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

% Reserved on: 05th April, 2023
Pronounced on: 25th April, 2023

\+ **BAIL APPLN. 1700/2022**

ARUN KUMAR @ VARUN ..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. Yogesh Kumar Saxena, Ms. Priya Saxena, Mr. Devyanshu Bharti, Mr. Vikrant Pandey, Mr. Mandeep Dahiya and Mr. Harsh Gautam, Advs.

versus

NARCOTICS CONTROL BUREAU ..... Respondent

Through: Mr. Utsav Singh Bains, SPP, NCB with Mr. Yusuf Khan, Adv.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. By this petition, the regular bail is sought by the petitioner in Crime No. VIII/DZU/2019 under Section 8, 20,22(c), 23 & 29 of NDPS Act.

2. As per the case of the prosecutrix, secret information was received on 06th July 2019 regarding one courier parcel booked by one Sudhir Srivastava to Amar Srivastava from Lucknow to USA lying at DTDC company office on the suspicion that it contains tablets in huge quantity and a team was constituted and on opening the parcels 500 strips of 10 Tablets Alprazolam were recovered total weight was found to be 1 k.g. Pursuant to details sought from the manufacturing company in Punjab, it was revealed that the said tablets had been sold to Psychocare Health Pvt. Ltd. and then to M/s S.S. Medicos situated in U.P.

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3. In November, 2019, S.S. Medicos, through Bhanu Pratap, admitted to the purchase of 20,000 tablets but failed to supply details of the stock of medicines as per license held by the company. Pursuant to several notices issued under Section 67 NDPS Act, Bhanu Pratap and his sister Shivangi Singh who was the licence holder for S.S. Medicos did not join investigation. NBW's were issued and finally Bhanu Pratap was interrogated, he disclosed that he had sold 20,000 tablets of Alprazolam to Manish Gupta without any bills. He was arrested on 05th December 2020. Notice was issued to Manish Gupta who was also located in Uttar Pradesh and consequent to his not joining the investigation, NBW's were issued. However, he joined the investigation subsequently.

4. Statement was recorded where he disclosed that he was involved in the illegal sale and purchase of medicines and had procured it from Bhanu Pratap. Out of the 20,000 Alprazolam tablets, 5000 were booked by him as per directions from Bhanu Pratap and the remaining 15,000 were sold by him to one Somdutt Singh whose mobile number was provided. Somdutt was found in Narela, Delhi and he tendered his statement pursuant to a notice served upon him under Section 67 NDPS Act on 07th April 2021,. Apparently, he disclosed that there were huge quantities of medicines lying at his flat at Sector 2, Narela, Delhi. A search was made of the said premises and 11,500 Tramadol Tablets, 750 Tramadol Tablets, 1500 Zolpidem Tablets, 400 Diazapam Tablets, were discovered along with other tablets.

5. Somdutt was arrested on 7th April 2021. Pursuant to another statement of Somdutt recorded on 8th April 2021, he apparently disclosed that these medicines were sent from Balia, U.P., to Anand Vihar through buses and then were illegally couriered abroad on the basis of fake IDs which were provided by Arun and Manish Kumar. He disclosed that he

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had sent pictures and messages in respect of 16-17 parcels to Arun Kumar and disclosed the address of Arun Kumar.

6. On 12th April 2021, notice was issued to Arun @ Varun (petitioner herein) who apparently disclosed his involvement in the export of psychotropic medicines. He also disclosed the involvement of Rex Ajmeria and Mausam involved in the illegal business of medicines. The petitioner was arrested on 12th April 2021. Somdutt apparently disclosed further through another statement that the drugs recovered from his rented house were brought by the petitioner in his *Verna* car. Pursuant to tracking details of parcels found in mobile belonging to Somdutt, investigation was carried out and it was found that parcels were exported to foreign countries but were lying at the Foreign Post Office, ITO. Said parcels were traced and a recovery of 8,000 Tramadol tablets and 9,000 Zolpidem tablets was made, which were later seized on 21st September 2021.

7. Pursuant to CDRs that were requisitioned, it became evident that accused petitioner was in touch with accused Somdutt. Further, unaccounted money has been found in the petitioner's bank account and a freezing order was passed which was confirmed by the Competent Authority.

8. An additional status report was filed by the NCB stating that details of money were found in his bank account. It is also stated that he was found involved in another Case No. VIII-13, 13A/DZU/20 on a complaint dated 27th April 2021. An independent witness, Preeti had deposed against the petitioner and accused persons according to whom Somdutt and Rex Ajmeria, used to procure medicines and they were packed by Arun along with the others by placing IDs of other unknown persons to send said medicines to countries abroad.

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9. Learned Senior Counsel for the petitioner contented that *firstly*, the said recovery was not from the petitioner but from a courier package which was not booked by the petitioner; *secondly*, the case against the petitioner, at best, was that packages of the medicines were sent to him and he used to provide fake names on identification documents for sending said couriers; *thirdly,* the petitioner had only been arrested on basis of a statement by the co-accused and it was asserted that as per the decision of the Hon'ble Supreme Court in ***Tofan Singh v. Stae of Tamil Nadu***, statements recorded under Section 67 NDPS Act were inadmissible; *fourthly*, with regard to incriminating material from the phone, forensics had been carried out and data was extracted belying the accusation that data had been deleted by the petitioner; *fifthly*, as regards the banking transactions, they were seized by the NCB in September 2021 and as per the documents filed with relation to the bank accounts, there was no transaction evident on behalf of Somdutt; *sixthly*, as regards the arrest of the petitioner in the other case dated 18th April 2021, it has been stated the petitioner was granted bail on 28th May 2022 by the learned Trial Court; *seventhly,* despite the original recovery made in 2019, the name of the petitioner had not been disclosed till 2021.

10. Further it has been pointed out with regard to the disclosure statements of Somdutt dated 23rd May 2022, that there was no mention of the petitioner nor was it mentioned in the statement of dated 7th April 2021 or 08th April, 2021. Only in the disclosure pursuant to questions being asked by the NCB did Somdutt mention that parcels were sent to USA on address provided by one *"Varun"* and Manish Gupta which they used to send on Whatsapp. ID's of Vinay Singh and Akshay Chauhan on whose names the parcels had been sent, as per Somdutt, were provided by Varun. Subsequently, in statement dated 10th April 2021, it was disclosed that tablets were also given to Somdutt through

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Gulzar and Abdul. It was further disclosed that he used to make Whatsapp calls with Varun and when they met, calls and images of the tablets were deleted by Varun, as per disclosure by Manish Kumar dated 13th April 2021. In response to a query whether he had transacted with Arun Kumar, Manish Kumar stated that he had neither transacted with Arun Kumar nor dealt with narcotics medicines and had never taken the medicines from him. This disclosure was made when the petitioner was in custody.

11. Learned counsel for the NCB stated that there were Whatsapp chats from Somdutt to Varun which state that "*baba aap muje transfer karoge ya cash doge*" and also "*paise aa gaye na account me*". Further, it was contended that there was multiple tracking numbers of couriers which were consigned to various persons abroad. Furthermore, documents signed on behalf of A.K. Medicos which was allegedly Arun Kumar's entity which noted that there was supply of 20,0000 Zoltrate Tablets to Digital Vision.

12. Attention was also drawn to the freezing order passed in relation to the bank account and card of Arun Kumar which was confirmed by the Inspecting Officer in Mumbai. Statement of Preeti was also adverted to who was apparently employed in the firm of Arun Kumar @ Varun who stated that Varun and Rex work together and used to send medicines abroad through foreign Post Office.

13. This was rebutted by the learned Senior Council for the petitioner stating that Preeti's statement clearly notes that "*on the asking of NCB, I am stating that on the direction of Arun, Shivam used to bring medicines after purchasing and Rex used to get the medicines himself, which were packed by Arun, Rex, Shivam, Kashmir by putting ID of some other persons*". It was contended that statement of Preeti was taken in another case where, which according to the petitioner's counsel, was immediately

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foisted on the accused petitioner, in SC 132/2021 on which he is already on bail by order dated 28th May 2022. It is in this regard that the IO had withdrawn the application relating to the statement and therefore should not be relied upon. Further, bank accounts showed no transaction to Somdutt and the WhatsApp chats being adverted to by the NCB were not on Varun's phone but rather on someone else's phone. As regards Varun's phone, the report says that the chats have been apparently deleted and there has to be a corresponding chat to corroborate the same. Reference to A.K. Medicos was to Arun and not to Varun. The bar codes on the dispatch courier receipts could only show that there were some dispatches but how they connected to the petitioner and the offence is not evident. Also there was no basis of check list of bank statements which have been adverted to since neither do they show any names of beneficiaries nor senders of money and therefore, are not specific in nature. As regards the freezing of accounts, learned Senior Counsel states that while the opening balance was Rs.11,000/- and the closing balance was Rs.9,000/-, it would fail to implicate the petitioner in this regard.

14. Reference has been made by the petitioner to the following judgments:

> ***Shravan Kumar V. State Of NCT Of Delhi***, Bail Application No. 175/2018 decision dated 12th March, 2018; ***Mukesh v. State***, Bail Application No. 1345/2020 decision dated 08th July, 2020; ***Rex Ajmeria @ Rajeev Rex v. Narcotics Control Bureau*** decision dated 09th March, 2022; ***Prajjwal Bhardwaj v. Narcotics Control Bureau*****,** Bail Application No. 982/2022 decision dated 06th October, 2022.

15. Further, reference has also been made on the following judgments:

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Jai Bhagwan @ Bhedha Bhai v. N.C.B. (Narcotics Control Bureau) decision dated 11th August, 2020; ***State By (NCB) Bengaluru v. Pallulabid Ahmad Arimutta & Anr.***(2022) LiveLaw (SC) 63; ***Sujit Tiwari v. State of Gujarat & Anr***, (2020) 13 SCC 447 & ***Sachin Makade v. Narcotics Control Bureau New Delhi***, Bail Application No. 1410/2022 decision dated 08th December, 2022.

16. Pursuant to an assessment of the respective contention of the parties and perusal of documents on record, this Court notes that there was no recovery from the petitioner and his name cropped up, as per the State, in disclosure statements of Somdutt, which in any event are not admissible. However, even despite Somdutt disclosing the involvement of the petitioner, there was no recovery from the petitioner and the allegation was, even as per Somdutt, that the petitioner used to provide fake ID's of different persons for courier of parcels containing these medicines to different countries. Recoveries were from Somdutt instead. The CDR assessment by the State would at best show that the petitioner was in touch with Somdutt. Even as per the screenshots relied upon by the State of the mobile messages, it does not reveal that there were discussions regarding contraband. The bank accounts statements which the State relies upon are merely a typed copy showing the list of amounts and dates but there are no details provided regarding whom these amounts were received from or sent to. As regards the statement of Preeti in the other complaint case (SC No. 156/2021), it is noted that the IO had withdrawn the application to rely upon her statement in this matter. The petitioner was accused in this other case, in which he is already on bail since 28th May, 2022. The tracking bar codes relied upon by the State as also the tracking details of the courier parcels only serve to show that there were packages sent to certain named persons abroad

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but there is nothing placed on record to show their connection with the petitioner. It seems *prima facie* evident that the role of the petitioner, ever as per the prosecution case, is different from the other accused and is being considered in light of the specific allegations in relation to the petitioner.

17. The Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain v. State*** (2023) SCC OnLine 352 has held that the standard to be considered by the Court regarding conditions under Section 37 NDPS is of a reasonable satisfaction on a *prima facie* look at the material on record, that the accused may not be guilty. It does not call for meticulous examination of material collected during investigation. Based on these facts and circumstances, therefore, this Court is satisfied that there are reasonable grounds for a *prima facie* belief that he is not guilty for such offence for which he is being implicated, and there is no material on record to reach any conclusion that he is likely to commit any offence while on bail.

18. In light of the above, and the fact that the trial in this matter is likely to take up some time, while it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds this to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

i. Petitioner will not leave the country without prior permission of the Court.
ii. Petitioner shall provide permanent address to the Ld. Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.

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iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.

iv. Petitioner shall join investigation as and when called by the IO concerned.

v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.

vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

vii. Petitioner will report to the IO every alternate Saturday at 04:00 P.M. while he is enlarged on bail.

19. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

20. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

21. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

22. Order/judgment be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 25, 2023/RK

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