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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 3168/2021, CRL.M.A. 12474/2023

RAM AVTAR TYAGI

..... Petitioner

Through: Mr. Girish Chand Tyagi,
Mr.L.P.Pandey, Mr. Anurag
Tyagi and Mr. Hemant Singh, Advs.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Sr. SC,
Mr.Shashwat Bansal, Advocate

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Date of Decision: 05.07.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. seeking regular bail against Judgement and order dated 21.06.2021 passed by Ld. Spl. Judge, NDPS Act, PHC New Delhi in Sessions Case No. SC 93/2018 arising from Case No. VII/34/DZU/2017 under section 20/23/29 NDPS Act registered at PS NCB.
2. Learned counsel for the petitioner submits that the petitioner is in custody since 10.12.2017. The case as stated by the prosecution is that on the basis of information, the NCB team on 07.12.2017, searched a courier parcel bearing Airway Bill No.3048467936 at UBX Courier, A Block, Plot No.409, Road No.4, Gali No.10, Mahipalpur, Delhi-37. The

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Sender as per details was Jenish Lama r/o 156, Sector 4, Jagdish Pura, Agra-282002 UP and parcel was destined to Gauthier Devish, 12 Bischement Delux Croix, Verta 84130 Le Pontel, France. It has been alleged that upon search of the said parcel, it was found to contain 70 religious books and when cut-open the board of the books were found to contain dark-brown colour substance which on testing with Field-Testing Kit gave positive result for Charas. Similarly, all the 70 books were checked and all books were found containing similar substance kept in similar manner and on checking with Field-Test Kit, all gave positive result for Charas and found to be of same colour, texture and property. The charas was allegedly concealed in religious books. The total quantity of recovered substance came out to be 06.500 Kgs of Charas. The contraband was seized along with documents and the Panchnama of recovery was drawn at the spot on 07.12.2017 in the presence of independent witnesses. It has further been alleged that further during investigation it was revealed that the parcel was booked from Overnite Express Courier Shop No.6, Block No.32, Sanjay Palace, Agra UP. On enquiry being made from Overnite Express Mr. Pawan Kumar Pandey, it was revealed that one Jenish Lama has booked the parcel. Mr. Pawan Kumar Pandey informed that they had also taken the ID of the said person who came to book the said parcel which disclosed the name of Devender Sen s/o Vishwanath Singh. Upon verification of the address of Jenish Lama, the same could not be located. Allegedly, during investigation on 09.12.2017, the NCB team reached the address of Devender Sen who disclosed that the parcel concealing the Charas in the religious book was delivered to him by his



friend Ram Avtar Tyagi r/o Prakash Vihar, S.S. Public Schook, Partap Pura, Agra which was actually sent to him by Vikrant Gurung, a Nepal National. Mr. Devender Sen also revealed that his friend Vikrant Gurung is coming to Agra from Nepal, and he can identify them.

3. It has been further alleged that in pursuance of summons, Vikrant Gurung tendered his voluntary statement under Section 67 of NDPS and admitted to have sent the parcel containing charas from Nepal through a bus which was received by Ram Avtar Tyagi and delivered to Devender Sen. It has been stated that Ram Avtar Tyagi also tendered his voluntary statement under Section 67 on 10.12.2017 wherein he admitted his involvement in handing over the said parcel. Subsequently, Devendra Sen, Vikrant Gurung and Ram Avtar Tyagi were arrested on 10.12.2017.
4. In respect of the present petitioner, it has been alleged that he was in conspiracy with the co-accused and indulged in illegal trafficking of contraband i.e. 6.5 kgs of Charas. It has been alleged that Ram Avtar Tyagi had received the seized parcel from Vikrant Gurung and gave it to Devender Sen who booked the seized parcel bearing Air way Bill No. 3048467936 with Courier Overnite Express, Agra on a fake identity document bearing the name of Jenish Lama. The investigation also revealed that mobile no. 8948140943 registered in the name of Ram Avtar Tyagi was given by him to Devender Sen for communication and the said mobile number was also mentioned at the time of booking of the seized parcel.
5. Learned counsel for the petitioner has sought the bail predominantly in light of the judgement in *Supreme Court Legal Aid Committee*



Representing Undertrial Prisoners vs. Union of India, (1994) 6 SCC 731, whereby the Hon'ble Apex Court held that if the accused has undergone custody for more than five years and if the total sentence is 10 years or more, the accused may be released on bail. Relevant para of the judgment is reproduced as under:

“15. ... We, therefore, direct as under:

...

(iii) *Where the under trial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.”*

6. The verdict of the Hon'ble Supreme Court in “***Supreme Court Legal Aid Committee representing Undertrial Prisoners Vs. Union of India***” (Supra) has been followed by this Court in several cases, which includes judgement dated 21.03.2022 in Bail Appln. 1724/2021 titled ***Anil Kumar @ Nillu vs State***; judgement dated 22.12.2022 in Bail Appln. 3638/2021 titled ***Anil Kumar vs. DRI***; judgement dated 21.12.2021 in Bail Appln. 2477/2021 titled ***Atul Aggarwal vs. Directorate of Revenue Intelligence***; judgement dated 31.05.2022 in Bail Appln. 3705 - 4187 of 2020 titled ***Ebera Nwanaforo and Frank Vitus vs. Narcotics Control Bureau***; judgement dated 11.11.2022 in Bail Appln. 891/2022 titled ***Tasawwur Hussain @ Tasawwur vs. DRI***;



judgement dated 05.01.2023 in Bail Appln. 991/2022 titled ***Jumah Khan vs The State Govt. of NCT of Delhi***. In the said judgements, this court has granted bail to the accused therein, in terms of the principles laid down in ***Supreme Court Legal Aid Committee (supra)***.

7. Learned counsel for the petitioner has submitted that in light of the above, the petitioner may be admitted to regular bail.
8. Learned counsel for NCB/respondent submits that the facts of the present case are very serious in nature and huge quantity of contraband was recovered and therefore bail may not be granted. However, learned counsel has fairly submitted that the accused has been in custody for more than five years.
9. I have considered the submissions. As per the latest nominal roll, the petitioner is in custody for more than five years. Without going into the meris of the case and taking into the account the period of incarceration of the accused, the petitioner is admitted to bail on furnishing a personal bond of Rs. 1,00,000/- with two sureties of the like amount to the satisfaction of the trial court subject to the following conditions:
 1. The petitioner shall surrender his passport with the learned Judge of the concerned Special Court and if he does not hold a passport, he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge;
 2. The petitioner shall on being released on bail present himself at the concerned police station on every Thursday of every week, unless leave of absence is obtained in advance from the concerned Spl. Judge.
 3. The petitioner shall not leave the city without prior permission



of the court concerned;

4. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 5. The petitioner shall provide his/her mobile number (s) to the Investigating Officer and keep it operational at all times;
 6. In case of change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
10. With these directions, the present bail application along with pending application stands disposed of.

DINESH KUMAR SHARMA, J

JULY 5, 2023

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