

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

Reserved on : 20.03.2023

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Pronounced on : 10.05.2023

+ **BAIL APPLN. 3203/2021**

EMMANUEL WILLIAM

..... Petitioner

Through: Mr. Amit Dwivedi, Mr. Adarsh Priyadarshi, Mr. Gaurav Arya and Mr. Sachin Tanwar, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Sr. Standing Counsel with Mr. Shashwat Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case being SC No.67/2021 registered under Section 21C/23/29 NDPS Act.

2. The factual matrix in the present case is that on 27.08.2020, the Narcotics Control Bureau (hereinafter "NCB") directed Mr. Chetan Sharma, Investigating Officer, for carrying out controlled delivery operation of parcels bearing Airway Bill No. 1735174092 and PPA32016193974 lying at the Cargo Terminal, IGI Airport, New Delhi. Accordingly, on 01.09.2020, search operation was conducted, and the investigating team seized 970

grams of heroin and collected samples of substance found in parcels bearing Airway Bill No. PPA32016193974 (hereinafter “impugned parcel”). It is further stated that the investigating team conducted a controlled delivery of subject parcel, which was received by another co-accused namely Wahid Ali.

3. On 02.09.2020, Wahid Ali was arrested and his statement under Section 67 NDPS Act was recorded. During inquiry, various incriminating documents were found in his phone including images of invoice pertaining to parcel bearing no. AWBY Y0032216496 containing drugs (hereinafter “second parcel”), which he disclosed was due to arrive on 04.09.2020.

4. On 04.09.2020, another search was conducted by the NCB team at Hotel Shalimar near IGI Airport where co-accused person namely, Muhsin Ali was staying in room no. 301 along with three other persons namely Muhammed Haneef T, Muhammed Shajahan PP, and Munasir Ek. All the three co-accused were arrested on the recovery of five grams of Heroin from a bag in the room. Further, certain information was disclosed by the co-accused Muhsin Ali, which was recorded and thereafter, he was arrested by the Investigating Officer.

5. On 04.09.2020, a disclosure report was prepared wherein it was disclosed that co-accused Muhsin Ali was supposed to receive the second parcel and was required to deliver it to Frank’s Girlfriend, namely, Bethlehem alias Nunu at Nawada Metro Station at 5 pm on the said date. At 5:15 pm, search was conducted at Nawada Metro Station and Bethlehem came to receive the second parcel.

6. Upon being apprehended, she disclosed that a person named Emmanuel Williams (petitioner herein) who would be receiving the first parcel from co-accused Wahid Ali. Bethlehem further disclosed that she was working with Peter Chibuzor alias Frank and Emmanuel Williams (petitioner herein)

7. The Investigating Officer along with Bethlehem reached the Church at Sector 9, Dwarka in Ambarahi Village where the petitioner came to collect the parcel from Bethlehem. The petitioner came near Bethlehem and enquired about the parcel, at which point the NCB Team apprehended him. Thereafter, the petitioner disclosed that he had come to receive the parcel at the instance of his friend Peter Chibuzor@Frank who resides in Greater Noida.

8. The Investigating Officer served the Notice under Section 67 NDPS Act to the petitioner to tender his voluntary statement which was recorded on 04.09.2020. He disclosed that he had been doing the business with Peter and also disclosed that he knew Bethlehem who was Peter's girlfriend and was getting forged ID's for him.

9. On 05.09.2020, the petitioner was arrested. Subsequently on 15.09.2020, Peter was arrested at the instance of Bethlehem and his disclosure statement was recorded. He disclosed his drug business relations with the petitioner and Bethlehem. On 17.09.2020, the disclosure statement of co-accused Peter was recorded again. On 01.03.2021, Intelligence Officer filed the complaint case bearing SC no. 67/2021 under Section 8(c)/21(c)/23/29 of the NDPS act before the court of Additional Sessions

Judge, Patiala House Courts and subsequently on the same day cognizance was taken by the ASJ against all accused persons including the petitioner.

10. I have heard the Ld. Counsel for the petitioner, Ld. Sr. Standing Counsel for NCB, perused the Status Report filed by the NCB and also perused the records of this case.

11. It is submitted by the counsel for the petitioner that petitioner is in judicial custody since 05.09.2020 and has been falsely implicated in this case. It is further submitted that nothing has been recovered from the present petitioner. It is further submitted that trial will take time and there is no chance of influencing the witnesses. It is further submitted that the petitioner has clean past antecedents. It is further submitted that investigation qua the petitioner is complete and there is no apprehension of absconding. It is lastly prayed that bail may be granted to petitioner on the ground of long incarceration.

12. On the other hand, Sr. Standing counsel for NCB while vehemently opposing the present bail application submitted that the order dated 14.07.2021 passed by Id. Special judge dismissing the bail application is absolutely justified. It is further submitted that there is a prima facie case of conspiracy as the present petitioner is a part of drug-syndicate indulging in illegal business of drug trafficking. It is further submitted that the petitioner is a foreign national and he has no roots in the society and there is every possibility to jump the bail and to frustrate the process of trial. It is further submitted that the present matter is at the stage of arguments on charge and the presence of accused persons is necessary for framing of charges. It is

further submitted by him that the petitioner has indulged himself in trafficking of contraband of commercial quantity in conspiracy with other co-accused persons. It is further submitted that there is substantive evidence on record i.e. recovery of commercial quantity of contraband, voluntary statements of accused persons leading to discovery of facts, voluntary statements of Public Witnesses, data extracted from mobile phones of accused persons and mobile connectivity between co-accused persons; hence, as per Section 37(i)(b)(ii) there are no reasonable grounds for believing that the accused is *prima-facie* not guilty of said offence. It is further submitted by Ld. Sr. Standing counsel for NCB that this Hon'ble court vide order dated 25.01.2022 dismissed the bail application of co-accused person namely Muhsin Ali. Lastly, it is prayed that the present bail application be also dismissed.

13. In a recent decision of Full Bench of Supreme Court of India, in the matter of '**N.C.B. v. Mohit Aggarwal 2022 Live Law (SC) 613**', the following has been observed:

“10. The provisions of Section 37 of the NDPS Act read as follows:

“[37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless –

- (i) *the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
- (ii) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
- (2) *The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]*

11. *It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in subsection (2) of Section 337 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. the conditions imposed in subsection (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.*

12. *The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadalieva Nodira”, a decision rendered by a Three Judges Bench of this Court, it has been held thus:-*

“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.” [emphasis added]

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others Vs. Rajesh and others” and this Court has observed as below:

“20 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 and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.” [emphasis added]

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

16. Coming back to the facts of the instant case, the learned Single Judge of the High Court cannot be faulted for holding that the appellant NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in Tofan Singh (supra), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. However, this was to the only material that the appellant-NCB had relied on to oppose the bail application filed by the respondent. The appellant-NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria form of tablets, injections and syrups. Counsel for the appellant-NCB had also pointed out that it was the respondent who had disclosed the address and location of the co-accused, Promod Jaipuria who was arrested later on and the CDR details of the mobile phones of all coaccused including the respondent herein showed that they were in touch with each other.

17. *Even dehors the confessional statement of the respondent and the other co-accused recorded under Section 67 of the NDPS Act, which were subsequently retracted by them, the other circumstantial evidence brought on record by the appellant-NCB ought to have dissuaded the High Court from exercising its discretion in favour of the respondent and concluding that there were reasonable grounds to justify that he was not guilty of such an offence under the NDPS Act. We are not persuaded by the submission made by learned counsel for the respondent and the observation made in the impugned order that since nothing was found from the possession of the respondent, he is not guilty of the offence for which he has been charged. Such an assumption would be premature at this stage.*

18. *In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the chargesheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 3 of the NDPS Act*

(Emphasis Supplied)

19. *As a result of the aforesaid discussion, the present appeals are allowed and the impugned order releasing the respondent on post-arrest bail, is quashed and set aside. The bail bonds of the respondent are cancelled and he is directed to be taken into custody forthwith.*

14. In view of the above observations, the bail application of the petitioner is to be considered in accordance as this judgement lays down the latest law of the land on the point of bail.

15. In the present case, *de hors* the statement recorded under Section 67 of the NDPS Act, the following factors are taken into account:

- i. Disclosure statements of co-accused persons disclosing the involvement of the present petitioner.
- ii. Recovered contraband falls in commercial quantity.
- iii. Statements of recovery witnesses.
- iv. The trial has commenced and the Examination of the witnesses is under progress.
- v. Other evidences like call detail records revealing the connection among the accused persons.

16. The strict conditions for granting bail under Section 37 of the NDPS Act cannot be said to be satisfied in the present case. None of the ground argued by the learned counsel for the petitioner can be made basis of reaching to the conclusion that there are reasonable grounds to believe that the petitioner is not guilty of the offence. Subsequently, at the present stage, this Court cannot reach to a reasoned conclusion that petitioner has not committed the offence.

17. Similarly, there is nothing on record to satisfy that if the petitioner is released on bail, he will not again indulge in the same crime, during the bail period.

18. In my view, the twin conditions set out in Section 37 of the NDPS Act for granting bail are not satisfied. Therefore, the present bail application is

dismissed and disposed of accordingly along with pending applications, if any.

19. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

MAY 10, 2023/_p

