



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

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Reserved on : 06.01.2022

Pronounced on : 11.04.2022

+ **BAIL APPLN. 2549/2021**

SOMNATH PAL

..... Petitioner

Through: Mr. Rajiv Mohan, Adv. with Mr.
Abhimanyu Kampani, Mr. Swapnil
Krishna and Mr. Mohit Joshi Advs.

versus

DRI

.... Respondent

Through: Mr. Satish Aggarwala, Sr. SPP with
Mr. Gagan Vaswani, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. read with Section 37 of the NDPS Act seeking regular bail in complaint case No. 34/06/2012-DZU under Section 25A, 29 of the NDPS Act registered by the respondent (DRI).

2. Briefly stated, the facts of the case are that on 21.05.2013, a specific intelligence was received by the DRI officers that (1) Kiran Bhandari of Mumbai, Maharashtra, (2) Rajesh Sharma (co-accused),

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(3) Surender Kumar Verma (co-accused) and (4) Somnath Pal (present petitioner) were engaged in trafficking of contraband psychotropic substance i.e. Ketamine, Ephedrine, and Methaqualone etc. and premises situated at 35/15, G.T Karnal Road, Industrial Area, Phase-B, Near Telephone Exchange, Derawal-Model Town, Gurudwara, Delhi is being used by this syndicate for storage purpose. Specific inputs were received that some deal regarding a drug consignment is likely to be carried out in one Honda City car bearing registration No. DL-4C-NC-5873 near Tagore Market, Kirti Nagar, New Delhi at around 10.00 PM on 23.05.2015.

3. The said information was received into writing by Sh. Rajender Verma, IO, DRI and submitted the same to Sh. Rajesh Dabral, Appraiser, DRI DZU, New Delhi and Rajesh Dabral, Appraiser submitted the same to Sh. D.P. Mishra, Deputy Director, who directed the SIO / Appraiser to take necessary action. Thereafter, Sh. Rajesh Dabral, Appraiser directed Sh. Rajender Verma, to form a team and take immediate necessary action.

4. Accordingly, a team of DRI officers reached the above spot at Tagore Market, Kirti Nagar, along with two public witnesses namely Jitender Godwara and Devender Singh Bhati, where they noticed the above car bearing No DL-4C-NC-5873 parked in the parking area near the Federal Bank with a person sitting in the said car on the driving



seat. After sometime, one person reached there and sat on the front passenger seat of the above car. It is further the case of the prosecution that at that point, DRI officers intercepted the above car and persons sitting inside and the identity of the person sitting on the driver seat of the car was revealed as Surender Kumar (co-accused) and of the other person as Rajesh Sharma (co-accused) were apprehended from the car. A Notice Under Section 50 of the NDPS Act was served to both the accused persons. However, upon enquiry and search, nothing incriminating was recovered from the possession of the accused persons nor from the car.

5. During the course of enquiry, co-accused Surender Verma has disclosed that that he has a godown located at 35/5, G.T Karnal Road, Industrial Area, Phase-B, Near Telephone Exchange, Derawal, Model Town Gurudwara, Delhi, where he alongwith the petitioner was secretly keeping psychotropic substances received from the co-accused Rajesh Sharma and others.

6. It is further the case of the prosecution that vide authorization dated 23.05.2013, Sh. S K Nath, SIO DRI has authorized Sh. Devender Singh (IO) to search the premise of the petitioner i.e. BF-35, Shalimar Bagh (E), Delhi. In pursuance of the said authorization, Sh. Devender Singh called two witnesses namely Deepak Kumar and Amar Singh and searched the premise bearing No. BF-35, Shalimar Bagh. During



the course of search of the said premises a number of incriminating documents were recovered and Indian currency amounting to Rs. 8,40,000/- was also recovered which were seized under the provisions of NDPS Act. One Volkswagen car bearing registration No. DL-3C-BW-1245 and one Wagon R car bearing registration No. DL-6C-K-3275 were also seized which were used for transportation of the narcotic substance.

7. Further, in pursuance of the Authorization dated 23.05.2013, Shri R.K. Sharma, Intelligence Officer conducted the search on 23/24.05.2013 at Ground Floor, B 35/5, G.T Karnal Road, Industrial Area, Shakti Nagar, Delhi in the presence of two independent witnesses and Shri Vikram Singh, care taker of the said premises. During the search, white Coloured HDPE bags, black polythene bags, one blue plastic drum, one corrugated carton and blue coloured plastic bottles each having markings of "Manhar" pure coconut oil 100% were recovered. The substance kept in these bags/drum/carton and bottle was tested with the help of the precursor chemicals detection kit, which was carried by the officers of DIR, one by one which gave positive result for Ephedrine/Pseudoephedrine and 3, 4-Methylenedioxyphenyl-2-Porpanone. The Total weight of the contraband suspected to be Ephedrine/Pseudoephedrine was 54.740 kgs. and of 3,4-Methylenedioxyphenyl-2-Porpanone was 136.840 kgs. and the same was seized under the provisions of the NDPS Act.



8. It is further the case of the prosecution that on 27.05.2013, 18 (Eighteen) sample packets of Narcotics Substance along with the test memos were deposited with the CRCL. Further, on 04.07.2013, CRCL Delhi in its report confirmed presence of Ephedrine/Pseudoephedrine Hydrochloride in these samples. However, the other recovery allegedly mentions as 3,4-Methylenedioxphenyl-2 Propanone is concerned it was stated that the same could not be analyzed as the reference standard was not available with CRCL. It was advised to forward the same to CFSL Hyderabad for testing.

9. Vide summon dated 24.05.2013 the statement of the petitioner under Section 67 of the NDPS Act was recorded on 24.05.2013. The respondent (DRI) after conducting the in-depth investigation has launched the prosecution on 24.07.2013 for the offence under Sections 21/ 25A and 29 of the NDPS against (1) Rajesh Sharma (co-accused"), (2) Surender Sharma (co-accused") and (3) Somnath Pal (present petitioner").

10. It is further the case of the prosecution that in view of the report of CRCL, an application was moved by respondent (DRI) before the Ld. Trial Court for permission to send the samples to CFSL, Hyderabad which was allowed on 29.10.2013 by Ld Trial Court. CFSL Hyderabad has submitted the report dated 21.11.2014, wherein it has been



analysed that all 11 of the Exhibit out of 12 sent for analysis gave positive test for "Methamphetamine".

11. I have heard the Ld. counsel for the petitioner, Ld. Sr. SPP for the respondent (DRI), perused the reply filed by the respondent-DRI and also perused the records of this case.

12. It is submitted by the Ld. counsel for the petitioner that the petitioner has been falsely implicated in this case and he is in custody for the last more than 7 years and since then the prosecution has not been able to conclude the evidence. It is further submitted by the Ld. counsel for the petitioner that the co-accused has already been granted bail and the petitioner is also entitled to parity. It is further submitted by the Ld. counsel for the petitioner that all the recovery memos are forged and fabricated and therefore, no reliance can be placed upon the recovery witnesses.

13. It is further submitted by the Ld. counsel for the petitioner that the alleged recovery was made from the house which was taken on rent by the petitioner but the petitioner was not present at the said house at the time of recovery. It is further submitted by the Ld. counsel for the petitioner that the statement recorded U/s 67 of the NDPS Act is not admissible in evidence and he has placed reliance upon *Tofan Singh Vs. State of Tamilnadu 2020 SCC 882*. It is further submitted that the prosecution has failed to prove the rent agreement



of the alleged premises in question which according to the prosecution was taken on rent by the petitioner. He further submitted that the veracity of the prosecution case is doubtful and the mode and manner of investigation is also questionable.

14. It is further submitted by the Ld. counsel for the petitioner that in so far as the recovery of controlled substance is concerned, be it Pseudoephedrine and "3, 4, Methlenexioxyphenyl-2-propanone", rigors of Section 37 cannot be attracted under any circumstances, whatsoever.

15. On the other hand, Ld. Sr. SPP for the respondent (DRI) has argued on the lines of the reply filed by the respondent (DRI). It is submitted by the Ld. Sr. SPP that the Panchnama dated 23/24-05-2013 was drawn at the residence of the petitioner which led to the recovery of cash amounting to Rs. 8,40,000/-. He further submitted that the Panchnama dated 23/24-05-2013 of the godown has been signed by the petitioner and the statement of the owner of the godown is to the effect that the said godown was rented to the petitioner. It is further submitted by the Ld. SPP that the statement of one employee and care taker of the godown of the petitioner has also been recorded in whose presence the recovery was effected. It is further submitted that his voluntarily statement U/s 67 of the NDPS Act is supported by the recovery effected on the basis of the same and he further submitted that



the reasons for his statement being typed on computer has been recorded in his statement.

16. It is further submitted by the Ld. Sr. SPP that the petitioner is a habitual offender and he has committed the offence under NDPS Act, while on bail and has been booked in two cases under NDPS Act, one at Delhi in which he was arrested by the Delhi Police Special Cell on 06.09.2007 and was granted bail on 12.02.2008 and the other at Chennai in which he has been charged U/s 22C, 28 and 29 of the NDPS Act R/w section 135 of the Customs Act . It is further submitted by the Ld. Sr. SPP that the recovery was effected from the rented premises of the petitioner. He further submitted that the CFSL Hyderabad vide its report dated 21.11.14 had opined that the exhibits sent gave positive test for "Methamphetamine". He further submitted that the amount of Rs. 8,40,000/- which was recovered is the sale proceeds of the drugs.

17. It is further submitted by the Ld. Sr. SPP that the recovery was made at the instance and in the presence of the petitioner as well as other co-accused and in the voluntary statement dated 25.05.2013, co-accused Rajesh Sharma stated that a cash of Rs. 3,50,000/- recovered from his residence has been received by him as advance part payment from Surender Verma @ Chotu, who is the carrier boy of the petitioner, in lieu of delivery of next consignment of 25 Kgs. of pseudoephedrine.



18. One of the contention of the counsel for the petitioner is that embargo of Section 37 of NDPS Act is not applicable as the substance recovered is a controlled substance. In the instant case, there is a recovery of huge quantity of Ephedrine/Pseudoephedrine weighing 54.740 kgs. and 3,4- Methylenedioxyphenyl-2-Propionone weighing 136.840 kgs. which was recovered from the premises of the petitioner. The Supreme Court in the case of Union of India Vs. Prateek Shukla, Criminal Appeal No. 284 of 201 decided on 08.03.2021 has cancelled the bail of the petitioner who was found in possession of controlled substances namely acetic anhydride.

19. As far as the question that the petitioner has been in incarceration for the last 7 years and the trial is still yet continuing, this can be one of the ground for consideration of the bail application but the same is not so in the case of the petitioner, specifically when it has been categorically stated by the respondent-DRI that the petitioner is a habitual offender and while on bail he has been booked in two cases of NDPS Act. This conduct of the petitioner does not entitle him to be released on bail simply because he has been incarcerated for a long period.

20. The reasons given by the petitioner for claiming grant of bail become insignificant on account of huge recovery mentioned hereinabove and the two involvements of the petitioner in the same



offence under NDPS Act while he was on bail. At this stage of the case, all that could be seen is whether the statement made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not. But at this juncture one cannot say that the petitioner/accused is not guilty of the offence if the allegations made in the charge are established. The evidence is still not complete before the trial Court and therefore, one cannot say that there were no grounds to hold that he was not guilty of such an offence. The liberty of a citizen has got to be balanced with the interest of the society. In cases where narcotics drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society and in the instant case, as observed hereinabove, the petitioner has already indulged in two other cases while on bail.

21. The other contention raised by the counsel for the petitioner that the prosecution has not been able to connect the tenanted premises with the petitioner or the panchnama are forged and fabricated, therefore the witnesses of the panchnama are not truthful, these are all matters to be looked into at the time of trial and this is not the stage to analyze the testimony of the witnesses in depth as desired by the counsel for the petitioner, otherwise the same would prejudice the case of either of the parties. Therefore, no ground for bail is made out, the bail application is, therefore, dismissed. However, the Ld. Trial Court is directed to



dispose of the case as expeditiously as possible, looking into the period of incarceration of the petitioner.

22. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

APRIL 11, 2022

Sumant

