



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

Date of decision: 11th MARCH, 2022

IN THE MATTER OF:

+ **BAIL APPLN. 4335/2021**

AFROZ ALAM

..... Petitioner

Through Mr. Naveen R. Nath, Senior Advocate
with Mr. Anirudh Bhat, Mr. Amjad
Khan, Mr. Arijit, Mr. Vikas Tomal
and Mr. Alok Mahajan, Advocates

versus

STATE

..... Respondent

Through Mr. Amit Chadha, APP for the State
with SI Rakesh Kumar, AGS/Crime
Branch, Dwarka

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The petitioner seeks bail in FIR No.218/2018 dated 29.08.2018 registered at Police Station Crime Branch for offences under Section 22 and 29 of the NDPS Act read with Section 63 and 65 of the Copyright Act.
2. Briefly stated, the facts leading to the instant case are as follows:-
 - i. On 28.08.2018, at about 4.00 PM, a secret information was received at IGIS/Crime Branch, Dwarka stating that one person, namely Sunil Sharma, is involved in supply of Tramadol (a substance prohibited under the NDPS Act) to North-East region along with his friends namely, Rajesh and Nagesh.
 - ii. After necessary compliances, raid was conducted and three



persons namely, Sunil Sharma, Rajesh Kumar Sharma and Nagesh Sharma were apprehended. It is stated that 46,656 Capsules of Spasmo Proxyvon Plus which contains Tramadol were recovered from their possession and the instant case was registered.

- iii. During investigation, several persons were arrested. In his disclosure statement, one co-accused Vineet Garg @ Banti stated that Sunil Sharma was funding the business and he used to supply Buprenorphine injection. It was further disclosed that the said Buprenorphine injection was supplied after removing the labels and stickers and after pasting labels of standards companies so that they can be sold on higher prices. It was disclosed that these labels were procured through the Petitioner herein.
- iv. It is stated that the Petitioner was arrested on 24.09.2018. It is stated that during investigation he disclosed that co-accused Sunil Sharma contacted him in Jan/Feb 2018 for the first time and informed him that he is in the process of setting-up his own medicine manufacturing plant. It is stated that he informed the petitioner herein that the capsule of Spasmo Proxyvon Plus is in great demand among drug abusers because it contained a psychotropic substance Tramadol. Co-accused Sunil Sharma further informed that they were setting up entire setup for manufacturing Spasmo Proxyvon Plus capsules, but they lack printing/packaging material.
- v. It is stated that co-accused Sunil Sharma lured the petitioner



herein on the pretext that he will give ten times more money than the normal rate if the petitioner herein gets ready to extend help. It is stated that the co-accused Sunil also provided nearly 50-60 thousand labels of standard companies like Logo-Gesis and Lupi-Gesic despite having knowledge about the use of the stickers for illegal and easy sale of medicines containing psychotropic substance, i.e. Buprenorphine, without taking any Purchase Order/valid documents from the co-accused Sunil Sharma.

- vi. It is stated that the petitioner was taken on two days PC remand and three bundles (containing 9000 Nos. of literature) of Spasmo Proxyvon Plus Literature and 31 boxes of Stemetil MD having printed details of Abbott Healthcare Pvt. Ltd. were recovered from his office i.e. 2151/14, New Patel Nagar, Delhi. It is pertinent to mention that the Petitioner does not have a license to print literature of Spasmo Proxyvon Plus.
- vii. The petitioner further disclosed that these recovered literature and empty boxes of Stemetil MD are the left over part of the consignment of printed/packaging material supplied to the co-accused Sunil Sharma. The above mentioned details were taken into possession through seizure memo.
- viii. It is stated that the petitioner herein was well versed with the use of printed material provided by him and despite that he extended his help to this group and provided all kind of printed/packaging material in order to make easy money. It is stated that without his help, it was not possible for the accused



persons to sell Tramadol the psychotropic substance.

- ix. On the analysis of CDR, it was revealed that co-accused Sunil Shama was in touch with co-accused persons Rajesh Kumar Sharma (7838168550, Total Call-17), Vijay Dubey (9425619797, Total Call-2), Vineet Garg (9917949049, Total Call-7) and Afroz Alam i.e. the petitioner herein (9811265877, Total Call-1 & 881358795, Total Call-1 from 16.04.2018 to 28.08.2018).
- x. Material on record discloses that the petitioner was released on the interim bail(s) in the past i.e. 02.11.2019 to 16.11.2019, 17.07.2020 to 18.03.2021 and also on 05.05.2021 to 03.12.2021.
- xi. The petitioner approached the Trial Court for grant of regular bail and the same was rejected by order dated 03.12.2021 passed by the learned Additional Sessions Judge. The petitioner has approached this Court by filing the instant bail application.

3. Heard Mr. Naveen R Nath, learned Senior Advocate for the petitioner and Mr. Amit Chadha, learned APP for the State and perused the material on record.

4. Mr. Naveen R Nath, learned Senior Advocate for the petitioner contends that the goods have been seized without following the procedure under the NDPS Act. He states that a notification including Tramadol under the NDPS Act was passed only in April, 2018. He submits that that the offence at best can only be under the Copyright Act and not under the NDPS Act. He further states that the petitioner cannot be brought under the ambit of Section 29 of the NDPS Act. He places reliance on the judgment passed



by the Apex Court in State of Rajasthan v. Parmanand & Anr., (2014) 5 SCC 345. He states that mere recovery of certain materials or labels does not make the petitioner a part of the conspiracy.

5. *Per contra*, Mr. Amit Chadha, learned APP states that the petitioner did not have a licence to bring out literature for medicines which can also be used as psychotropic substances under the NDPS Act. He also states that the petitioner was in touch with the main accused. He further states that looking at the quantum of recovery, Section 37 of the NDPS Act would be applicable. He contends that the petitioner has approached this Court with the unclean hands and has not disclosed that he had moved an application for grant of bail in this Court by filing BAIL APPLN 1588/2019 which was withdrawn on 06.11.2019. He further states that the petitioner also did not disclose that another bail application being BAIL APPLN No.2522/2020 was rejected by this Court vide order dated 25.11.2020.

6. A perusal of the chargesheet indicates that accused Sunil had decided to manufacture Spasmo Proxyvon Plus capsules, which contains Tramadol. He got in touch with the Petitioner for printing labels of Spasmo Proxyvon Plus promising ten times more money than the normal rate, and the petitioner had agreed to provide the boxes and printed details of the Tramadol, despite not having the license/print labels for medicines which is a psychotropic substance.

7. Substantial quantities of literature for Spasmo Proxyvon Plus and Stemetil MD boxes wherein these goods were packed etc. have been recovered from the Petitioner. The question as to whether the labels found on the goods that were seized originated from the Petitioner or not is a matter of trial and cannot be considered at this stage. However, it is



pertinent to note that the petitioner did not have any licence to bring out the labels or the literature of Spasmo Proxyvon Plus and Stemetil MD tablets.

8. A reading of the chargesheet also shows that there has been a telephonic conversation between the petitioner and the co-accused Sunil Shama. There has been recovery of substantial amount of Spasmo Proxyvon Plus and Stemetil MD boxes. The quantity of narcotics drugs and psychotropic substances recovered from the co-accused is of a commercial quantity. At this juncture, it would be pertinent to reproduce Section 29 of the NDPS Act.

“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.”

9. Section 29 of the NDPS stipulates the punishment for abetment and conspiracy for offences under the NDPS Act. In this context, the Petitioner cannot use the defence that no narcotics drugs or psychotropic substances has been recovered from his person. By virtue of Section 29 of the NDPS, the Petitioner herein, if convicted, would also be liable for recovery of the psychotropic substance which has been recovered from the co-accused as it is the Petitioner who was printing the labels of Spasmo Proxyvon Plus which was being used as psychotropic substance sold by the co-accused - Sunil, without permission.

10. Grant or refusal of bail under the NDPS Act has been laid down by the Apex Court. In Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798, the Apex Court has observed as under:-

“3. According to learned counsel for the appellant the parameters of Section 37 of the Act have not been kept in view while accepting the prayer for grant of bail. It was pointed out that huge quantity of poppy straw was recovered from the possession of the respondent from House No. K.63/121, Gola Deena Nath, Varanasi. It is submitted that the prayer for bail was rejected by the District Judge in terms of Section 37 of the Act after elaborately dealing with the background facts. Bail can only be granted on fulfilment of two conditions i.e. (i) where there are reasonable grounds for believing that the accused is not guilty of the offence and (ii) that he is not likely to commit any offence while on bail. The learned Single Judge while accepting the prayer for bail has not recorded any finding that there are reasonable grounds for believing that the accused was



not guilty. Further, no finding has been recorded that he is not likely to commit any offence while on bail.

6. As the provision itself provides that no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

7. The expression used in Section 37(1)(b)(ii) is “reasonable grounds”. The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.”

In State of Kerala V. Rajesh, (2020) 12 SCC 122, the Supreme Court has reiterated the principles on which bail can be granted under the NDPS Act.

“19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to



oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. 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. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

21. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act.”

11. Substantial quantities of literature for Spasmo Proxyvon Plus and Stemetil MD boxes wherein these goods were packed etc. have been recovered from the Petitioner which were to be delivered to the co-accused – Sunil, who was illegally manufacturing these medicines. Whether the labels of the drug seized during the raid on 28.08.2018 were printed by the Petitioner or not is a matter of trial.

12. The rigours of Section 37 of the NDPS Act would, therefore,



automatically apply to the petitioner who had been roped in by virtue of Section 29 of the NDPS Act. The two bail applications of the petitioner had been rejected by this Court and it cannot be said that there are any changes in circumstances after the dismissal of the bail orders by this Court. Further, applying the twin test under Section 37 of the NDPS Act, it cannot be said that there are any reasonable grounds at this juncture to believe that the Petitioner was not a part of a well-oiled machinery and, therefore, this Court cannot discount the possibility of the Petitioner repeating the offence once out on bail. Narcotics drugs have a deleterious impact on society, and the menace of drug addiction not only has the ability of destroying the life of just one individual, but the ability to destroy the lives of generations to come. Therefore, the consequences of dealing of drugs and drug abuse can be experienced across the board, from causing economic issues to societal disintegration. The purpose of enacting the NDPS Act was to curb this menace, and this purpose must be borne in mind while considering the grant of bail pertaining to the NDPS Act [See Gurdev Singh v. State of Punjab, (2021) 6 SCC 558].

13. The petition is dismissed with the above observations along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 11, 2022

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