

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

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Reserved on: 18th January, 2023

Pronounced on: 1st February, 2023

+ BAIL APPLN. 2064/2022

PAWAN ARORA

..... Petitioner

Through: Sh. Karan Kapoor and Sh. Manik
Kapoor, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Sh. Ritesh Kumar Bahri, APP for
State with SI Vishan Kumar, PS
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. By this petition the petitioner seeks regular bail in FIR No.78/2020 under sections 22/25/29 NDPS Act and section 62 Drugs & Cosmetics Act registered at PS Crime Branch. The petitioner has been in custody since 4th August, 2020 and charges have already been framed by the Ld. Trial Court.

2. As per the case of the prosecution on the basis of a secret information, a raid was conducted in the *jhuggis* of Kamla Nehru Camp, Kirti Nagar, New Delhi on the intervening night of 17th and 18th June, 2020 by the Narcotic Cell, Crime Branch. At the instance of one Sharvan Kumar, a huge consignment of psychotropic substance Tramadol, Nitrazepam based tablets and Codeine based syrups were recovered from the godown. During enquiry, Sharvan Kumar revealed

that the medicines of the godown belonged to the petitioner and his manager Chander Shekhar. Accordingly, the FIR was registered and the caretaker of the godown Sharvan Kumar was arrested. As per his disclosure, the petitioner and his manager had their office at A-69, DSIDC, Packaging Complex, Second Floor, Kirti Nagar, New Delhi and they had taken the empty room in his *jhuggi* for using it as a godown for storing medicines on a monthly rent of Rs.7,500/- and also engaged his carrier vehicle for bringing medicines from other suppliers and to transport them to customers. The petitioner was arrested from Haridwar on 5th August, 2020 and Chander Shekhar was also arrested on 7th August, 2020. Further investigation revealed that the licence to sell, possess and deal in wholesale medicines at Kirti Nagar address was in the name of Chander Shekhar who was proprietor of M/s Rudra Thakur Enterprises.

3. Learned counsel for the petitioner contended that the secret information, on the basis of which raid was conducted has resulted from disclosure of Sharvan Kumar who has stated that he was carrying a valid consignment of cough syrup to be delivered at Patna. This is evident from the FIR itself. Further, on enquiry from Sharvan Kumar, he had stated that he had let out his *jhuggi* on rent to petitioner and Chander Shekhar for keeping stocks of medicines. The petitioner had not been charged under section 25 NDPS Act and therefore, could not be considered as an owner or occupier of the said premises. Most importantly, the learned counsel for the petitioner stressed that the charge sheet records that the prosecution has verified licence No.DL-MTN-130647 which is in the name of M/s. Rudra Thakur Enterprises issued by the Dy. Director Control Department, Karkardooma, Delhi. The charge sheet further records that during investigation, SI Ashok

Kumar had verified the bills and invoices from the stockists (wholesalers, suppliers etc) who had supplied said substances and bills and invoices were found to be correct. All licences, permits, authorisations, stock ledgers were with the prosecution and duly appended with the charge sheet. This, according to the petitioner, evidences lawful possession of said substances by the petitioner. It was stated that these substances do not fall within Schedule I of the NDPS Act hence compliance to Chapter VII A of the NDPS Rules 1985 is not required. Instead they fall under Schedule H-1 of the Drugs and Cosmetics Act. The Schedule H-1 has been issued under Rule 65 and 97 of the Drugs and Cosmetics Rules, 1945 and the said substances which have been recovered and have been attributed to the petitioner, fall under Sr.No.20 (Codeine), No.36 (Nitrazepam) and No.45 (Tramadol). Rule 65 provides the conditions for license whereas Rule 64 provides for Form 20B and 21B that entitles the licensee to stock the goods. Rule 65 (h) prescribes that supply of drugs specified in Schedule H1 shall be recorded in a separate register.

4. In light of these provisions, it has been contended by the petitioner that there was a valid license which was available in favour of M/s. Rudra Thakur Enterprises which noted the address as A-69, DSIDC, Packaging Complex, Second Floor, Kirti Nagar, New Delhi. A self declaration had also been signed by Chander Shekhar and Clause 10 of the said declaration noted that as per Rule 65 (3) of the Drugs and Cosmetics Rules, sale record shall be kept on cash-credit memo. As per an RTI which was moved by the petitioner, the Drugs Control Department responded on 25th May, 2021 and verified that M/s. Rudra Thakur Enterprises under the licence could deal with drugs specified under Form 20B and 21B which also includes Tramadol, Nitrazepam,

Phosphate and Codeine subject to compliance of the conditions. Learned counsel for the petitioner drew attention of this Court to various invoices which have been appended and have been provided to the IO which contained details of purchase and had been issued on contemporaneous dates. It was also stated that in this light, the petitioner could have at best been charge sheeted under section 26 NDPS Act since he was an employee of the firm which had the license. Also since the license had been verified as well as the fact that as per the RTI the firm could deal with the substances, at best it could have been a violation of conditions of the license which would attract cancellation and suspension as per Rule 66 of Drugs and Cosmetics Rules. The essence of the allegation by the prosecution was not about selling of drugs but that petitioner was misusing the license and therefore carrying out illegal sale which was not substantiated by the documents on record.

5. As regards the Trial Court's observations while dismissing the bail application, wherein it is noted that the firm did possess the license, but the said license did not authorise them to buy, possess and sell these substances, it was countered by adverting to the information obtained through RTI. It is further contended that the petitioner has no previous criminal history and has clean antecedents.

6. Ld. APP for the State contended that the FSL report has been received and it has been confirmed that the seized material was psychotropic substances and that pursuant to framing of charges, the case was at the stage of prosecution evidence and trial was progressing. Further, it was contended that the contraband seized was of commercial quantity and therefore attracts the bar of section 37 NDPS Act. Ld. APP for the State has further placed reliance on a decision of Hon'ble

Supreme Court in *NCB v. Mohit Aggarwal*, 2022 SCC OnLine SC 891 where the Hon'ble Supreme Court has in a case involving Tramadol tablets held that the length of custody cannot be a persuasive ground for relief under section 37 NDPS Act. Ld counsel for the petitioner has however refuted the same by stating that in the facts of that case there was no licence under Drugs & Cosmetics Act which was in question.

7. In view of the above facts and circumstances, it seems evident that the license of M/s. Rudra Thakur Enterprises has been verified (it is in the name of Chander Shekher who is in judicial custody) while the petitioner herein is admittedly an employee of the company and not the proprietor and Sharvan Kumar used to be just a carrier, who was not part of the company. Further, an RTI has disclosed that these substances could have been stocked under the license, which included ability to sell and distribute as well as also the fact that there are numerous invoices that have been produced in the charge sheet which clearly show purchase and supply of these tablets and syrups which form part of the alleged contraband.

8. This Court is, therefore, of the considered view that at this stage when trial will take substantial time and 37 witnesses have to be examined and all documents which are relevant to the prosecution are already in their custody, the petitioner be released on regular bail. *Prima facie* it does seem that the issue may ultimately relate to non compliance with license conditions under Drugs and Cosmetics Act and not simplicitor the illegal stocking and sale of substances, without license. However, these aspects will only be proved through the trial and at this stage it may be difficult to conclusively state so. But these factors

became a relevant fact in balancing the scales for the purpose of considering bail.

9. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties 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.
- 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. In the event of any report against him, this Court will consider desirability of cancelling the bail.

Needless to state, but 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.

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

11. The petition is disposed of accordingly. Pending applications (if any) are disposed of as infructuous.

12. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

February 01, 2023/sm

