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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: November 18, 2022

Decided on: December 15, 2022

+ BAIL.APPLN.1559/2022

SARBPREET SINGH

..... Petitioner/Applicant

Through: Mr. Ramesh Gupta, Senior
Advocate with Mr. Gurbaksh
Singh, Mr. Shailender Singh
and Mr. Ishaan Jain
Advocates

V

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Senior
Standing Counsel with
Mr. Shashwat Bansal and
Mr. Raghav Bansal,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present application is filed under section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred as “the Code”) for grant of regular bail on behalf of the petitioner/applicant @ Sarabpreet Singh (hereinafter referred as “the petitioner”) in Complaint Case No. VIII/07/DZU/20210 registered under sections 18(b) & 23(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act”).

2. The perusal of complaint case bearing no. VIII/07/DZU/20210 reflects that Narender Khari, Junior Intelligence Officer, Narcotics Control Bureau, New Delhi on 26.02.2021 received a secret information that one parcel bearing AWB No. 5492641755 suspected to contain large quantity of Narcotics and Psychotropic Substance was lying at DHL Express Pvt. Ltd., 71/3, Rama Road, Near Kirti Nagar, New Delhi and destined to be exported to Canada. The information was passed on to Dhananjay Some, Superintendent, NCB who assigned said information to Mr. Harender Dagar, JIO, NCB with directions to constitute a team and take action as per law.

2.1 Harender Dagar, JIO constituted a team comprising himself, Shamsher Singh, Sepoy and Virinder Bam, driver. After necessary formalities, the constituted team reached at DHL Express Private Limited at about 12:15 PM where they met Mukesh Kumar, an employee of DHL. Mukesh Kumar produced the parcel bearing AWB No. 5492641755. Mukesh Kumar has also agreed to become independent witness. The necessary procedural formalities were also completed there. The details of the consignor were also found to be pasted over parcel. The details of the sender as Sarbpreet Singh,

Rauni, Ludhiana (P.B)- 141415, Mobile No.9646089170 and receiver as Jagjit Singh, S4 Saddleback RD NE, Calgary, AB Post Code – T3J4K5, Canada, Mobile No. +1(825)365-2000 were found to be pasted on the parcel. DHL Express worldwide booking slip having details of sender and receiver was also found pasted on the parcel.

2.2 The parcel was opened in front of independent witness Mukesh Kumar and found to be containing **2 boxes** of Dabur Chawanprash, **2 boxes** of Shama Badamprash enriched with kesar badam & pista, **1 box** of Baidnath kesari kalp Royal Chawanprash, **2 bottles** of Kalonji Tel Black Seed Oil besides other articles. The boxes of Dabur Chawanprash, Shama Badam Prash and Baidnath Kesari Kalp Royal Chawanprash were opened and material therein weighing 1.700 kg, 1.690 kg and 430 g respectively (total weighing 3.280 kg) was tested by D.D. kits gave 'positive' results for opium and 3.280 kg was a commercial quantity. The *pullandas* and *panchnama* were prepared after completion of formalities in presence of the independent witness. The contraband after sealing was seized as per procedure

vide seizure memo dated 26.02.2021 at the spot. The case property was deposited in *malkhana* of NCB-DZU, New Delhi.

2.3 The Booking Clerk Deepak Singhi in his voluntary statement under section 67 of the NDPS Act also revealed that the parcel was given to him by the petitioner for booking. The petitioner in his disclosure statement under section 67 of the NDPS Act also admitted his involvement. The application under section 52A of NDPS Act for drawl of samples and certification of the *Panchnama*/Seizure memo was allowed by Sh. Nitesh Goel, Metropolitan Magistrate, Patiala House Court, Delhi vide order dated 08.03.2021. The samples along with Test Memo Form were deposited at CRCL, Pusa Road.

2.4 NCB during further investigation collected other evidences such as Call details, bank statement of the petitioner etc. The petitioner also stated to receive Rs. 29,000/- and Rs. 50,000/- from Jagjit Singh i.e. receiver of the parcel. CRCL Report gave positive result for opium. The petitioner was arrested on 10.08.2021. The investigation qua the petitioner has already been completed. The complaint was filed before the Special Court (NDPS) under sections

18(b) & 23(c) of NDPS Act. The trial has already commenced after framing of charge.

3. The petitioner filed bail application for grant of regular bail which was dismissed vide order dated 25.04.2022 passed by the Court of Sh. Ajay Kumar Jain, ASJ/Special Judge, NDPS, Patiala House Courts, New Delhi. The relevant portion of the order dated 25.04.2022 is reproduced as under:-

It is settled law while considering the bail, the court has not to appreciate the probative value of material on record and only has to see whether the prima face case exists. In view of the mandate of above judgments, the denial of bail is a rule and grant is an exception. The reasonable grounds required for grant of bail are more than prima facie grounds. In present case, the present accused has booked the parcel concealing 3.820 kg of opium. The factum of booking is proved through the independent witnesses. The search was conducted also in presence of independent witnesses and as per FSL report, the contraband is found to be opium. The charges vide separate order framed, thus it cannot be held that no prima facie case made out. Apex Court in case titled Union of India Vs. Prateek Shukla, Crl. A. No. 284/2021 dated 08.03.2021 have categorically held that provisions of section 37 NDPS Act to be applied strictly while deciding the case for grant of bail. Apex Court in another recent judgment titled State Vs. Lokesh Chadha Orl. A No. 257/2021 dated 02.03.2021 observed that the judgment of State of Kerala Vs. Rajesh (supra) is to be followed while deciding bail. There is recovery of commercial quantity of opium, thus there is definite embargo us 37 NDPS Act and court must be satisfied that there are reasonable grounds for believing that accused is

not guilty of the offences with which one is charged and further that he is not likely to commit any offence while on bail. It cannot be inferred at this stage there are reasonable ground to believe that accused is not guilty of the offence and is not likely to commit any offence while on bail. Mere incarceration in jail is no ground to release the accused on bail. In present facts and circumstances, I do not find any ground to release the applicant/accused Sarbpreet Singh on bail. Hence, the present application is dismissed. Application disposed of accordingly.

4. The petitioner in bail application besides referring the factual position as mentioned in the complaint stated that the petitioner is in judicial custody since 18.08.2021 and was implicated on the basis of disclosure statement made by the co-accused. There is no evidence which can connect the petitioner with the alleged offence. The house search of the petitioner was conducted on 29.07.2021 but no recovery was affected from there. The seal of the 5 boxes was found to be tampered/broken and in that eventuality, these boxes should not have been opened before ascertaining the identity of the person to whom they belonged. The Investigating Officer was required to serve a notice to the person concerned i.e. the actual owner of the parcel under section 51 of the NDPS Act before affecting any search/seizure but no notice was served and as such the entire process was illegal. Deepak Singhi, Amritpal Singh and Jasvir Kaur who have booked

parcel were examined on 04.10.2021 i.e. after 8 months of the alleged recovery. The prosecution has not been able to establish that the seal of the boxes were broken and contents of the boxes were tampered. The case of the prosecution is based on the presumption and assumption without any concrete evidence which can connect the petitioner with the alleged offence/recovery. The seal was not handed over to a public witness after sealing the parcel at the spot and was retained by NCB Official. The alleged recovery was effected on 26.02.2021 but statement of *panch* witness, namely, Mukesh Kumar was recorded on 16.03.2021. No *prima facie* case is made out against the petitioner. The petitioner belonged to a respectable family and is having permanent root in the society. There is no chance of the petitioner to flee from the court of justice. The petitioner is having one minor child and old-aged parents and there is none in the family to look after them. The petitioner is the sole bread earner in the family. The investigation has already been completed as such no purpose would be served by keeping the petitioner in the judicial custody. It is prayed that the petitioner be released on bail.

5. The respondent filed the status report dated 26.08.2022 under the signature of C.M. Kumawat, JIO, Narcotics Control Bureau wherein besides detailing factual backgrounds as mentioned in the complaint, it is stated that *prima facie* case of drug trafficking is established and the petitioner was found to be indulged in a conspiracy for trafficking of the contraband in commercial quantity in connivance with co-accused. There is no reasonable ground to believe that the petitioner is not guilty of offence and is not likely to commit any offence if released on bail. The order dated 25.04.2022 is justified. It is prayed that the present bail application be dismissed.

6. The learned Senior Counsel for the petitioner advanced oral arguments. Written submissions were also submitted on behalf of the petitioner. The learned Senior Counsel for the petitioner argued that the petitioner is in judicial custody since 10.08.2021 and has been falsely implicated in the case. The petitioner was neither informed nor was called at the spot when the parcel bearing AWB No. 5492641755 was opened and to verify the physical condition of the boxes alleged to contain the contrabands and as such the petitioner cannot be linked with the alleged recovery. The statement of public

witness was not recorded on 26.02.2021 when the alleged recovery was affected but was recorded on 16.03.2021 after summoning him in the NCB Office. The seal after use was not handed over to the public witness. The petitioner was summoned and examined at the Office of NCB on 10.08.2021 and no recovery was affected during the search which was carried out at the residential house of the applicant. The learned Senior Counsel for the petitioner placed reliance on the decision delivered by the Supreme Court in case titled as **Noor Aga V State of Punjab** (2008) 16 SCC 417. It was prayed that the petitioner be released on bail.

7. The learned Senior Standing Counsel for the respondent/NCB argued that during investigation, the petitioner was found to be in contact with Deepak Singhi and Amritpal Singh. The order dated 25.04.2022 passed by the Special Court whereby the bail application of the petitioner was dismissed does not call any interference. The incriminating material brought on record is corroborated by the statement of the petitioner which he had voluntarily tendered. The statement of the petitioner recorded under section 67 of the NDPS Act led to corroboration of the fact of receiving money from Canada

for the parcel containing contraband substances. The conscious possession of the opium with the petitioner is proved beyond reasonable doubt as there is a presumption in law that the petitioner has committed the offence unless and until contrary is proved. The section 37 of the NDPS Act bars the grant of bail, particularly, when there is recovery of commercial quantity of contraband items. The learned Senior Standing Counsel for the NCB relied upon the judgments of Supreme Court of India titled as **State of Kerala etc. V Rajesh Etc.**, 2020 SCC Online SC 81 in which the accused person was denied bail. In **Collector of Custom V Abmadalieva Nodira** (2004) 3 SCC 549, **Union of India V Rattan Malik** (2009) 2 SCC 624, the Supreme Court has interpreted mandate of section 37 of NDPS Act.

8. Section 18 of NDPS Act provides punishment for contravention in relation to opium and reads as under :-

18. Punishment for contravention in relation to opium poppy and opium.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;
- (b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;
- (c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.]

8.1 Section 23 of NDPS Act prescribes punishment for illegal import and export of narcotic drugs and psychotropic substances.

It reads as under:-

23. Punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence or permit granted or certificate or authorisation issued thereunder, imports into India or exports from India or transships any narcotic drug or psychotropic substance shall be punishable,—

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to 1[one year], or with fine which may extend to ten thousand rupees, or with both;
- (b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;
- (c) where the contravention involves commercial quantity,

with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

8.2 Section 37 provides that offences under NDPS Act are cognizable and non-bailable. It 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 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.]

9. The Supreme Court in State of Kerala and others V Rajesh and others SLP(Crl.) No(s). 73097312 of 2019 held as under:-

20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

10. The Supreme Court in Narcotics Control Bureau V Mohit

Aggarwal, SLP CRL No. 6128-29 of 2021, held as under:-

To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

11. It is reflecting that the parcel bearing AWB No. 5492641755 was booked by the petitioner which was destined to Canada to Jagjit Singh. When the said parcel was opened in the presence of independent witness Mukesh Kumar on 26.02.2021, at that time, it

was found to be containing 5 boxes besides other materials and those 5 boxes were containing 3.820 kg of opium which is a commercial quantity. It was also revealed during investigation that booking clerk Deepak Singhi has received the said parcel from the petitioner for the purpose of booking. The petitioner also found to receive Rs. 29,000/- and Rs.50,000/- from Jagjit Singh of the Canada who was stated to be the receiver of the said parcel. The contents of 5 boxes booked in parcel bearing AWB No. 5492641755 were tested positive for opium. The petitioner was also found to be in contact with Deepak Singhi and Amritpal Singh who were instrumental in booking of the parcel bearing AWB No. 5492641755. The contents of the bail application and the arguments advanced by the counsel for the petitioner are considered in the right perspective and need trial and at this stage, no judicial opinion can be given about the facts and contentions as mentioned in the bail application. The charges have already been framed against the petitioner. At this stage, there is no reasonable ground which can suggest that the petitioner is not guilty of offence and he is not likely to commit any offence while on bail. The liberal approach in grant of bail in the cases under NDPS Act is not called

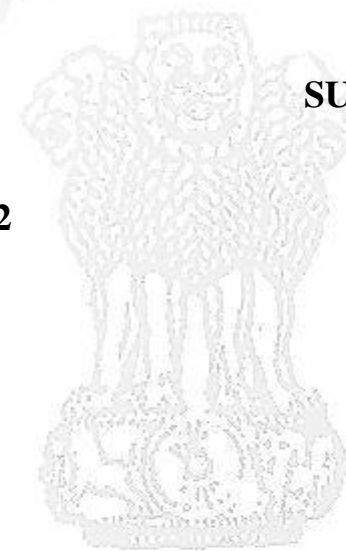
for. After considering all facts, at this stage, no ground for bail is made out. Hence, the application is dismissed.

12. Nothing in this matter shall be taken up as any expression on the final merits of the case.

13. The present bail application along with pending applications, if any, stands disposed of.

**SUDHIR KUMAR JAIN
(JUDGE)**

**DECEMBER 15, 2022
N/KG**



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