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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 25th July, 2023

+ BAIL APPLN. 1278/2023

LHINGNEIHAT LHOUVUM

..... Petitioner

Through: Mr. Sumit Sharma, Advocate.

versus

IO, NARCOTICS CONTROL BUREAU & ANR. Respondents

Through: Mr. Subhash Bansal, Senior Standing
Counsel for NCB with Mr. Raghav
Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') read with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') seeks regular bail in Sessions Case No. 09/2021, under Sections 21/23/29 of the NDPS Act, titled "NCB v. Martin Chikamma Nwokorie & Anr." pending before the Court of the learned Special Judge (NDPS), Patiala House, New Delhi.



2. The case of the respondent as per the status report dated 19.05.2023, is as under:-

- i. On 10.07.2020, the competent authority, i.e., Director General of the Narcotics Control Bureau (hereinafter referred to as 'NCB') issued an order to undertake controlled delivery operation of the parcel bearing AWB No. 3449436874 and AWB No. 3449436922 suspected to be containing contraband. For that purpose, Sh. Rampal, Intelligence Officer, NCB-DZU, New Delhi was directed to take action. The parcels originated from Kampala city, Uganda and were destined for Manja, Assam.
- ii. In compliance of aforesaid directions, the concerned Investigating Officer alongwith a team, reached at Aramex India Pvt. Ltd., Plot No. 211, Bamnoli Village, New Delhi-77 on 11.07.2020 and shared the information about controlled delivery of aforesaid parcels with Sh. Sandeep Saroha, Manager, Security at Aramex India Pvt. Ltd. The Manager checked the system and informed the Investigating Officer that the parcel bearing AWB No. 3449436922 has reached and the second parcel bearing AWB No. 3449436874 is on the way. In the presence of public witnesses-Sh. Neeraj Negi and Sh. Praveen Kumar, the aforesaid parcel - AWB No. 3449436922 was inspected and was intact in a carton box, wrapped/taped with Aramex tape. The carton was found to contain six smaller-sized cardboard boxes wrapped in Aramex tape. On opening the six boxes, all were found to contain LED Lights and on checking/opening the LED Lights, one packet containing an off-white substance was found in each light, concealed beneath the



panel of the lights. The packets were removed from all six LED Lights and the said off-white substance from each packet was tested separately with a field-testing kit. The recovered substance tested positive result for 'Heroin'. As the substance in all six packets was similar in colour and texture, a lot was made by mixing it homogeneously and the weight of the said substance was recorded as 500 grams.

- iii. The box was then packed in its original Aramex wrapping with photocopy of documents pasted on box and it was made ready for controlled delivery.
- iv. The seizure proceedings were recorded vide Panchnama dated 11.07.2020, in the presence of public witnesses and the relevant documents pertaining to the parcel bearing AWB No. 3449436922 were also seized, in original.
- v. Subsequently, on 14.07.2020, the Investigating Officer, received information from office of Aramex that the intended consignee, i.e., Lhingneihat Lhouvum has requested to collect the consignment bearing AWB No. 3449436922 from Delhi itself. The said consignment was the subject matter of a controlled delivery. Accordingly, a dummy parcel was taken out from the offices of NCB to facilitate delivery to the intended recipient. A team of NCB reached Aramex Office and there, Sh. Sandeep Saroha, Manager at Aramex informed that the intended consignee, namely, Lhingneihat Lhouvum, i.e., the applicant alongwith her friend had arrived and was waiting to collect the consignment bearing AWB No. 3449436922. Based on follow-up actions for controlled delivery, the Aramex staff, in the presence of independent



witnesses, had delivered the parcel to Lhingneihat Lhouvum. She admitted that she booked and received the said consignment and also the consignment bearing AWB No. 3449436874. She and her partner, namely, Martin Chikamma were apprehended while taking the delivery of said parcel.

- vi. A *panchnama* was drawn at the spot, in the presence of independent witnesses on 14.07.2020.
- vii. During further investigation, notices were issued to the applicant and co-accused Martin Chikamma, and they tendered their voluntary statements under section 67, NDPS Act, 1985 on 14.07.2020.
- viii. Co-accused Martin Chikamma in his voluntary statement, revealed the factual details and stated that he was living with his wife, the applicant at F-1/22, 3rd Floor, Mohan Garden Uttam Nagar, New Delhi, on rent. He stated they both had gone to collect the parcels in question from the Aramex office. He admitted of having received the dummy parcel, which actually contained 500 grams of Heroin. He further informed that his brother, Uchhe, had sent these parcels containing heroin to him and revealed other relevant details, including the mobile numbers used by him and the applicant. He also stated to have been living on a fake visa and disclosed his involvement in the business of drug for last two years.
- ix. The applicant tendered her voluntary statement on 14.07.2020. She stated that she was married to co-accused Martin Chikamma and was living with him at F-1/22, 3rd Floor, Mohan Garden, Uttam Nagar, New Delhi. She revealed that she had contacted Aramex, as directed by



co-accused, Martin Chikamma to collect the parcels in question and that she had also sent an e-mail to Aramex for delivery. Since address on her identity card was different, she and co-accused Martin Chikamma had gone to collect the said parcel bearing AWB No. 3449436922 personally. She also admitted to receiving the dummy parcel, which actually contained 500 grams heroin and also revealed details of the mobile numbers used by her and co-accused Martin Chikamma.

- x. Thereafter, the present applicant and co-accused were arrested on 14.07.2020.
- xi. In follow-up to the controlled delivery of other parcel bearing AWB No. 3449436874, information was received that said parcel has been detained at Cargo Custom at New Courier Terminal IGI Airport, New Delhi and accordingly, a team of the NCB reached and examined the said parcel in presence of witness-Mr. Arjun Senior Manager from Aramex Courier. The details of consignee on the said parcel AWB No. 3449436874 were “Lhingneihat Lhourum, Address Ghoijang Gaon PS Manjha Dphu, Karbinlong, Assam 782461, Phone +917303639629” alongwith copy of Electoral ID of the consignee. On opening the said parcel, it was found to contain four cardboard boxes and each box contained 12 sleek make-up compact and foundation boxes. On opening the sleek make-up boxes, it was found that each box was concealed with a plastic packet, containing an off-white powdery substance within the cavity of each pack. All 48 packets were taken-out and the substance in each packet was tested separately with field-



testing kit. The recovered substance tested positive for 'heroin'. The total weight of said substance was 470 grams. All substance, being similar in colour and texture, was homogeneously mixed and samples were drawn. The contraband was seized *vide panchnama* drawn at spot on 15.07.2020.

- xii. Further, while in custody, co-accused Martin, on 15.07.2020 revealed that he had sent an e-mail from his mail address *martin.fransis@gmail.com* to Aramex for tracking the said parcel and confirmed that parcel bearing AWB No. 3449436874 was sent to him by his brother, Ucche, from Uganda. Upon disclosures made during enquiry on 16.07.2020 a team of NCB alongwith Martin, had gone to his residence at F-22, 3rd Floor, Mohan Garden, Uttam Nagar, New Delhi. During search of the House, in presence of independent witness, an off-white substance, in a packet was found and weighed 360 grams. Upon search of trolley bag lying in a room, bundles of Indian currency amounting to Rs. 2,50,000/- were found. Few documents and a Scooty allegedly, purchased from drug-money were found, which were all seized *vide panchnama* dated 16.07.2020.
 - xiii. As per CRCL & CFSL Report, the samples of the substance seized from the house were found negative for heroin.
 - xiv. However, the CRCL Report for samples of substances seized from the two parcels in question were found positive for heroin.
3. Learned counsel appearing on behalf of the applicant submitted that the present applicant has been named in the complaint as she was the live-in



partner of co-accused and the said co-accused misused her identity as the consignee of the alleged consignment recovered by the respondent/NCB.

4. Learned counsel for the applicant urged the following grounds in support of the present application:

- i. The statement of the applicant is inadmissible in evidence. Be that as it may, the said statement does not say that the applicant had knowledge about contraband in the parcels, sent by Uche (brother of the co-accused Martin). She further mentions in her statement, *“On asking I told that Martin was the real consignee of the parcel.”*
- ii. The prosecution has falsely implicated the applicant in the present case, as the mobile phones, allegedly recovered from the applicant, do not belong to her and the same can be ascertained from the transcription of the messages. It has been alleged that two mobile phones, i.e., VIVO and iPhone X were recovered from applicant, as per the *Jamatalashi* Memo and they do not belong to the applicant.
- iii. The mobile number 7303639629 is in the name of one Salman Khan. It has been stated by the prosecution that the said Salman Khan is the mobile phone subscriber. It is important to mention that he is neither named in list of witnesses, nor has his statement under section 67 of NDPS Act been recorded by the respondent. As per the prosecution, the said number belongs to the applicant, however, there is no evidence or document to demonstrate the same. It is pertinent to mention that on both the phones, the conversation is not between the applicant and the second party, rather someone else.



5. It was further submitted that the chargesheet has already been filed in the present case and no useful purpose will be served in keeping the present applicant in further judicial custody. She has already been in custody since the date of her arrest, i.e., 14.07.2020. It was further submitted that the applicant has an aged mother to take care of and there is no one else in the family to take care of her.

6. *Per contra*, learned Senior Standing Counsel ('Sr. SC') for the NCB submitted that the present case involves recovery from two consignments containing 500 grams and 470 grams of heroin, which are commercial quantities. It is argued that the said consignments were in the name of the present applicant who alongwith her co-accused had gone to the courier Aramex India Pvt. Ltd. on 14.07.2020 to collect the first consignment containing 500 grams.

7. Learned Sr. SC for the NCB submitted that, as per the status report, role of the applicant is as under:-

- i. The applicant indulged in conspiracy with co-accused for trafficking of contraband – heroin, in a commercial quantity.
- ii. The said parcel bearing AWB No. 3449436922 had the name of the applicant as the receiver. Further, after seizure of contraband from said parcel, i.e., 500 Grams of Heroin, the dummy parcel under process of controlled delivery was received by the applicant and co-accused Martin Chikamma from the office of Aramex on 14.07.2020.
- iii. Both the accused persons had also disclosed about another parcel bearing AWB No. 3449436874 was to be delivered to them.



- iv. Further, the second parcel bearing AWB No. 3449436874, was also seized at Customs Cargo, bearing the name of the applicant as the consignee. Seizure of 470 Grams of heroin was effected therefrom.
- v. The applicant tendered her voluntary statement on 14.07.2020 and revealed that she was married to co-accused Martin Chikamma and lived with him. She revealed that she had contacted Aramex, as directed by co-accused Martin Chikamma to collect the parcels AWB No. 3449436922 and AWB No. 3449436874. She and co-accused Martin Chikamma had gone to collect the parcel bearing AWB No. 3449436922. She also admitted receiving the dummy parcel which actually contained 500 grams heroin and also revealed details of mobile numbers used by her and co-accused Martin.
- vi. On 14.07.2020, co-accused Martin, in his voluntary statement, that he was living with his wife, the applicant, and had gone to collect parcels AWB No. 3449436874 and AWB No. 3449436922 from Aramex office. He admitted to receiving the dummy parcel, which actually contained 500 grams heroin. He further informed that his brother, Uchhe, had sent these parcels containing heroin to him and revealed other relevant details including the mobile numbers used by him and the applicant.
- vii. As per the complaint, from the extracted data from mobile hand-set of the applicant, (VIVO1718) the Invoice and Express cargo clearance system AWB No. 3449436922, AWB No. 3449436874, correspondence with Aramex Courier, Election Voter ID of the applicant, messages and other incriminating documents were found.



Further, as per Mobile-Data Extraction Report of the Mobile handset of the applicant, (I-Phone X), Photograph of the parcel under question, correspondence with Aramex in regard to parcel, photo of the applicant and co-accused Martin were also found. As per the complaint, from the extracted data from mobile handset of co-accused Martin Chikamma, contact list, mobile number of the applicant, photographs of the applicant alongwith other incriminating material, were found.

viii. Further, CDR of the mobile numbers in their respective use revealed that both accused persons were in contact with each other.

8. Learned Sr. SC further submits that the an application for bail filed on behalf of co-accused Martin Chikamma (BAIL APPLN. 3542/2021) was dismissed by a learned Single Judge of this Court *vide* judgement dated 21.03.2022 and has drawn attention of this Court to Paras 28, 29 and 30 thereof.

9. Learned Sr. SC submitted that the present case involves commercial quantities, and therefore, the rigours of Section 37 of the NDPS Act will be applicable.

10. Heard learned counsel for the parties and perused the record.

11. Learned SPP for the respondent has placed reliance upon the messages exchanged between the phone alleged to have been used by the present applicant and an international number stated to be belonging to co-accused Martin's brother. The said chats have been placed on record alongwith the present application. A perusal of the said chats reflect that the number alleged to be of the present applicant has been reflected as 'Martin's'. A further perusal of the said chats reflects that the same were being exchanged between



co-accused Martin and his brother who was using an international number. It is further relevant to note that the said chats, refer to the consignments, which are alleged to have been seized by the respondent. These chats were extracted from a phone having SIM number - 7303639629, which is alleged to belong to the applicant. On a pointed query from this Court, learned SPP submitted that apart from these chats with the number belonging to the brother of the co-accused, there is no record of any call made to any friend or relative of the present applicant from the said number. It is further pointed out that the present number belongs to one Salman Khan, who has not been made a witness. Some portions of the said chats dated 09.06.2020 also reflect that certain names have allegedly been sent by co-accused Martin to his brother alongwith addresses. Admittedly, no investigation with respect to the said names and addresses has been conducted by the respondent.

12. The other circumstance relied upon by the prosecution is that the present applicant was in touch with the co-accused person. This fact, in itself, is not sufficient to infer the applicant's involvement in the alleged offence inasmuch as it is an admitted fact she was living with the said co-accused person.

13. As per the case of the prosecution, the two consignments from which the contraband has been recovered, were consigned in the name of the present applicant. It is also the case of the prosecution that the present applicant, alongwith co-accused had gone to take delivery of the first consignment on 14.07.2020, when she was apprehended by the respondent. Apart from the applicant's statement under Section 67 of the NDPS Act, there is no material to indicate that the present applicant had knowledge of the contents of the said



consignments, which were booked in her name. There is nothing on record, as per the case of the prosecution, that the applicant had received any similar consignment in the past.

14. As pointed out hereinabove, the extracts of the chats relied upon by the prosecution also reflect that the co-accused allegedly had been giving different names and addresses to his brother, over a period of time and the transcripts of the conversations, as placed on record, clearly indicate that the same were exchanged between the said co-accused and his brother. The telephone number from which the messages were exchanged is also not in the name of the present applicant. It is further pertinent to note that there is no other material on record to show that the said telephone number, from which the chats have been exchanged belonged to the applicant.

15. As far as the rigors of Section 37 of the NDPS Act are concerned, the Hon'ble Supreme Court of India, in **Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798**, while explaining the term "reasonable ground" in context of Section 37(1)(b)(ii), observed as under:

"6. As the provision itself provides 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.

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11. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

Further, more recently, in **Mohd. Muslim alias Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352**, the Hon'ble Supreme Court held as under:

"19. The conditions which courts have to be cognizant of are that 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. What is meant by "not guilty" when all the evidence is not before the court? It can only be a *prima facie* determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted *reasonably*. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of



such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a *prima facie* look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only *prima facie*, based on a *reasonable reading*, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil* supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

16. As pointed out hereinabove, the only incriminating material against the applicant is her statement under Section 67 of the NDPS Act which is inadmissible in evidence, as per the judgment of the Hon'ble Supreme Court in **Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1**. The messages exchanged between the telephone number allegedly belonging to her and the brother of co-accused, Martin Chikamma, which, as aforesaid, indicate that the same were exchanged between the said co-accused and his brother. As per



the nominal roll dated 17.05.2023, the applicant has been in custody for 02 years 10 months and 04 days. Her jail conduct is stated to be satisfactory and she is not involved in any other case either. In view thereof, this Court is of the opinion that the twin conditions of Section 37 of the NDPS Act stand satisfied.

17. The applicant is admitted to bail upon her furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

- i. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- ii. The applicant is directed to give all her mobile numbers to the Investigating Officer and keep them operational at all times.
- iii. The applicant shall not leave India without prior permission of the Trial Court.
- iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
- v. In case it is established that the applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.

18. The application stands disposed of along with all the pending application(s), if any.

19. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.



20. Let a copy of this judgment be communicated to the concerned Jail Superintendent for necessary information and compliance.
21. Judgement be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

JULY 25, 2023/sn