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

**Judgment reserved on: 17.08.2022**
**Date of decision: 30.08.2022**

\+ BAIL APPLN. 1716/2022

ABDUL REHMAN ALIAS DABLU ..... Petitioner

Through: Mr. Rahul Sharma, Mr. S.S. Swaminathan, Mr. Deepak Ghai, Mr. Vinay Duggal, Ms. Abhilasha, Advocates.

versus

N.C.B. ..... Respondent

Through: Mr. Subhash Bansal, SSC for NCB with Mr. Raghav Bansal, Advocate.

**CORAM:**
**HON'BLE MS. JUSTICE ANU MALHOTRA**

**JUDGMENT**

**ANU MALHOTRA, J**

**1.** The applicant Abdul Rehman @ Dablu, arrested on 06.08.2016, seeks the grant of bail in relation to CC No. VIII/15/DZU/2016, PS NCB (DZU) qua the alleged commission of offences punishable under Sections 21/23/29 of the NDPS Act, 1985.

**2.** The applicant submits that he has been falsely implicated in the instant case, that there is no sufficient incriminating evidence collected by the Investigating Agency to show that he is in conspiracy with the other co-accused persons, and that as per the prosecution version itself it was reflected that the applicant was not aware of the contents of the consignment i.e., a parcel that was delivered to him on instructions of his friend Haniff, which parcel belonged to a Nigerian friend of Haniff, and as per information provided by the co-accused Haniff, the applicant had to take the parcel to Haniff and Haniff would take it to Prince to hand it over to him.

**3.** The applicant submits that he was not aware of the contents of the consignment and it cannot be presumed that he had any custody, animus, dominion control over the same. *Inter alia*, the applicant submits that out of the 21 witnesses cited in the complaint filed by the NCB, only 7 have been examined, and that, thus, the applicant ought to be released on bail, and that there is no likelihood of his tampering with the prosecution evidence or fleeing away from justice.

**4.** The status report submitted by the NCB dated 12.08.2022 submits to the effect that charges have been framed against the applicant and other co-accused persons under Section 21(c), 23(c) read with Section 29 of NDPS Act, 1985; that the trial is in progress, that the public witnesses who had witnessed the proceedings and the operation of controlled delivery are crucial witnesses who have to be examined; that the recovered contraband from the parcel is 500 grams of Cocaine, a commercial quantity.

**5.** *Inter alia*, the NCB has submitted that as per the complaint, a parcel with commercial invoice No. 9479924042 was booked on 25.07.2016 at the DHL Express Pvt. Ltd. Trinidad & Tobago in the name of Abdul Rehman (i.e., the applicant herein), House No. E-353, Khadda Colony Extn., Jaitpur, Badarpur, New Delhi, India, which parcel was intercepted and seized on 27.07.2016 at the Gatwick Airport, UK, and on 28.07.2016, the NCB received a request from the National Crime Agency, UK for controlled delivery of the said parcel, and pursuant to that request, the Director General NCB authorized the Zonal Director, DZU who further authorized Sh. Rajeev Sehrawat, the Investigating Officer to undertake the controlled delivery in coordination with NCA, UK in terms of Section 50A of the NDPS Act, 1985, and on 03.08.2016, the parcel was received by the authorized Investigating Officer at New Delhi.

**6.** As per the status report, on 05.08.2016, the controlled delivery operation was undertaken in coordination with DHL Courier Staff, and the applicant/ accused/ the consignee / Abdul Rehman @ Dablu (the applicant/accused herein) received the parcel, and at that moment, he was intercepted and upon enquiry he revealed that he had received the said parcel on instructions of Mohd. Haniff in the presence of public witnesses, and that the applicant made a call to Mohd. Haniff and the accused Haniff came at the Madan Pur Khadar near the crossing to receive the parcel, and at that moment, he was intercepted by the team on the pointing out of the applicant Abdul Rehman. *Inter alia*, as per the status report, in the preliminary inquiry conducted, the co-accused Haniff admitted that he had asked the applicant herein Abdul Rehman to receive the said parcel on his behalf and the co-accused Haniff further revealed that he had received the said parcel on instructions of Bartholomew Okoh @ Prince in the presence of public witnesses, and that the co-accused Mohd. Haniff made a call to the accused Bartholomew Okoh @ Prince on which he told Mohd. Haniff to come at the Janak Puri flyover, near the Janakpuri Distt. Center to deliver the parcel. It is further stated through the status report that Bartholomew Okoh @ Prince was waiting at the Janakpuri flyover near the Distt. Centre to take the delivery of the said parcel and he was intercepted whilst taking the delivery of the said parcel of the controlled delivery operation at the Janakpuri Flyover near the Janakpuri Distt. Center, and on checking the said parcel, 500 grams of Cocaine was recovered from the foot massager concealed in two round shaped packets, and the contraband was seized as per procedure.

**7.** *Inter alia*, the NCB submits that the voluntary statements of the accused persons were tendered under Section 67 of the NDPS Act, 1985 and the same are inculpatory which admitted that the delivery of the parcel containing contraband as well as led to the discovery of facts leading arrest of other accused persons. *Inter alia*, the NCB submits that the delivery of the contraband was affected on 05.08.2016 though the parcel was required to be delivered on 04.08.2016 by the DHL, and that there are relevant entries of conversations on 04.08.2016 and 05.08.2016 between the accused persons, and that there are CDR details of conversations between the co-accused Mohd. Haniff with the applicant herein Abdul Rehman and Bartholomew Okoh @ Prince on 04.08.2016 and 05.08.2016 for the purpose of obtaining of the delivery of the parcel containing contraband, and that the accused persons have admitted through their statements under Section 67 of the NDPS Act, 1985 of the user of their mobile numbers as detailed in the status report.

**8.** The NCB further submits that the accused persons knew each other and were in touch for the purposes of conspired actions, and though Mohd. Haniff the co-accused has retracted his statement, the same was irrelevant, as the CDR detail record indicated that Mohd. Haniff was in constant touch with other accused persons. *Inter alia*, the NCB submits that the previous Bail Application No.307/2019 of Mohd. Haniff had been declined. The NCB further submits that taking into account the factum that there has been a recovery of a commercial quantity of contraband, charges have been framed in the matter, and that the provisions of Section 37 of the NDPS Act, 1985 wholly apply and that the applicant cannot be released on bail, with it having been submitted on behalf of the NCB that there are no reasonable grounds for this Court to believe that the accused is not guilty of the commission of the offence and that is not likely to commit any offence whilst on bail.

## ANALYSIS

**9.** On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that the applicant is in custody from the date 06.08.2016, and that more than a period of six years from the date of the applicant being in custody has since elapsed

**10.** The offences punishable under Sections 21, 23 and 29 of the NDPS Act, 1985 are punishable as under:-

> *"21. **Punishment for contravention in relation to manufactured drugs and preparations.**—Whoever, in contravention of any provision of this Act or any rule or order made or condition of license granted thereunder,*

*manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug 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 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.*

***23. Punishment for illegal import into India, export from India or transhipment 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 tranships 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 [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.*

*29. **Punishment for abetment and criminal conspiracy**.—(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.*
*(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—*
*(a) would constitute an offence if committed within India; or*
*(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India."*

The offence punishable under Section 21(c) of the NDPS Act, 1985 thus relates to the punishment for a contravention involving commercial quantity of a manufactured drug with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years with also the liability of a fine which is not to be less than one lakh rupees but which may extend to two lakh rupees.

Section 23(c) of the NDPS Act, 1985 provides for punishment qua importation, exportation or transhipment of any narcotic drug or psychotropic substance into India or from India where the contravention involves a commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and wherein there would also be a liability of a fine which is to be not less than one lakh rupees but which may extend to two lakh rupees.

Section 29 of the NDPS Act, 1985 penalizes the abettor or a party to a criminal conspiracy to commit the offences punishable under Chapter IV of the NDPS Act, 1985 to punishment punishable as provided for the offences, qua which, the person alleged to have committed an offence is found guilty of abetment or being a party to the criminal conspiracy.

**11.** Undoubtedly, the offence alleged against the applicant is grave. However, it cannot be overlooked that in view of the verdict of the Hon'ble Supreme Court in ***"Supreme Court Legal Aid Committee representing Undertrial Prisoners Vs. Union of India" (1994) 6 Supreme Court Cases 731*** as adhered to and followed by the Co-ordinate Bench of this Court in ***Atul Aggarwal vs. Directorate of Revenue Intelligence (2021) SCC OnLine Del 5489, Anil Kumar @ Nillu vs. State*** in Bail Appln 1724/2021 and the verdicts of this Court in Bail Appln. 3705/2020 and Bail Appln. 4187/2020 in ***Ebera Nwanaforo and Frank Vitus vs. Narcotics Control Bureau*** decided on 31.05.2022, and the verdict of this Court dated 26.08.2022 in BAIL APPLN. 1444/2022 in ***A. Vennugopal Reddy vs. State of NCT of Delhi,*** the applicant, in terms of paragraph 15(iii) of the verdict of the Hon'ble Supreme Court in ***"Supreme Court Legal Aid Committee representing Undertrial Prisoners (Supra),*** which paragraph 15(iii) reads to the effect:-

> ***"15….***
> ***(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.***
> ***……",***

falls in the category of an under trial incarcerated for a period of a minimum of five years (and in relation to which the applicant herein is already incarcerated for more than six years now), and as a consequence thereof, the applicant, in terms of paragraph 15(iii) of the of the verdict of the Hon'ble Supreme Court in ***"Supreme Court Legal Aid Committee representing Undertrial Prisoners (Supra),*** is entitled to be released on bail on filing a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount with further observations that the directives in paragraph 15(iii) of the said verdict of the Hon'ble Supreme Court reproduced hereinabove, being subject to the general conditions, which read to the effect:-

> ***"(i) The undertrial accused entitled to be released on***

*bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;*

*(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;*

*(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;*

*(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;*

*(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special*

> ***Judge;***
>
> ***(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;***
>
> ***(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and***
>
> ***(viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code."***

## CONCLUSION

**12.** In view thereof, the applicant in the instant case is allowed to be released on bail on filing a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court with further conditions imposed on the applicant to deposit his passport with the Court of the learned Special Judge concerned and in the event of the applicant not being in possession of any passport to file an affidavit to that effect before the Special Judge concerned which aspect would also be verified by the Investigating Officer qua the aspect of possession of a passport by the applicant and the said verification report be submitted by the Investigating Officer to the Court of the Special Judge concerned.

**13.** The applicant is further directed to appear before the concerned Investigating Officer, NCB Office, R.K. Puram, New Delhi on every Monday of each week of each calendar month commencing from the date of his release by 4.00 PM on that particular day unless leave of absence is obtained in advance from the Special Judge, NDPS concerned. Further, the applicant is not permitted to leave the city of Delhi in terms of directives in paragraph 15(iii) of the verdict of the Hon'ble Supreme Court in ***"Supreme Court Legal Aid Committee representing Undertrial Vs. Union of India"*** (1994) 6 Supreme Court Cases 731 referred to hereinabove except with the permission of the Special Judge concerned and furthermore, under no circumstance shall the applicant leave the country.

**14.** Furthermore, the applicant during the period that he is on bail shall not commit any offence whatsoever and in the event of there being any FIR/ DD Entry/ Complaint lodged against the applicant, it would be open to the State to seek cancellation of bail of the applicant, which application, if any, filed would be dealt with on its own merits.

**15.** The learned Special Judge on release of the applicant undertrial accused on bail shall proceed qua the trial according priority to the matter as provided in Section 309(1) of the Cr.P.C., 1973.

**16.** The application is disposed of accordingly.

**ANU MALHOTRA, J.**

**AUGUST 30, 2022**
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