



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

+ BAIL APPLN. No.4317/2021

**Judgment reserved on :21.01.2022.**

**Date of decision : 25.03.2022**

ARUN KUMAR GOYAL

..... Petitioner

Through: Mr.Vikas Pahwa, Sr.Advocate  
with Mr.Nishant Singh &  
Ms.Raavi Sharma, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr.Subhash Bansal, Senior  
Standing Counsel with  
Mr.Shashwat Bansal, Advocate

**CORAM:**

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

**JUDGMENT**

**ANU MALHOTRA, J.**

1. The applicant vide the present application seeks the grant of bail in relation to SC No. 244/2021 under Sections 8, 22(c), 23 & 29 of the NDPS Act, 1985, submitting to the effect that he has been falsely implicated in the instant case and has been incarcerated since 5.4.2021 with it having been submitted on behalf of the applicant that there has been no recovery of any contraband from the applicant nor at his behest. *Inter alia*, it is submitted on behalf of the applicant that even the alleged recovery of 80.673 kg of Tramadol tablets from the residence of one Bablu at Bahadurpur, Agra, U.P., cannot be attributed to the applicant. It is further submitted on behalf of the applicant that the chemical examination report in relation to the said Tramadol



tablets has also not been placed on record by the Investigating Agency and that thus in the absence of a complete investigation report having been filed in terms of Section 173(8) of the Cr.P.C., 1973, the applicant was entitled to be released on default bail in terms of Section 167(2) of the Cr.P.C., 1973.

2. Notice of the application was issued to the NCB. The NCB through its response dated 25.1.2022 has adverted to the contents of the complaint in the instant case Crime No. VIII/10/DZU/2021 under Sections 8, 22(c), 23 & 29 of the NDPS Act, 1985, filed against one Kapil Aggarwal @ Rohit S/o Prakash Chand Aggarwal and against the present applicant Arun Kumar Goyal @ Bauji S/o Sh. Vijay Kumar Goyal, R/o N-112, Natraj Puram, Kamla Nagar, Agra, U.P. It has been submitted by the NCB that on the basis of a secret information dated 13.3.2021, the NCB team searched parcel bearing Airway Bill No. 4254071485.

3. The NCB through its status report in response stated to the effect:

*“1..... Briefly facts emanating from Complaint, on the basis of secret information dated 13-03-2021, the NCB Team searched parcel bearing Airway Bill No. 4254071485 and seized 1200 Grams of Alprazolam tablets & 1 Kg of Oxycodone Tablets from said parcel lying at DHL Express India Lt. Kirti Nagar, New Delhi which was stated to have been booked by Kapil Aggarwal@Rohit of Agra. Further investigation revealed 11 more parcels sent by Kapil Aggarwal were lying at RightwaysLogistics, Mahipalpur, New Delhi and seizure of 14.895 Kgs of Amphetamine Tablets and 144.08 Kg. of Alprazolam / Tramadol Tablets was*



*effected therefrom vide Panchnama dated 18-03-2021. Upon recovery of contraband from aforesaid parcels, in follow-up actions, Kapil Aggarwal was traced. On 31-03-2021 in his voluntary statement Kapil Aggarwal revealed having indulged in sending narcotic / psychotropic tablets / medicines abroad in conspiracy with co-accused and he stated to have procured these loose tablets from Arun Goyal@Bauji at Agra.*

*2. Further investigations were led on the basis of facts revealed by Kapil Aggarwal and Notice under section 67 NDPS Act was given to Arun Goyal who on 05-04-2021 tendered his voluntary statement and during preliminary enquiry Arun Goyal revealed that the seized psychotropic medicines were supplied by him to Kapil Aggarwal and some more loose Tramadol Tablets were kept by him at house of one Achal Gupta. After said disclosure by Arun Goyal, he led the NCB Team to said place and upon reaching, Achal Gupta informed having received 04 cartons from Arun Goyal and without knowing its contents, he shifted those cartons to the residence of Bablu, Bahadurpur, Agra, U.P.. Thereafter NCB Team was led to the place of Bablu wherefrom 4 cartons containing loose tablets in aluminum zip pouches were recovered. The recovered tablets were revealed by Arun Goyal to be Tramadol Tablets and it weighed 80.673 Kgs. Arun Goyal led to the recovery of 80 kgs Tramadol Tablets which were under his conscious possession and the said seizure was effected vide Panchnama dated 05-04-2021 in the presence of Arun Goyal and Bablu and Achal Gupta. However, Achal Gupta expired prior to his statement could be recorded; whereas Bablu had tendered his Statement under section 67, NDPS Act and he is a public witness. Consequently, Arun Kumar Goyal was arrested on*



*05-04-2021. Further, upon disclosure by Arun Goyal about procurement of said loose tablets from JPEE Drug company, its warehouse and manufacturing unit was searched wherefrom huge quantity of Tramadol Tablets and other contraband was recovered and seized vide Panchnama dated 07-04-2021.*

*3. The mobile number 7055522456 used by Kapil Aggarwal was in frequent connection with mobile numbers 7055092473 & 7302869588 used by Arun Goyal. As per Complaint, the analysis of the CDRs shows connectivity and involvement of present accused.*

*The relevant role and facts qua other accused persons are mentioned in detail vide separate Complaint filed in present matter.*

*.....”*

4. Inter alia, it was submitted by the NCB that the role of the applicant was not limited to the supply of psychotropic tablets to Kapil Aggarwal @ Rohit which were recovered from the seized parcels but that the applicant had also led to a further recovery of 80 Kgs of loose Tramadol tablets kept in another place which were under his conscious possession and thereby had led to a seizure of commercial quantity of contraband and thus in terms of Section 27 of the Indian Evidence Act, 1872, the statement which led to a discovery of a fact, i.e., recovery of commercial quantity of contraband was admissible in evidence.

5. The NCB has thus submitted that the applicant has indulged in trafficking of the commercial quantity of contraband in conspiracy with the co-accused and thus there is an embargo under Section 37 of the NDPS Act, 1985, for grant of bail and that the charges are yet to



be framed and the trial is yet to commence and that as per Section 37(1)(b)(ii) of the NDPS Act, 1985, there are no reasonable grounds for believing by this Court that the accused is, *prima facie*, not guilty of the offence. It has thus been contended on behalf of the NCB that the applicant does not deserve to be released on bail.

6. The contentions raised on behalf of the applicant as also submitted through the written submissions dated 22.1.2022 as also orally submitted during the course of the hearing in the instant case are to the effect that the applicant is a license holder and thus there is no impediment in his buying/selling and dealing in psychotropic substances; that his name surfaced in the statement of the co-accused Kapil Aggarwal @ Rohit vide a confessional statement dated 31.03.2021 made under Section 67 of the NDPS Act, 1985, which cannot be relied upon in view of the verdict of the Hon'ble Supreme Court in *Tofan Singh V. State of Tamil Nadu*; (2021) 4 SCC 1; that there was nothing recovered from the premises of the applicant or from his shop and that the said aspect is detailed in the seizure memo dated 5.4.2021; that 80.673 Kgs tablets of Tramadol were seized from the kitchen of Bablu on 5.4.2021 at the instance of information provided by Achal Gupta and that though the seizure took place on 5.4.2021, the statement of Achal Gupta was not recorded by the NCB nor was he arrested and rather he was made a witness.

7. Inter alia, it has been submitted on behalf of the applicant that the notice under Section 67 of the NDPS Act, 1985, was sent by the NCB to the said Bablu only on 1.9.2021 which is five months after the recovery of 80.673 Kgs of tablets of Tramadol from Bablu's residence



and his statement was recorded on 6.9.2021 and that if the recovery was genuine, the statement ought to have been recorded on the same day and that the recovery having been effected allegedly on 5.4.2021, the statement ought to have been recorded on the same day and the recording of the same after five months of the alleged recovery has no legal sanctity nor was the delay explained. Inter alia, it was submitted on behalf of the applicant that during the course of the proceedings of the present application it has been submitted on behalf of the NCB that the statement of Achal Gupta was not recorded though the alleged recovery in the case was effected on 5.4.2021 in as much as Achal Gupta expired on 22.4.2021 due to COVID and that this reply filed on 17.1.2021 by the NCB does not inspire any confidence for if the recovery was genuine the statement ought to have been recorded on the same day. It was thus submitted on behalf of the applicant that there was no probability of recovery of 80.673 Kgs. of tablets of Tramadol without recording the statement of Achal Gupta.

8. Inter alia, the applicant has submitted that apart from the factum that the samples of recovery from the residence of Bablu have not been linked to the applicant till date in as much as they had not been sent to the CRCL of the NCB, there was no test/CRCL result on the judicial record till the filing of the complaint and that even the result pertaining to the allegedly seized tablets from the co-accused was pending and it was thus not known as to what was the contraband allegedly recovered and that there was no material against the applicant available to the trial Court for taking cognizance.



9. Inter alia, the applicant has submitted that an additional complaint was filed apparently by the respondent on 10.12.2021 wherein four additional accused were added in the complaint but none of them had been named by the applicant nor had the applicant stated that they played any role.

10. It has thus been submitted on behalf of the applicant that a retracted statement of the applicant allegedly recorded under Section 67 of the NDPS Act, 1985, which has a tampering of dates on it, in as much as in the statement under Section 67 of the NDPS Act, 1985, of the applicant, the date has been changed from 6.4.2021 to 5.4.2021 at several places in the document which indicates that the NCB had not followed the due procedure while recording the statement of the applicant; and the retracted statement of the co-accused Kapil Aggarwal @ Rohit recorded allegedly under Section 67 of the NDPS Act, 1985, cannot be used against the petitioner in the event of no recovery having been effected from the applicant. The applicant has further submitted that in *State by NCB Bengaluru V. Pallulabaid Ahmad Arimutta*; SLP CrI. 242/2022, the Hon'ble Supreme Court whilst adjudicating an application for cancellation of bail filed by the State of Karnataka held vide order dated 10.1.2022 that statements of the respondents or the co-accused under Section 67 of the NDPS Act, 1985, cannot form the basis for overturning the impugned orders releasing them on bail.

11. Inter alia, reliance has been placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Prajesh Vaghani v. State of Maharashtra*; 1989 SCC OnLine Bom 356 and *Dharampal Singh*



**V. State of Punjab** (2010) 9 SCC 608 to submit to the effect that there is nothing on the record to suggest that the applicant was in conscious possession of the psychotropic substances.

12. The status report dated 6.1.2022 is to the effect:

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| 6. | Date, time & place of incident | <p>On the basis of secret information dated 13-03-2021, the NCB Team reached DHL Express Courier Company, Kirti Nagar, New Delhi, and the Supervisor at DHL produced the suspected parcel bearing Airway Bill No. 4254071485 which was destined to USA and booked in name of one Muskan Singh. On opening the parcel it contained three carton boxes. In first box, it contained black colour plastic box in which 45 white boxes were found. One box contained 36 tablets with words GG249. All 45 boxes contained similar type tablets i.e. GG249 and all weighed 600 Grams and appeared to be Alprazolam.</p> <p>On opening second box, it contained 39 pouches consisting of yellow coloured tablets having words A215 appeared to be Oxycodone tablets and it weighed 1 Kg</p> <p>On opening third box, it contained GG249 tablets in 45 small boxes and all weighed 600 grams which appeared to be Alprazolam. Seizure was effected vide Panchnama dated 13-03-2021 in presence of independent witnesses.</p> <p>During investigation, Muskan Singh the alleged consignor tendered her statement wherein she disclosed that she had never booked the parcel under reference.</p> <p>During further investigation, it revealed that said</p> |



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|  | <p>parcel received at DHL was booked through Zephyr Express at CB- 3858 Ring Road Naraina, New Delhi. In follow-up Sh . Anoop Singh of Zephyr Express tendered his voluntary statement on 17-03-2021 and revealed that said parcel bearing AWB No. 4254071485 was received from M/s Rightway Logistics Mahipalpur, New Delhi and further disclosed that Ashok Kumar of said Courier company had informed him that 11 more such parcels are with him, which shall be forwarded to him in near future for booking.</p> <p>On the basis of disclosure of 11 more such parcels lying with Rightway Logistics, Mahipalpur, the NCB Team under directions, reached at said place and enquired about the said 11 parcels from Mr. Ashok Kumar who informed that said parcel AWB No. 4254071485 and similar 11 more parcels have been booked through Mr. Ajay of Shyam Logistics Rangpur, Mahipalpur. On directions, Sh Ashok Kumar telephonically informed Mr. Ajay Bhardwaj and called him at the Office of Rightways Logistics. After sharing information by NCB team about booking of said parcels with Mr. Ajay, he revealed that said parcels had been by one person who introduced himself as Rohit resident of Agra and said Rohit had sent ID of Muskan for booking the parcels.</p> <p>Thereafter, the said parcels were examined in the presence of independent witnesses and on opening said parcels were found to contain Psychotropic Tablets as under:</p> <p>First Parcel- 14.895 Kgs Tablets of Amphetamine;</p> <p>Second Parcel- 16.100 Kgs of Tramadol tablets;</p> <p>Third Parcel- 10.155 Kgs. of Tramadol Tablets;</p> <p>Fourth Parcel- 3 990 Kg of Tramadol Tablets</p> <p>Fifth Parcel- 16. 775 Kgs of Tramadol Tablets;</p> <p>Sixth Parcel- 6. 170 Kgs of Tramadol Tablets</p> <p>Seventh Parcel- 16. 725 Kgs of Tramadol Tablets</p> <p>Eighth Parcel- 6 .560 Kgs of Tramadol Tablets;</p> <p>Ninth Parcel- 16 100 Kgs of Tramadol Tablets;</p> <p>Tenth Parcel- 10.495 Kgs of Tramadol Tablets;</p> |
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|  | <p>Eleventh Parcel - 1.060 Kg of Tramadol Tablets;<br/>Twelfth Parcel- 8.050 Kgs of Tramadol Tablets<br/>Thirteenth Parcel- 10.050 Kgs of Tramadol Tablets,<br/>Fourteenth Parcel- 1.850 Kg of Tramadol Tablets.</p> <p>The aforesaid seizure was effected in presence of independent witnesses and recorded vide Panchnama dated 18-03-2021.</p> <p>During investigation, Ajay Bhardwaj tendered his voluntary statement under section 67, NDPS Act on 26-03-2021 wherein he revealed that Rohit had sent parcel bearing AWB No. 4254071485 and 11 more boxes for booking as Herbal pills and for said purposes had also deposited Rs. 2,08,000/- in his Bank account. He also revealed that the person through whom Rohit had sent the parcel, his mobile number is 8368661085 and mobile number of Rohit of Agra is 9548241905.</p> <p><b>In follow-up investigations, it revealed that actual name of Rohit is Kapil Aggarwal who is using mobile no. 9548241905 and was residing at Flat No. 6, Sitaram Colony, Agra. A notice under section 67, NDPS Act was issued to Kapil Aggarwal@Rohit and in compliance thereof he tendered his voluntary statement on 30-03-2021, whereby he admitted his indulgence in exporting narcotic medicines illegally and further revealed that he purchased those medicines in loose form from one Bauji@Arun Goyal and used to send those medicines abroad through parcel. He also disclosed that parcel recovered from DHL Courier on 13-3-2021 and Rightways Logistics on 18-03-2021 were sent by him alongwith fake ID documents of one Muskan. He had also revealed details of Jack Delton@Swami who provided him foreign addresses and also fake ID for sending parcels containing contraband. Consequently, Kapil Aggarwal was arrested on 31-03-2021.</b></p> <p><i>(emphasis supplied)</i></p> <p><b>In follow-up investigation, notice under section 67, NDPS Act was issued to Arun</b></p> |
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|  | <p>Goyal@Bauji on 05-04-2021 and in pursuance thereof during preliminary enquiry he revealed that the seized psychotropic medicines were supplied to Kapil Aggarwal by him and some of loose Tramadol Tablets was kept at house of Achal Gupta R/o 213, MaGauri Town. Bahadurpur, Agra, U.P. After said disclosure by Arun Goyal, he led the NCB team to said place. After reaching residence of Achal Gupta, the NCB Team was informed by him that he received 4 cartons from Arun Goyal@Bauji ,and without knowing its contents, he shifted those cartons to the residence of Bablu, Bahadurpur, Agra, U.P .. Thereafter he led the NCB Team to the place of Bablu wherefrom 4 cartons containing loose tablets in aluminium zip pouches were recovered. The recovered tablets were revealed by Arun Goyal to be Tramadol Tablets and it weighed 80.673 Kgs. The seizure was effected vide Panchnama dated 05-04- 2021in the presence of witnesses.</p> <p>Arun Goyal has also revealed that he has been engaged in dealing with the psychotropic/narcotic medicines for the last 20 years. He also disclosed that he used to procure medicines without bills from JPEE Drugs, Sikandara, Agra owned by one Vinod Aggarwal and run by his son Vikas Aggarwal and further he used to supply to Kapil Aggarwal in the form of loose tablets. He also revealed that the seized loose tablets were procured by him from JPEE Drugs and were intended to supply to Kapil Aggarwal. Consequently, Arun Kumar Goyal was arrested on 05-04-2021.</p> <p>Thereafter, on the basis of facts disclosed by Arun Goyal and the field information/intelligence gathered qua JPEE Drugs, the NCB Team reached J.P Drugs' Godown warehouse located at J.P. medical Agencies, F-50, Site C, Industrial Area , Sikandara, Agra, U.P. Upon search of</p> |
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|  |  | <p>said premises, 20,40,500 tablets of Psychotropic Medicines, 31.12 Ltr. of Tramadol injections and 62,637 bottles of Codeine based Cough syrup alongwith other material/documents were seized on 07-04-2021.</p> <p>Similarly, during search at manufacturing Unit of JPEE Drugs located at Plot No. 53, Sector-6A, Sidcul, Haridwar, Uttarakhand, 2,47,500 Tramadol Tablets weighing 86.625 Kgs were found and seized vide Panchnama dated 07.04.2021.</p> <p style="text-align: right;"><i>(emphasis supplied)</i></p> <p>During further investigations the role of other accused persons namely Jwala Prasad @ Swami, Avinash Sharma, Gaurav Sharma, Prajjwal Bhardwaj had surfaced on record who all were involved in online illegal drug business in connivance with Kapil Aggarwal. The relevant role and facts qua said accused persons are in detailed vide separate Complaint filed in present matter.</p> <p><b>Seizure-</b></p> <p><b>1200 Grams of Alprazolam tablets &amp; 1 Kg of Oxycodone Tablets seized on 13-03-2021 at DHL Express India Lt. Kirti Nagar, New Delhi;</b></p> <p><b>ii) 14.895 Kgs of Amphetamine Tablets and 144.08 Kg. of Alprazolam / Tramadol Tablets seized on 18-03- 2021 at Rightways Logistics, Mahipalpur, New Delhi;</b></p> <p><b>iii) 80.672 Kgs of loose Tramadol Tablets seized on 05-04-2021 at H.No. 23, Sitaram Colony, Bahadurpur, Agra.</b></p> <p><b>iv) Huge quantity of Tramadol Tablets seized from premises of J.P. Drugs Company. (Commercial Quantity)</b></p> |
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13. Reliance was placed on behalf of the NCB on the verdicts of the Hon’ble Supreme Court in *State of Kerala Etc. V. Rajesh Etc.* 2020



SCC OnLine SC 81, *Collector of Customs, New Delhi v. Ahmadalieva Nodira*; (2004) 3 SCC 549 and *Union of India V. Rattan Mallik*; (2009) 2 SCC 624.

14. The NCB has thus submitted to the effect that the applicant has been accused of a serious offence of drug trafficking of commercial quantity, i.e., a seizure of 1200 Grams of Alprazolam tablets & 1Kg of Oxycodone tablets seized on 13.3.2021 at DHL Express India Limited, Kirti Nagar, New Delhi; 14.895 Kgs of Amphetamine tablets and 144.08 Kgs of Alprazolam /Tramadol Tablets seized on 18.3.2021 at Rightways Logistics, Mahipalpur, New Delhi; 80.972 Kgs of loose Tramadol Tablets seized on 5.4.2021 at H. No. 23, Sitaram Colony, Bahadurpur, Agra, U.P.. It has thus been submitted on behalf of the NCB that there was no ground for grant of bail whatsoever to the applicant.

### ANALYSIS

15. On a consideration of the submissions that have been made on behalf of either side, it is essential to observe that undoubtedly the statements under Section 67 of the NDPS Act, 1985 made by the co-accused Kapil Aggarwal, who is alleged to have sent the narcotics/psychotropic tablets and medicines amounting to 14.895 Kgs of Amphetamine tablets and 144.08 Kg. of Alprazolam/ Tramadol Tablets which were recovered on 18.3.2021 from the Rightways Logistics, Mahipalpur, New Delhi as sent by the co-accused Kapil Aggarwal and who is alleged to have booked 1200 gms of Alprazolam, 1 kg of oxycodone tablets vide Airway bill No. 4254071485 seized on 13.3.2021 from the parcel lying at DHL



Express India Limited, Kirti Nagar, New Delhi, wherein as per which statement the said Kapil Aggarwal allegedly stated that in conspiracy with the co-accused he had procured these loose tablets from the applicant Arun Kumar Goyal @ Bauji at Agra *per se* does not amount to any incriminating evidence against the applicant in terms of the verdict of the Hon'ble Supreme Court *Tofan Singh V. State of Tamil Nadu* (supra) as followed in "*Sanjeev Chandra Agarwal & Anr. Vs. Union of India*" in Criminal Appeal No(s). 1273/2021, a verdict dated 25.10.2021 and the verdict of the Hon'ble Supreme Court in a Petition for Special Leave to Appeal (CRL.) No.242 of 2022 Arising out of Diary No.22702 of 2020 in case titled as "*STATE BY (NCB) BENGALURU VERSUS PALLULABID AHMAD ARIMUTTA & ANR.*" alongwith Petition for Special Leave to Appeal (CRL.) No.1569 of 2021 in case titled as "*UNION OF INDIA VERSUS MOHAMMED AFZAL*" with Petition for Special Leave to Appeal (CRL.) No.1454 of 2021 in case titled as "*UNION OF INDIA NARCOTICS CONTROL BUREAU, BENGALURU VERSUS MOHAMMED AFZAL*" with Petition for Special Leave to Appeal (CRL.) No.1465 of 2021 in case titled as "*STATE BY INTELLIGENCE OFFICER, NARCOTICS CONTROL BUREAU*" *VERSUS MUNEES KAVIL PARAMABATH @ MUNEES KP*" with Petition for Special Leave to Appeal (CRL.) No.2080 of 2021 in case titled as "*STATE OF KARNATAKA VERSUS MUNEES KAVIL PARAMABATH*" and Petition for Special Leave to Appeal (CRL.) No.1773-74 of 2021 in case titled as "*STATE BY INTELLIGENCE OFFICER (NCB) BENGALURU ZONAL UNIT, BENGALURU*"



***VERSUS ABU THAHIR @ ABDU & ETC.***” dated 10.01.2022 making it apparent that the confessional voluntary statements of the accused or co-accused cannot be considered as admissible evidence against the accused.

16. Nevertheless, the aspect that the applicant allegedly led to recovery of 80.673 kgs of Tramadol from the residence of Bablu, at Bahadurpur, Agra, U.P. which were found to be contained in four cartons in aluminium zip pouches, which had been recovered allegedly from the residence of Bablu on the alleged voluntary statement of the applicant that he had kept some Tramadol Tablets at the house of one Achal Gupta, whereupon the applicant led the NCB team to the house of Achal Gupta where the said Achal Gupta informed the NCB team of having received four cartons from the applicant but that without knowing its contents he shifted those cartons to the residence of Bablu, at Bahadurpur, Agra, U.P. coupled with the statement tendered by Bablu put forth as a public witness by the NCB under Section 67 of the NDPS Act, 1985, the said alleged disclosure made by the applicant which led to consequential recovery of 80.673 kgs of Tramadol Tablets from the residence of Bablu at Bahadurpur, Agra, U.P. is apparently *prima facie* admissible in terms of Section 27 of the Indian Evidence Act, 1872, as rightly contended on behalf of the NCB.

17. The factum that the NCB has also put forth that the mobile No. 7055522456 used by Kapil Aggarawal @ Rohit was in frequent connection with mobile numbers 7055092473 and 7302869588 used by the applicant as per the CDR details analysis, brings forth also the



*prima facie* alleged involvement of the applicant with the co-accused Kapil Aggarwal @ Rohit.

18. The entry No. 238-ZH Tramadol, in terms of the Table as detailed in SO-1055(E), dated 19.10.2001, with Tramadol having been inserted vide Notification SO-1762(E) dated 26.4.2018 indicates that possession of 250 grams and above of Tramadol falls within the ambit of commercial quantity of Tramadol.

19. Furthermore, qua the contention that had been raised on behalf of the applicant that the CRCL report of samples allegedly drawn of the Tramadol Tablets allegedly recovered at the behest of the applicant had not been placed on record and thus an incomplete chargesheet had been filed with the applicant being entitled to the grant of bail in terms of Section 167(2) of the Cr.P.C., 1973, in view of the verdict of the Co-ordinate Bench of this Court in ***Mohd. Arbaz V. State of NCT of Delhi***, CrI.Rev.P. 1219/2019 and ***Abdul Rashid V. State of NCT of Delhi***, CrI.Rev P. No. 1220/2019 and ***Mohd. Nazim V. State of NCT o Delhi*** CrI.Rev P. No. 1222/2019 dated 3.11.2020 as already adjudicated in the negative qua the aspect of a report under Section 173(2) of the Cr.P.C., 1973 being an incomplete report, if not, accompanied with the Chemical Examiner's report in view of the binding observations of the Division Bench of this Court in ***Kishan Lal V. State*** 1989 (39) DLT 392; the said contention cannot be accepted. Undoubtedly, the said verdict dated 3.11.2020 in ***Mohd. Arbaz V. State of NCT of Delhi*** (Supra), ***Abdul Rashid V. State of NCT of Delh (supra)*** and ***Mohd. Nazim V. State of NCT of Delhi*** (supra) has been assailed and is *sub judice* before the Hon'ble



Supreme Court in Petition(s) for Special Leave to Appeal (Crl.) No(s.). 8164-8166/2021, qua the instant case, however, the said aspect of the CRCL chemical examination report having not been received is set at rest in as much as the Court has been informed vide mail dated 23.3.2022 from the NCB of the CRCL report in the matter and the copy of the proceedings dated 28.2.2022 before the Court of the Special Judge, NDPS, New Delhi in Crime No. VIII/10/DZU/2021 i.e. in which the instant bail application has been filed, also indicates that the copy of the CRCL report has been supplied to the accused persons. The CRCL report of the alleged recovery made on 5.4.2021 at Bahadurpur, Agra, U.P. allegedly at the behest of Bablu, dated 22.2.2022 which is admissible under Section 293 of the Cr.P.C., 1973 shows that the samples marked:

| <i>S. No.</i> | <i>CLD No.</i> | <i>Marked as</i> | <i>Gross weight of sample as received (gm)</i> | <i>Gross weight of remnant returned (gm)</i> |
|---------------|----------------|------------------|------------------------------------------------|----------------------------------------------|
| 1             | 2037(N)        | PA-1             | 5.2                                            | 3.6                                          |
| 2             | 2038(N)        | PB-1             | 5.0                                            | 3.7                                          |
| 3             | 2039(N)        | PC-1             | 6.1                                            | 4.3                                          |
| 4             | 2040(N)        | PD-1             | 5.0                                            | 3.7                                          |
| 5             | 2041(N)        | PE-1             | 5.0                                            | 3.7                                          |
| 6             | 2042(N)        | PF-1             | 5.2                                            | 3.6                                          |
| 7             | 2043(N)        | PG-1             | 4.6                                            | 3.1                                          |
| 8             | 2044(N)        | PH-1             | 4.9                                            | 3.4                                          |

have been found to have tested positive of Tramadol Hydrochloride.

20. In view of the above observations in relation to the aspect that the alleged disclosure statement made by the applicant had led to the alleged recovery of 80.673 Kgs. of Tramadol Tablets, the samples



drawn of which as per the CRCL report have also tested positive for Tramadol with the commercial quantity of Tramadol being 250 grms and the recovery allegedly effected being of 80.673 Kgs of Tramadol Tablets at the behest of the applicant with allegations against the applicant of the alleged commission of offences punishable under Sections 8, 22(c), 23 & 29 of the NDPS Act, 1985, in as much as this Court is not satisfied that there are reasonable grounds for believing that the applicant is not guilty of the alleged commission of the offences for which he has been arrested nor of the factum that he is not likely to commit any such similar offence whilst on bail, it being apparent thus that the embargo under Section 37(2)(b) of the NDPS Act, 1985, read with Section 37(1)(b)(ii) of the NDPS Act, 1985, is wholly applicable in the facts and circumstances of the instant case in view of the verdict of the Hon'ble Supreme Court in ***State of Kerala Etc. V. Rajesh Etc.*** (Supra) vide verdict dated 24.1.2020 whereby it was held to the effect that

*“21. 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.....”*

### **CONCLUSION**

21. It is thus held that the application filed by the applicant seeking the grant of bail is dismissed in view of the alleged incriminating evidence collected against the applicant and this Court not being



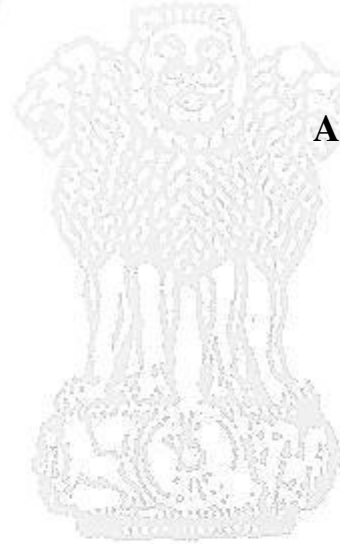
satisfied *prima facie* as observed hereinabove of the applicant not being guilty of the commission of any offence under Sections 8, 22(c), 23 & 29 of the NDPS Act, 1985, nor of the factum that the applicant is not likely to commit any such offence whilst on bail.

22. Nothing stated herein above shall however amount to any expression of facts or the merits or demerits of the trial, if any, that may take place in relation to Crime No. VIII/10/DZU/2021.

23. The application is thus declined.

**MARCH 25, 2022**  
**SV**

**ANU MALHOTRA, J.**



न्यायमेव जयते