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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on: 07.07.2022
Order delivered on: 16.08.2022

\+ **BAIL APPLN. 4088/2021**

LEELA DHAR @ LEELU ..... Petitioner

Through: Mr.J.S.Kushwaha and Mr.Suryansh Soam, Advocates.

versus

THE STATE ..... Respondent

Through: Ms.Rajni Gupta, APP for State along with ASI Shailesh Kumar.

\+ **BAIL APPLN. 4159/2021**

SHIVANSHU JAIN ..... Petitioner

Through: Mr.Fuzail Khan, Mr.Manoj Jain and Ms.Sanjana Jain, Advocates.

versus

STATE ..... Respondent

Through: Ms.Rajni Gupta, APP for State with ASI Shailesh Kumar.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

O R D E R

ANOOP KUMAR MENDIRATTA, J.

1. Separate applications under Section 439 Cr.PC have been preferred on behalf of petitioners Leela Dhar @ Leelu and Shivanshu Jain in FIR No.0094/2021 under Sections 20/29/25 of the NDPS Act registered at Police Station Kalyanpuri.

2. In brief, as per the case of the prosecution, on 18.03.2021, a secret information was received by SI Nehit Phogat, posted at Special Staff East

that a person namely Chirag Jain procures narcotic substance i.e. charas in bulk from Kasol, Himachal Pradesh and supplies to local drug peddlers in Delhi. Further, on 18.03.2021, two of the Chirag Jain's associates would bring charas in Car bearing No. DL-10CG 8565 Toyota Etios and supply the same to Chirag Jain about 08:00-08:30 PM.

3. On the aforesaid information, a raiding party was constituted to apprehend the accused and also the secret information was entered vide DD No. 12 at 07:12 PM. The raiding party was finally placed near LBS Hospital. About 08:15 PM, Chirag Jain reached from the side of Mayur Vihar Phase-II and kept waiting and was identified by the secret informer. Thereafter, at about 08:25 PM Car No. DL-10CG 8565 Toyota Etios was seen coming towards the spot and the driver was identified by secret informer as Mukesh Rana and other as Shivanshu Jain (petitioner in Bail Application No. 4159/2021). Accused Chirag Jain boarded the car. After about 5 minutes, Chirag Jain came out of the car along with a polythene bag in his right hand. The way of Toyota was blocked with a 'gypsy'. All the three accused were apprehended and further investigation was carried out. The polythene bag in the possession of Chirag Jain was found to contain a black colour polythene which further contained a transparent airtight polythene containing Charas

which weighed 1050 gms. and was confirmed through field testing kit as well as smell and physical appearance. Further proceedings for taking the same in possession were conducted.

4. It is further the case of the prosecution that Chirag Jain disclosed that he purchases Charas in bulk quantity from Leela Dhar @ Leelu (petitioner in Bail Application No.4088/2021) from Kasol, Himachal Pradesh and supplies through his associates Anutosh and others. Further, out of 1050 gms, 500 gms of charas was supposed to be supplied to Anutosh in Delhi and also stated that he was in contact with Anutosh and Leela Dhar @ Leelu through WhatsApp chat/call.

Further, Shivanshu Jain on interrogation disclosed that he had visited many times to Kasol, Himachal Pradesh to procure charas and on the intervening night of 15-16.03.2021, he on the instructions of Chirag Jain went to Himachal Pradesh to procure charas from co-accused Leela Dhar @ Leelu along with Mukesh Rana.

It is further the case of the prosecution that during investigation, accused Leela Dhar @ Leelu appeared after dismissal of his anticipatory bail application and during police custody remand, a car of co-accused Chirag Jain bearing No. DL-6CM-4826 was recovered at the instance of Leela Dhar

@ Leelu in front of his house i.e. Village Chawki, District Kullu, Himachal Pradesh. The car was kept mortgaged with Leela Dhar @ Leelu in lieu of account of settlement of charas. It was also revealed that accused Chirag Jain and his associates had transferred amount several times in the account of accused Leela Dhar @ Leelu in lieu of purchasing charas. The details of the amount transferred through UPI in the account of Leela Dhar @ Leelu (No.2216000100411604, PNB, Jari Kullu, H.P.) from the account of Chirag Jain, Shashi Jain (mother of accused Chirag Jain), Rishabh Jain (cousin of accused Chirag Jain) and Shivanshu Jain during the period 02.01.2020 till 30.10.2020 were further reflected as Rs.4.5 lacs.

5. Also, amount was transferred through UPI etc. in the account of one Bhupinder Singh (No.2216000100439266, PNB, Jari Kullu, H.P.) which was given by Leela Dhar to his customers to deposit money. An amount of Rs.1,35,996/- was transferred by Chirag Jain, Rishabh Jain and Shivanshu Jain in said account in between 13.06.2020 to 27.02.2021.

6. It is also the case of the prosecution that as per CDR analysis before their arrest, accused Shivanshu Jain had visited Kasol, Himachal Pradesh several times in three months to procure charas. Further in the month of February and March, 2021, accused Shivanshu Jain along with co-accused

Mukesh Rana had visited Kasol, Himachal Pradesh four times between 8 to 11.02.2021; 20 to 21.02.2021, 26 to 27.02.2021 and 15 to 17.03.2021 to procure charas and continuously remained connected with Leela Dhar @ Leelu. Further, all the accused were connected with each other on or before the date of arrest as per phone numbers in their possession. As per CDR analysis from 16^{th} to 18^{th} March, 2021 Leela Dhar received 8 calls from Shivanshu Jain, 4 calls from Chirag Jain. Leela Dhar @ Leelu called 7 times to Shivanshu Jain and 4 times to Chirag Jain.

7. Learned counsel for accused Shivanshu Jain contended that no recovery was effected from the possession of accused Shivanshu Jain and recovery is alleged only from Chirag Jain. It is also submitted that accused have been picked and implicated in this case and the proceedings have been fabricated. It is also contended that evidence on record is similar to that of Anutosh who has already been discharged by the learned Trial Court vide order dated 15.03.2022, as the trail of money, relied upon by the prosecution was found insufficient to charge the accused. It is also submitted that the petitioner Shivanshu Jain is aged about 24 years and though the co-accused Chirag Jain was known to him but he was unaware of the business dealings of Chirag Jain. It is also contended that 'conscious possession' by the

petitioner cannot be presumed since the alleged recovery was from co-accused Chirag Jain.

8. Learned counsel for accused Leela Dhar @ Leelu submitted that no recovery had been made from the applicant and the disclosure statement of the co-accused is a weak piece of evidence. It is further submitted that Leela Dhar @ Leelu is a tourist guide/tracking guide and is also a certificate holder under the Home Stay Scheme, which is registered and is a commercial driver. Further he had been in touch with several persons from whom the money was received in routine course of business. It is also contended that the prosecution has relied upon the payments which were made up to 30.10.2020 about five months prior to the incident and there is missing link since the alleged recovery is stated to be on 18.03.2021. It is also contended that the alleged recovery of car of Chirag Jain in front of house of Leela Dhar @ Leelu is fabricated since the prosecution was not sure if the vehicle had been mortgaged or sold to Leela Dhar @ Leelu by Chirag Jain. In support of the contention, reliance is also placed upon 2021 [1] JCC 281, ***Nitesh Amrut Bhai Patel Vs. Narcotic Control Bureau***, 2018 (3) LRC 304 (SC), ***Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence***, 2020 (2) LRC 387 (Del), ***Mohan Kumar Vs. Narcotic***

Control Bureau, 2021 [1] JCC 471, ***Jai Bhagwan @ Bhedha Bhai Vs. N.C.B. (Narcotics Control Bureau)***, 2021 [1] JCC 588, Birpal Vs. N.C.B & 2021 [1] JCC 386, ***Iqbal Singh Vs. State.***

9. The application has been vehemently opposed by the learned APP for the State and it is submitted that even in the absence of direct recovery from Leela Dhar @ Leelu, the money trail for procuring/delivering the charas incriminates the accused. It is also contended that the CDR details of the phones recovered from both Shivanshu Jain as well as Chirag Jain reflect that both had been continuously in touch from 15.03.2021 till prior to the date of recovery on 18.03.2021. It is also contended that the aforesaid transfer of amount in the account of Leela Dhar @ Leelu and Bhupinder Singh from Chirag Jain, Shivanshu Jain and other family members indicate a strong nexus between accused. The authorities cited by the learned counsel for the petitioner are stated to be distinguishable on facts. It is also urged that the case of discharge of Anutosh is on different footing, since the payments were stated to have been made more than a year prior to the date of recovery i.e. 18.03.2021.

10. I have given considered thought to the contentions raised. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences

punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are :

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist 'reasonable grounds to believe' that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

Based upon the precedents, the test which this Court is required to apply while granting bail is whether there are reasonable grounds to believe that accused is not guilty of such an offence and whether he is likely to commit any offence while on bail.

11. Learned counsel for the petitioners has placed reliance on ***Nitesh Amrul Bhai Patel Vs. Narcotics Control Bureau*** 2021 (1) JCC 281 to contend that the statement recorded under Section 67 of the NDPS Act, 1985 is a weak piece of evidence and must be tested and evaluated before the same can be accepted and the Court must be satisfied that such a statement has been made voluntarily without any fear, coercion or duress. It is also submitted that unsubstantiated statements recorded by the NCB are intrinsically weak piece of evidence and of limited evidentiary value and it

would be unsafe to act on the basis of the same, against co-accused. Reference is also made to ***Surender Kumar Khanna Vs. DRI*** 2018 (3) LRC 304 (SC), ***Mohan Kumar Vs. Narcotics Control Bureau*** 2020 (2) LRC 387 (DEL), ***Jaibhagwan @ Bhedha Bhai Vs. Narcotics Control Bureau*** 2021 (1) JCC 471, ***Birpal Vs. Narcotics Control Bureau*** 2021 (1) JCC 588, ***Dalip Singh @ Langda Vs. The State (NCT of Delhi)*** in Bail Application No.1312/2018 decided on 14.01.2019 and ***Iqbal Singh Vs. State*** 2021 (1) JCC 386 to submit that there have to be reasonable grounds for pinning down the accused and merely telephonic conversation would be insufficient to hold that the petitioner is guilty or stands linked with the offence. It is also submitted that circumstantial evidence based solely on disclosure statement of co-accused without any corroboration is *per se* inadmissible. It is also urged that there is no recovery effected from the petitioners as per the available material on record and as such, no reasonable grounds exist for adverse presumption on the basis of call detail records. The alleged transfer of money is stated to be in relation to the legitimate business activities carried out by Leela Dhar @ Leelu.

12. There is no dispute as to the proposition of law, as referred by the learned counsel for the petitioners, but it needs to be analyzed whether there

is any other incriminating material apart from the disclosure statements indicating the involvement of the petitioners/accused in the present case. It also needs to be shown by the petitioners that the Prosecution has not been able to establish any connection between the subject offence and the bank accounts, wherein the alleged proceeds for procuring the contraband allegedly stand deposited. Merely because there is no recovery from the possession of the concerned petitioner, it cannot be assumed at the stage of bail that the petitioner is not guilty of the said offence, if there is other incriminating evidence connecting the petitioner with the offence.

13. In the present case, on the face of record, the Prosecution case does not rest merely on the basis of the disclosure statements of co-accused. As per the case of the Prosecution, the recovery of charas from the possession of Chirag Jain was after the same was immediately delivered by the petitioner Shivanshu Jain while travelling along with Mukesh Rana in car bearing No. DL10 CG 8565 Toyota Etios. The same reflects that the possession was with Shivanshu Jain and Mukesh Ran prior to delivery and it cannot be assumed at this stage that the contents of polythene were not known.

14. It may further be observed that the evidence for the purpose of linking the petitioner Leela Dhar @ Leelu as the supplier of drug and Shivanshu

Jain, as a courier/receiver is based upon the call detail records, relating to the visits of Shivanshu Jain to Kasol, Himachal Pradesh, as well as on the basis of amount transferred in the account of Leela Dhar @ Leelu and in an account held by one Bhupinder Singh on behalf of Leela Dhar @ Leelu for receiving the amounts from his clients.

The transfer of money by Chirag Jain, Shashi Jain (mother of Chirag Jain) and Rishabh Jain (cousin of Chirag Jain) in the account of Leela Dhar @ Leelu as well as transfer of money in the account of one Bhupinder Singh at the behest of Leela Dhar @ Leelu from Chirag Jain, Rishabh Jain and Shivanshu Jain in between 13.06.2020 to 27.02.2021 reflects that was a close nexus. Any explanation in defence that the same was towards legitimate business activities needs to be established during the course of evidence.

15. Additionally, the recovery of car belonging to Chirag Jain, from front of the house of Leela Dhar @ Leelu, which is alleged to have been retained for settlement of dues links the cartel. Further, repeated visits by Shivanshu Jain to Kasol, Himachal Pradesh in three months, as supported by call detail records and his contact with Leela Dhar @ Leelu, indicate that both were connected and known to each other. The defence taken in this regard that it was in connection with legitimate business activities undertaken by Leela

Dhar @ Leelu as a tourist guide will have to be suitably probablized, at the stage of evidence.

16. The benefit extended to co-accused Anutosh by the learned Trial Court appears to be distinguishable since the payments in the aforesaid case were made more than a year prior to the date of recovery.

The judgments cited by the learned counsel for the petitioner are distinguishable on facts and in the light of evidence placed on record in the present case.

17. In the facts and circumstances, considering the connecting evidence on record, I am of the considered opinion that no grounds for bail are made out in the light of twin conditions laid down in Section 37 of the NDPS Act.

19. The applications are accordingly dismissed.

Nothing stated herein shall tentamount to an expression of opinion on merits of the case.

(ANOOP KUMAR MENDIRATTA)
JUDGE

AUGUST 16, 2022/*A*