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

% Judgment delivered on: 23.05.2023

+ BAIL APPLN. 289/2023

GAJENDRA SINGH@GAJENDER SINGH Petitioner

Through: Mr. Pankaj Srivastav, Adv.

versus

STATE (NCT OF DELHI) Respondent

Through: Ms. Priyanka Dalal, APP

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The present petition has been filed by the petitioner seeking regular bail in FIR No. 307/2021 registered under Sections 22/29 of the NDPS Act, registered at P.S. Kashmere Gate, Delhi.
2. The petitioner who was also in custody in another case was formally arrested in the present case after seeking permission from the court, on 23.09.2021. Since then the petitioner is in custody and the chargesheet in the case has been filed.
3. The case of the prosecution is that on 02.06.2021 during patrolling duty SI Deepak, No. D/4545 and ASI Ravinder, No. 294/N checked a taxi car Ertiga Color White No. HR74A4946 which was intercepted at picket near GOP, Kashmere Gate Delhi. During checking of the said taxi, three passengers were found sitting in the said car on the rear seat who seemed frightened and on finding their activities suspicious, the said taxi and

passengers were checked properly and the all three persons were found carrying illicit Tramadol Hydrochloride Tablets RL-DOL100 SR in a bag, total 74 boxes each box containing 10 strips having 500 tablets and 5000 loose tablets (total 42000 Tablets).

4. On enquiry, the said persons could not produce any bill/document regarding possession of huge quantity of tablets and disclosed their names as (1) Bohad Singh, (2) Sewak Singh and (3) Vinod. Subsequently, the present FIR was registered and investigation was taken up.

5. During further investigation, statement of cab driver Nisar was recorded who stated that he is an Uber-Ola Cab driver and the cab was booked by Naved and all the above named three persons had boarded his cab for the trip booked by Naved. Accused Naved was arrested at the instance of Cab driver Nisar on 04.06.2021.

6. In the course of further investigation accused Naved disclosed that he is doing this illegal sale-purchase of Tramadol tablets from the last 01 year when he got in contact with accused Bohad Singh and Sewak Singh and realized that there is huge demand of these tablets in black market. Naved disclosed that he buys these tablets from Gaurav, and subsequently accused Gaurav was arrested on the same day i.e. 04.06.2021. Thereafter, on Gaurav's instance sixth accused in the chain namely Narender, who supplied these tablets illegally without bill to Gaurav was arrested 05.06.2021.

7. In so far as the role ascribed to the present petitioner is concerned, perusal of the chargesheet filed by the police reveals that during investigation a notice under Section 91 Cr.P.C. and under Section 67 NDPS Act was served on the manufacturer of Tramadol Tablets namely, M/s Orison Pharma International and from the reply submitted by the said

manufacturer, it transpired that the relevant batch of tablets was sold to M/s Gajanand Pharma, Vikas Puri, New Delhi vide Invoice No. MFG0732 dated 01.05.2021. On further investigation being made from the Drug Controller, South West Zone, it was found that the petitioner is the proprietor of the concern M/s Gajanand Pharma.

8. As the petitioner was already in custody having been arrested by the Narcotics Control Bureau, Delhi in crime case Cr. No. VIII/27/DZU/2021 dated 20.06.2020, the petitioner was taken on remand in police custody for 03 days with the orders of the court.

9. During remand the petitioner gave a statement that the shop in Vikas Puri was taken on rent by one Pramod who is into the business of selling, buying and storing of medicines and the petitioner is carrying the business of trading in medicines along with Pramod, who also has a flat and godown in Noida. Further, during petitioner's remand, shop of the petitioner in Vikas Puri, as well as, godowns of Pramod were searched but nothing was found.

10. The learned counsel for the petitioner submits that on the date of alleged incident, the petitioner was already in custody in connection with another case, therefore, he could not have procured and sold the Tramadol tablets to the co-accused from whom the recovery was made. He further submits that there is no material to show that from the accused persons from whom the alleged recovery of 42000 tablets of Tramadol was made were in contact with the petitioner and that the tablets were supplied by the petitioner to them. He further submits that the co-accused was arrested on 02.06.2021 and since then he is in custody.

11. It is further contended by the learned counsel for the petitioner that no recovery was made from the petitioner. He submits that in so far as another

case referred to in the Status Report is concerned, the petitioner has already been granted bail by the High Court of Allahabad in CRL.M (Bail) application no.15412/2023.

12. *Per contra*, the learned APP for the State contends that though the petitioner has a valid drug license but the quantity of the psychotropic substance i.e., Tramadol which has been recovered from the co-accused is in commercial quantity and the co-accused were in possession of such a huge quantity without any bill/document regarding possession of the same. She submits that the manufacturer of the Tramadol tablets had stated that the batch of the tablets recovered from the co-accused were actually sold to the petitioner's proprietorship concern M/s Gajanand Pharma. She submits that the petitioner is involved in another case registered as a crime case vide Cr. No. VIII/27/DZU/2021 dated 02.06.2021 under sections 8/21/22/29 of the NDPS Act, in which the petitioner was arrested on 06.06.2021. She further contends that since the quantity of Tramadol recovered is commercial and as the twin conditions as provided in Section 37 of the NDPS Act, are not satisfied, therefore, the bail application of the petitioner should be dismissed.

13. I have heard the learned counsel for the petitioner as well as the learned APP for the State.

14. I have also perused the material on record and the Status Report filed by the State.

15. The Supreme Court in *Collector of Customs vs. Ahmadaliev Nodira*, (2004) 3 SCC 549, while dealing with the twin conditions as envisaged by Section 37 of the Act, which need to be satisfied before granting bail in an offence under the Act involving commercial quantity, observed as under:-

“.....7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the

grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are : the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. 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 at hand the High Court seems to have completely overlooked the underlying object of Section 37. It did not take note of the confessional statement recorded under Section 67 of the Act."

16. The Supreme Court of India in *Babua v. State of Orissa*, (2001) 2 SCC 566 held as under:

"3. In view of Section 37(1)(b) of the Act unless there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail alone will entitle him to a bail. In the present case, the petitioner attempted to secure bail on various grounds but failed. But those reasons would be insignificant if we bear in mind the scope of Section 37(1)(b) of the Act. At this stage of the case all that could be seen is whether the statements made on behalf of the prosecution witnesses, if believable, would result in conviction of the petitioner or not. At this juncture, we cannot say that the accused is not guilty of the offence if the allegations made in the charge are established. Nor can we say that the evidence having not been completely adduced before the Court that there are no grounds to hold that he is not guilty of such offence. The other aspect to be borne in mind is that the liberty of a citizen has got to be balanced with the interest of the

society. In cases where narcotic drugs and psychotropic substances are involved, the accused would indulge in activities which are lethal to the society. Therefore, it would certainly be in the interest of the society to keep such persons behind bars during the pendency of the proceedings before the court, and the validity of Section 37(1)(b) having been upheld, we cannot take any other view."

17. The present bail application of the petitioner will, therefore, have to be considered in the light of the aforesaid law laid down by the Hon'ble Supreme Court.

18. The recovery of Tramadol tablets from Bohad Singh, Sewak Singh and Vinod, is of commercial quantity. It is true that no recovery has been made from the petitioner nor there is any material on record in the form of CDR etc. to show that the petitioner was in contact with the co-accused or had supplied the Tramadol tablets to them and the petitioner was not even named in the FIR. A perusal of the charge sheet also shows that the persons who were in touch with each other over mobile phone were Bohad Singh, Naved @ Naveen, Vinod, Sewak Singh, Gaurav Kalra and the cab driver namely, Nisar. However, it cannot be overlooked that the manufacturer of the recovered Tramadol tablets, namely, M/s Orison Pharma International, in response to notice under Section 91 CrPC and in statement under section 67 of the Act has stated that the batch of tablets of Tramadol which have been recovered from the co-accused were sold to M/s Gajanand Pharma, Vikaspuri, New Delhi.

19. The petitioner in his statement has also disclosed that he was doing the business of medicines with one Pramod, who has his godowns in Noida. The said Pramod, as stated in the charge-sheet, is absconding.

20. Though there might be a missing link to establish the supply of huge

quantity of Tramadol by the petitioner to the other co-accused but since there is material on record to show that the batch of the recovered tablets of Tramadol was supplied by the manufacturer M/s Orison Pharma International, to the petitioner, the involvement of the petitioner and the possibility of him being held guilty cannot be ruled out at this stage.

21. That apart, there is another case registered against the petitioner vide case Crime No. VIII/27/DZU/2021 under Sections 8/21/22/29 of NDPS Act. Though the petitioner has already been granted bail in the said case but petitioner's involvement in that case shows that the antecedents of the petitioner are not clean.

22. The contention of the petitioner that the petitioner was in judicial custody when the incident alleged in the present case happened, is factually incorrect. In fact the incident in the present case is of 02.06.2021, when the co-accused were intercepted and recovery of Tramadol tablets was made, whereas in the other case mentioned in the foregoing paragraph, the petitioner was arrested on 06.06.2021 i.e. after the recovery was made.

23. At this stage, in my view, it cannot be *prima facie* said that there are no grounds to hold that the petitioner is not guilty of the alleged offence. As held by the Supreme Court in *Babua (supra)*, the liberty of a citizen has to be balanced with the interest of the society. In cases where narcotic drugs and psychotropic substances are involved, the accused indulges in activities which are lethal to the society. It is also not in dispute that in so far as the petitioner is concerned, there is another case in which the petitioner is involved and his antecedents are not clean.

24. Keeping in view the facts and circumstances of the case in entirety, the nature of allegation and the material on record, I am of the view that the

petitioner is not entitled to grant of bail. The Petition is accordingly dismissed.

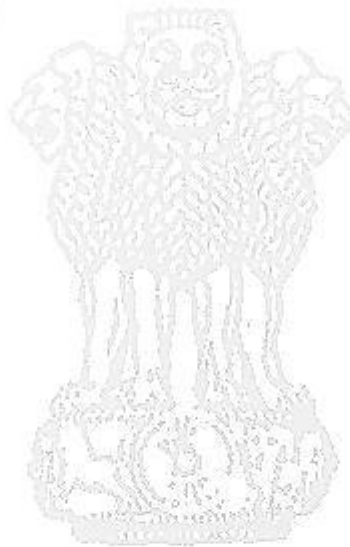
25. Nothing stated herein above shall be construed to be an expression of opinion on the merits of the case.

26. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

MAY 23, 2023

N.S.ASWAL/dss



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