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

Judgment reserved on :02/08/2022
Judgment pronounced on :04/08/2022

\+ **BAIL APPLN. 1848/2022**

LENMINTHANG BAITE ..... Petitioner

Through: Mr. Ashish Deep Verma, Mr. Samuel Haokip, Kamya Ritu Verma, Mr. Mir Adnan Zahoor, Mr. Harsh Singh and Ms. Pooja Kumar, Advs.

versus

NARCOTICS CONTROL BUREAU, DELHI ...Respondent

Through: Ms. Priyanka Dalal, APP for the State.
SI Dharmender, Special Cell, Rohini/NR

POONAM A. BAMBA, J.:

1.0. Vide this application under Section 438 Cr.P.C, the petitioner is seeking anticipatory bail, in case FIR no. 106/2022 dated 09.05.2022, under Section 21 of NDPS Act, registered at PS Special Cell (Delhi).

2.0. It is the case of the prosecution that secret information was received that one Rajesh resident of Kushi Nagar, UP, used to procure heroine from one Lenminthang (petitioner herein) r/o Manipur on the directions of Shivam and Pankaj r/o Bareilly, UP and deliver it further to their contacts on their directions, would be coming at DDU Marg, Near Gandhi Market, Delhi, to deliver the heroine to one Vishal resident of Trans Yamuna, Delhi between 01.30 pm to 2.30 pm on 09.05.2022. On the basis of the said secret information, a raid was conducted on 09.05.2022 and a trap was laid ; and the accused Rajesh resident of Kushinagar, UP was caught from DDU Marg, near Gandhi Market and was found in possession of a total 5 kg of heroine in his bag. During the course of investigation, a mobile phone was recovered from the possession of the accused Rajesh Gupta, which was kept 'ON' for the purpose of investigation ; and some incriminating photographs were found including some slips regarding deposit of money in the account numbers 920020067746042 and 919010030391408 from Bareilly from account no. 922010003796841 through ATM.

2.1. On further investigation, accused Rajesh Gupta disclosed that account numbers 920020067746042 and 919010030391408 belonged to the present petitioner. He stated that Pankaj Verma and Lenminthang asked him to get opened an Axis Bank account for transferring money. He further stated that he told his son-in-law Siya Ram that he has started a business in Manipur with his friends of Bareilly and there is a requirement of an Axis Bank account for transferring money. Upon which, Siya Ram got opened an Axis Bank account in his name vide account no. 922010003796841. Pankaj Verma and Shivam Verma deposited cash money from ATM machine of Bareilly in the said account of Siya Ram. Thereafter, on his directions, his son-in-law Siya Ram transferred that money in the account of the Lenminthang ; and some cash was also deposited in the account of Lenminthang through ATM machine by Pankaj Verma and Shivam Verma. Thereafter, Rajesh Gupta went to Manipur for procuring heroine from Lenminthang/the petitioner herein.

2.2. Status report mentions that during investigation, both the above account numbers 920020067746042 and 919010030391408 were found to be in the name of Lenminthang/petitioner ; and it was found that the accused persons Pankaj Verma and Shivam Verma deposited cash through ATM machine from Bareilly in the above bank accounts of accused Lenminthang and money had also been transferred from account no. 922010003796841 (of Siya Ram), for procuring heroine from Lenminthang. Many other suspicious transactions were also found in the account of Lenminthang.

2.3. Status report further mentions that accused Rajesh Gupta also disclosed that he was court marshalled by Indian Army and his account was freezed by his employer. He also disclosed that pursuant to his court marshal, he remained in Kohima Jail, where he came in contact of Sushil r/o Bareilly, who was also lodged in the said jail in some case of NDPS. Said Sushil introduced him with Pankaj Verma and Shivam Verma, both residents of Bareilly, who indulged in supply of heroine. Accused Rajesh Gupta further disclosed that he used to procure heroine from the petitioner, resident of Manipur on the directions of Shivam and Pankaj.

2.4. Status report mentions that Siya Ram, holder of the account no. 922010003796841 was also examined and he disclosed that he opened the said account in Axis Bank on the directions of his father-in-law Rajesh Gupta, who told him that he has started a business with his friends of Bareilly in Manipur and was requiring an Axis Bank account for transferring money.

2.5. Status report further mentions that a raid was conducted at the house of the petitioner with the help of local police, but he was found absconding. Thus, on 20.05.2022, NBWs against the petitioner were issued by the ld. ASJ, Patiala House Courts, returnable for 01.07.2022. It also mentions that the petitioner had filed an anticipatory bail application before the ld. ASJ, whch was dismissed vide order dated 02.06.2022.

3.0. Ld. counsel for the petitioner submits that the petitioner has been falsely implicated in the instant case FIR no. 106/2022 registered against the accused Rajesh Gupta. No narcotic or psychotropic substance was recovered from the possession of the petitioner.

3.1. It is further submitted that the petitioner is a young businessman aged about 43 years and is a family person of a considerable repute. He has clean antecedents. He has been implicated in the matter only on the basis of disclosure statement of accused Rajesh Gupta that money in the petitioner's account was deposited by son-in-law of the accused Rajesh Gupta.

3.2. Ld. counsel for the petitioner argued that except for the disclosure statement of the accused Rajesh Gupta, there is nothing incriminating on record to implicate/connect the petitioner with the alleged offence ; there is no independent corroborative evidence/material to connect the present petitioner with the alleged offence.

3.3. Ld. counsel also submitted that the petitioner apprehends arrest in view of the searches made/raid conducted by the police at the petitioner's residence at Manipur.

3.4. Ld. counsel for the petitioner further submitted that in view of the above facts, the petitioner deserves anticipatory bail and placed reliance upon the order dated 05.05.2022 of **Coordinate Bench of this Court** in Bail Appl. No. 994/2022 titled as **Md. Irshad vs. State NCT of Delhi** ; order dated 23.05.2022 in Bail Appl. No. 1189/2020 titled as **Amit Ranjan vs. Narcotics Control Bureau, Delhi** ; and order dated 13.12.2021 of **Hon'ble Apex Court**, in "**Bharat Chaudhary vs. Union of India, 2021, SCC, Online SC 1235**"

4.0. Per contra, Ld. Prosecutor submitted that there is sufficient incriminating material against the petitioner. From the mobile phone recovered from the possession of the accused Rajesh Gupta arrested on the spot with 5 kg heroine, it was revealed that an amount of Rs. 4,00,000/- was transferred from the account of Sh. Siya Ram, son-in-law of the co-accused Rajesh Gupta to the account of the present petitioner during the period w.e.f. 28.04.2022 to 06.05.2022, that is, soon before 09.5.2022, when the raid was conducted and co-accused Rajesh Gupta was arrested. She also submitted that there is also a cash deposit of Rs. 5.5 lacs (4.00 lacs and 1.5 lacs) in petitioner's account from ATM, Bareilly.

4.1. Ld. Prosecutor further submitted that a notice u/s 91 Cr.P.C has been given to the concerned bank to provide CCTV camera footage of the ATM machine, from where the money in cash was deposited in the account of the petitioner and reply to the said notice is still awaited.

4.2. Ld. Prosecutor further submitted that in one of the above accounts of the petitioner bearing numbers 920020067746042 and 919010030391408, transactions of Rs. 3 crores and in another account, transactions of Rs. 91 lac are found reflected.

4.3. Ld. Prosecutor submitted that in view of the above, it is evident that the petitioner is a key player of the Inter-state Narco Syndicate. Investigation is at initial stage. The petitioner has been intentionally avoiding the process of law and is absconding/evading arrest ; proceedings under Section 82 Cr.P.C have already been initiated against him. Therefore, his custodial interrogation is necessary to unearth the complete information about Inter-state Narco Syndicate.

5.0. In rebuttal, ld. counsel for the petitioner submitted that the prosecution has failed to show any connection/chat between the petitioner and the accused Rajesh Gupta ; even otherwise, this aspect is a matter of trial. Ld. counsel for the petitioner further submitted that the petitioner is ready to join investigation as and when called and extend full cooperation.

6.0. In this respect, ld. Prosecutor submitted that the mobile phone recovered from the accused Rajesh has already been sent to the FSL for extracting of data and the investigation in the matter is still going on. She also submitted that there is a clear connection between the petitioner and arrested accused Rajesh Gupta ; the petitioner supplied heroine to Rajesh Gupta, who had made payments/transferred money from his son-in-law's account.

7.0. I have duly considered the submissions made by both the sides.

7.1. Suffice it to state that the basic purpose of anticipatory bail is to prevent harassment and humiliation of a person by way of arrest due to his false implication as was also rendered in several judgments including Bharat Chaudhary's case (supra), relied upon by the petitioner herein. The court may grant anticipatory bail, when there is not enough material placed on record to form even prima facie opinion regarding involvement of the accused in commission of an offence alleged against him ; and the accused perceives threat and apprehension of arrest. (**Salauddin Abdulsamad Shaikh vs State Of Maharashtra** (1996 SCC (1) 667). In catena of judgments, it has come that the factors relevant while considering bail application under Section 438 Cr.P.C inter alia are, nature and gravity of the offence/charge, severity of punishment in the event of conviction, danger of accused absconding/fleeing if released on bail, past antecedents, position and situation of the accused, likelihood of offence being repeated, reasonable apprehension of the witnesses being influenced/evidence being tampered with etc.

8.0. In the instant case, accused Rajesh Gupta, who was caught red-handed and was found in possession of total 5 kg of heroine, disclosed that he used to procure/procured heroine from the petitioner, resident of Manipur on the directions of Shivam Verma and Pankaj Verma. He also disclosed that for the said procurement, some cash amount was deposited by Pankaj Verma and Shivam Verma directly in the petitioner's account through ATM at Bareilly. He also disclosed that on the asking of accused Pankaj Verma and the petitioner to transfer money from Axis Bank account, he (accused Rajesh Gupta) requested his son-in-law Siya Ram, and who got opened bank account bearing no. 922010003796841 in Axis Bank ; and thereafter, on his asking, his son-in-law Siya Ram transferred the money from the said account to the account of the petitioner herein. He also disclosed that the cash was also deposited in the petitioner's account by Pankaj Verma and Shivam Verma from ATM Bareilly

8.1. As per status report, at the time of apprehension of the accused Rajesh Gupta, one mobile phone was seized from his possession, which had photographs of some slips of deposit of money in the account numbers 920020067746042 and 919010030391408 from Bareilly, from account no. 922010003796841 through ATM. During investigation, transfer of cash from account no. 922010003796841 through ATM Bareilly to petitioner's aforesaid accounts numbers 920020067746042 and 919010030391408, is also corroborated by the photographs of deposit receipts found in the mobile phone recovered from the possession of accused Rajesh Gupta.

8.2. Further, the aforesaid account numbers of the petitioner and that of Siya Ram, (son-in-law of accused Rajesh Gupta) have been verified. It has also been verified that a total amount of Rs. 4 lac was transferred from the account of Siya Ram, (son-in-law of accused Rajesh Gupta) to the account of petitioner during the period 28.04.2022 to 06.05.2022. Ld. Prosecutor also submitted that cash deposit of a total amount Rs. 5.5. lacs (Rs. 4 lacs + Rs. 1.5 lacs) in the petitioner's account from the ATM, Bareilly has also been verified. From the same, it is apparent that money was transferred to the petitioner's account immediately preceding the date (9.5.22) on which, the accused Rajesh Gupta was trapped with 5 kg heroine. Same corroborates accused Rajesh Gupta's disclosure statement to the effect that after transfer of money to the petitioner's account, he went to Manipur on 06.05.2022 and procured heroine from the petitioner and was to deliver the same on the fateful day i.e, 09.05.2022, to a contact, as directed by Shivam Verma and Pankaj Verma.

8.3 During investigation, huge money transactions to the tune of three crores and ninety-one lacs have been verified in the petitioner's account bearing numbers 920020067746042 and 919010030391408.

9.0. Thus, the disclosure statement made by the accused Rajesh Gupta finds corroboration in above findings of investigations so far. In view of the same and for the following reasons, the case law relied upon by the petitioner is not of much assistance to the petitioner.

9.1. In Bharat Chaudhary's case (supra), bail had been granted to the accused by Ld. Special Judge, which order was reversed by High Court of Madras. SLP was filed against the said order. The Hon'ble Supreme Court had found unsustainable, the said order cancelling the bail, considering that the quantitative analysis of the sample could not be carried out ; and therefore, the petitioner could not be said to have been found in possession of commercial quantity. Hon'ble Court also noted that large number of the tablets seized by the DRI admittedly contained herbs/medicines meant to enhance male potency. Considering these facts and as the scientific report in respect of mobile phone was awaited, the Apex Court noted that the order of bail could not have been upset by the High Court by placing reliance on the print outs of the whatsapp messages downloaded from the seized mobile phone/devices seized.

9.2. In Md. Irshad's case (supra) also, the Court had found that except confessional statement of the arrested accused, there was no other evidence.

9.3. As far as order dated 23.05.2022, in Amit Ranjan's case (supra) relied upon by the petitioner is concerned, the facts in the said case are also distinguishable. That was an order on regular bail application. Ld. Prosecutor had drawn the attention of this Court to the fact that anticipatory bail application of the said petitioner/accused bearing Bail Application no. 1102/2019 was dismissed by the Coordinate Bench of this Court vide order dated 05.07.2019. Subsequently, on filing of regular bail application, the petitioner was admitted to bail three years thereafter.

9.3.1. Further, the regular bail was granted to the petitioner vide aforesaid order considering that he was not named in the initial complaint and that he was implicated through supplementary complaint on the basis of disclosure statements of co-accused ; said disclosure statements were subsequently retracted pleading that they were given under duress. Also, in that case, the petitioner claimed that he had business relations with the co-accused and telephone calls and bank transactions between their companies were on that account ; and he also claimed parity as the co-accused had already been granted bail. In view of these facts and circumstances and there being no recovery from the possession of the petitioner, the Coordinate Bench of this Court while granting regular bail, observed that whether the calls exchanged/CDR details and money transactions were in relation to illicit trafficking of narcotics or psychotropic substance, is a matter of trial.

10.0. Considering the above facts and circumstances in entirety and taking into account the gravity of offence and the fact that the petitioner has been avoiding the process of law and proceedings u/s 82 Cr.P.C have already been initiated against him and also that the investigation in the matter is still at the initial stage, I am inclined to accept the learned Prosecutor's contention that custodial interrogation of the petitioner would be required in the matter

11.0 For the aforesaid reasons, I am of the considered opinion that the petitioner does not deserve relief under Section 438 Cr.P.C. **The petitioner's anticipatory bail application is accordingly dismissed.**

(POONAM A. BAMBA)
JUDGE

AUGUST 4, 2022/*chandan*