolam weighing 1 kg and 50000/- tablets of Zolpidem weighing 12.500 kg which are psychotropic substances as per the Schedule of NDPS Act and in view of the embargo of Section 37 of the NDPS Act, the petitioner be not released on bail as he has been earlier involved in two NDPS Act cases with recovery of commercial quantity of contraband. The chats and Whatsapp messages exchanged between accused Brij Bhushan Bansal and Birpal clearly shows the larger conspiracy in which illicit trafficking of commercial quantity of contraband was committed by all the accused persons. From the CAF details and the CDR of the respective mobile numbers received from concerned service providers, it is evident that all the accused were interconnected by mobile phones. Accused Brij Bhushan Bansal and the petitioner were connected on one side and the accused Birpal, Mohan Kumar with Brij Bhushan Bansal on the other side. There are no contradictions in the statements of the various accused persons recorded under Section 67 of the NDPS Act. The contraband was recovered from two packets in one parcel as informed by secret informer. Satyapal was working in the transport business, thus was in touch with the people working in transport business and was not involved in the illegal activity of commission of offence and hence, was not made an accused.

5. It is contended that there is no parity in the role of the petitioner and the accused Birpal and Mohan Kumar, for the reason, Brij Bhushan Bansal



and the petitioner were on one side procuring the contraband from the open market illegally. The recovered tablets of contraband were purchased illegally in Agra as is evident from the batch numbers of the tablets which batch numbers of tablets were available in Agra. The contraband was sent from Agra to Delhi which is evident from the messages and Whatsapp chats data retrieved from the mobile phone of accused Birpal with which accused Brij Bhushan Bansal was also confronted. The petitioner and Brij Bhushan Bansal are partners in Pig farming and under the garb of said business, were also indulging in illegal trafficking of narcotics drugs and psychotropic substances. The role assigned to Mohan Kumar and Birpal who have been granted bail is not similar. Hence, no bail be granted to the petitioner.

6. Case of the respondent in the complaint in brief is that on 19th January 2019, a consignment was intercepted at Apex Courier, Mahipalpur, Delhi which contained 5000 tablets of Alprazolam and 50,000 tablets of Zolpidem. The said consignment had come from Agra to Delhi sent by one Satpal to Ajay at Mahipalpur, Delhi which was collected by Lallan, pick up boy of M/s. S.M.Courier Company. On the consignment being opened, it was found to be containing a transparent polythene bag addressed to WYNN Industries, USA. According to Lallan, he was sent to collect the parcel by Birpal. Statement of Birpal was recorded under Section 67 of the NDPS Act wherein, he disclosed that Ms. Sandhya Sharma and Mohan Kumar were the Directors of M/s. S.M.Courier and Cargo Private Limited (in short, 'SMC') and they provided him two mobiles phone bearing Nos. 9599008336 and 9599351207 which he used for the purposes of collecting the rates and for delivery and collection of parcels.

7. Mohan Kumar was connected with Brij Bhushan Bansal and on a whatsapp message received from Brij Bhushan Bansal, Mohan Kumar sent



pictures of the drugs and used to sent Lallan to collect the parcels from Apex Courier through Om Prakash. The drug parcel used to be collected on the order of Mohan Kumar and was to be kept in the office. Payment of the drug was made to Brij Bhushan Bansal through Sandhya Sharma and Mohan Kumar.

8. Brij Bhushan Bansal in his statement recorded under Section 67 NDPS Act stated that he was already facing trial under NDPS Act at Agra and met Mohan Kumar three months back in Sadar Bazar, Agra. Brij Bhushan Bansal stated to Mohan Kumar that he would supply the three packets at Delhi through courier. In lieu of the said packets, Mohan Kumar received ₹2 lakhs through hawala at Agra. On 18th January, 2019, on the asking of Mohan Kumar, two parcels were sent in the name of Ajay through Satpal having address of USA. The said packets were taken from the house of Mohan Kumar and duly informed to the employee of Mohan Kumar. It was also revealed that Alok, an employee of Mohan Kumar and Birpal was the same person.

9. Mohan Kumar, in his statement, under Section 67 of the NDPS Act stated that he was one of the Director of SMC besides Sandhya, his sister-in-law and Birpal was working in their company for the last 1½ years. He stated that Brij Bhushan Bansal met him three years ago at Agra. He used to send medicines containing psychotropic substances which medicines were forwarded to him. However, he had no clue about the nature of medicines.

10. The petitioner was also arrested and his statement under Section 67 of the NDPS Act was recorded wherein, he stated that he took parcels of medicines given by accused Brij Bhushan Bansal at Agra and delivered the same to Satpal for being sent to Delhi in his car.

11. It was thus revealed in investigation that the accused Brij Bhushan



Bansal, Gaurav, the present petitioner, Mohan Kumar and Birpal were involved in illegal trafficking of psychotropic substances through courier services. The complaint has been filed by the respondent against these four accused.

12. Allegations of the prosecution against the petitioner are that the petitioner is connected with the main accused Brij Bhushan Bansal, that they were doing the business of pig farming together and in the garb of the said business were indulging in supply of narcotic drugs and psychotropic substances. Undoubtedly, no recovery has been made from the petitioner. While granting bail to Mohan Kumar, it was noted that though the case of the NCB was that alleged parcel was dispatched from Agra, however, the address of the courier company i.e. Apex Courier, Mahipalpur, Delhi clearly showed that the consignment note No. 20235315 was generated at Delhi and not at Agra. This Court has perused the copy of the consignment note No. 20235315 dated 18th January 2019 wherein, the place of origin has been noted as Agra and the destination at Delhi, the consigner is Satpal, Agra and the consignee is Ajay, Mahipalpur, Delhi.

13. The other evidence available with the prosecution against the petitioner is the statement of the witness Satpal, who stated that on 18th January 2019, he received a phone call from Dr. Brij Bhushan Bansal that he was sending two parcels to be sent from Apex Courier, Agra to Ajay, Mahipalpur, Delhi. Dr. Bansal stated that his person will come in a white Honda City Car No. 3003 with the parcels and the same be given in Apex Courier. Satyapal told him that these parcels be given to Apex Courier and he will tell Danish, who is working in Apex Courier. The parcels were received at the Apex Courier in the afternoon. He told Danish on his mobile to send the two parcels to Apex Courier, Mahipalpur. Dr. Brij Bhushan



Bansal told him that his person will pick the parcels at Delhi. The two parcels weighed approximately 25.500 kg. Danish told him that the expense for the parcels would be ₹520, to which Satpal replied that he would give him the next day. On 19th January, 2019 Dr. Bansal asked him about the parcels. After inquiring from Danish, he informed Dr. Bansal that his person has taken from Apex Courier. He stated that Dr. Bansal had sent two parcels in October and November, 2018 to Apex Courier, Mahipalpur. In his statement, Satpal also stated that Dr. Bansal and Gaurav Mendiratta, the present petitioner had opened a pig farm and the car number 3003 Honda City was the car of Gaurav Mendiratta, in which Dr. Brij Bhushan Bansal had sent the parcels.

14. Admittedly, no recovery has been affected from the petitioner. Though in the statement of the petitioner recorded under Section 67 of the NDPS Act it is noted that that the petitioner in his Honda City Car No.3003 gave the parcels to Satpal for being sent to Delhi, the same being not admissible in evidence in view of the decision of the Hon'ble Supreme Court in Tofan Singh (supra), the statement of Satpal only indicates that the car number of the petitioner was given and that the parcels will be sent in the said car. As per Satpal, the parcels were given to Danish and on Dr. Bansal asking about the parcels being received and sent, he inquired from Danish who said that the same were taken by Dr. Bansal's man from Apex Courier. No statement of Danish has been recorded to show that the petitioner has handed over the two parcels to him in his Honda City Car No.3003. Thus the allegations at best against the petitioner is that number of his Honda City Car was used for sending the parcels to the courier agency at Agra. In the absence of the statement of Danish, as per the complaint filed by the respondent who is not a witness and there is no evidence against the



petitioner except the inadmissible statement of the petitioner himself that he delivered the parcels to Danish. Further claim of the respondent is that the petitioner was in touch with the main accused Dr.Brij Bhushan Bansal as per the call detail records. It is the case of the respondent itself that Dr.Brij Bhushan Bansal and petitioner were partners. Hence the contact between the main accused as established through the call detail records does not show the complicity of the petitioner in the present case.

15. Learned counsel for the respondent invokes Section 37 NDPS Act and contends that the petitioner was earlier also involved in an offence under the NDPS Act titled as '*NCB Vs. Deep Chand and Anr.*', in complaint No. VIII/034/DZU/2018. In the said case wherein the petitioner is presently on bail, Dr.Bansal had sent the contraband through the same courier agency i.e. Apex Courier of Agra through Satpal, Danish and Om Prakash and the other persons involved in the chain were Deep Chand Kumar, Bobby, Tapish Kumar, Dheeraj Jain and Virender Singh.

16. Section 37 NDPS Act reads as under:-

"37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for



the time being in force, on granting of bail."

17. As noted above, before the Court grants bail to an accused allegedly involved in an offence under the NDPS Act, the Court required to be satisfied that the accused is not guilty of the offence and that he will not involve himself in an offence under the NDPS Act while on bail.

18. Though the petitioner is involved in an earlier offence and is facing trial therein, however, as noted above, he has been granted bail in the said case and in the present complaint, even the witness Satpal does not say that the petitioner delivered the parcels to him nor is the statement of Danish recorded who could identify the person who delivered the contraband to him. The petitioner has been in custody since January, 2019 and considering the evidence against him, this Court deems it fit to grant regular bail to the petitioner pending decision of the trial. Consequently, the petitioner is directed to be released on bail on his furnishing a personal bond in sum of ₹50,000/- with two surety bonds of the like amount subject to the satisfaction of the learned Trial Court. Further, subject to the condition that the petitioner will not leave the country without prior permission of the court concerned and in case change of address and/or mobile number, the same will be intimated to the Court concerned by way of an affidavit by the petitioner.

19. Petition is disposed of. It is clarified that the observations made hereinabove are only for the purpose of deciding this petition and will have no bearing on merits during the trial.

20. Copy of the order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

FEBRUARY 07, 2022/akb