



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

Reserved on : 13.07.2023

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Pronounced on : 05.09.2023

+ **BAIL APPLN. 2392/2022 AND CRL.M.A. 15280/2023**

AAKASH MEHRA

..... Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Advocate with Mr. Vikram Hegde, Mr. Akshay Bhandari, Mr. Sowjhanya Shankaran, Mr. Chitwan Sharma, Mr. Abhinav Hansaraman, Mr. Jagrit Vyas and Ms. Rudrali Patil, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Sr. Standing Counsel for NCB with Mr. Shashwat Bansal, Advocates.

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 complaint case no. VIII/53/DZU/2021 under Sections 8/20(b)(ii)/21(c)/22(c)/25/27A/29 NDPS Act registered at Police Station NCB.

2. In brief the facts of the case are that on 24.09.2021, a secret information was received regarding a parcel addressed to Pankaj Gupta



awaiting delivery at a courier office-Shree Tirupati Courier Pvt. Ltd., 253/A-1-A, Shahpur Jat, Hauz Khas, New Delhi. A team of NCB officials went the said courier office and proceeded for delivery of parcel nearby Kali Masjid at Savitri Nagar, Malviya Nagar, New Delhi. After sometime a Taxi bearing No. DL-1-RTC-3329 arrived and the parcel was received by its driver. The driver, identified as Pankaj Gupta, was asked to show the parcel which was in a small khaki-coloured carton box. On opening the said parcel, it was found containing two plastic packets in sealed condition. The first plastic packet contained one packet sanitary napkins which was taken out and one zip-lock polythene was found inside it which contained 15.3 grams of Ecstasy (MDMA) tablets. The second packet also contained sanitary napkins and in zip-lock pouch 29.10 grams of Ecstasy (MDMA) tablets were found. Thereafter, from search of the Taxi car of Pankaj Gupta, from its dashboard a polythene having zip-lock pouches was found containing 16.5 grams, 17 grams, 17.5 grams and 15.5 grams of Ganja. Further, a polythene containing 6 grams of Charas was found and from other two white coloured polythene bags 2 LSD blots and 2 Ecstasy (MDMA) Tablets weighing 0.55 grams were found.

3. During investigation, search of house of Pankaj Gupta was carried out on 24.09.2021 at House No. 25, 3rd Floor, G-Block, Savitri Nagar and 32 blot papers of LSD, 13.25 grams of Charas and Rs. 7,68,420/- cash was recovered.

4. Pankaj Gupta disclosed that the recovered contraband from the parcel were ordered by Aakash Mehra (Petitioner herein) who is also his partner in the drugs business and they both shared profits equally. Based on the



disclosure, in follow-up investigations, notice under section 67, NDPS Act was given to Aakash Mehra who appeared and tendered his voluntary statement on 27.09.2021. He revealed his complicity in trafficking of drugs in conspiracy with Pankaj Gupta, Sidharth Sahdev and other accused persons. Amongst other things, he revealed that 300-350 parcels have been delivered to the customers by Pankaj Gupta on his direction as the list of these customers was provided by the petitioner herein. As per the complaint, the CDR details of mobile numbers of all accused persons were obtained and found to be in contact. Consequently, the petitioner, namely, Aakash Mehra was arrested on 27.09.2021 and accordingly, Complaint under sections 8, 20(b)(ii)(A), 21(c), 22(c), 25, 27A & 29 of NDPS Act was filed against the accused persons.

5. I have heard the learned counsel for the petitioner, learned Sr. Standing Counsel for NCB and perused the status report filed by the NCB.

6. Learned counsel for the petitioner submitted that the petitioner is a young man of 27 years of age with clean antecedents and has been falsely implicated in this case. He further submitted that the petitioner was arrested only on the basis of disclosure statement of the co-accused Pankaj Gupta and no recovery has been effected from the petitioner. He further submitted that there is no material on record to show that the petitioner was acting in connivance with the other co-accused persons and also, there is no embargo under Section 37 of the NDPS Act on the petitioner as he had no connection to the contraband recovered since he was neither the receiver nor consignee of it.

7. He submitted that the purpose of alleged transactions between the



petitioner and the co-accused Pankaj Gupta is a matter of trial and the financial transactions being relied upon by the NCB were in fact on account of repayment of a friendly loan by co-accused Pankaj Gupta to the petitioner. He further submitted that there is nothing on record to show that the petitioner was involved in the procurement of the present contraband.

8. Learned counsel for the petitioner submitted that co-accused Krunal Golwala did not mention the petitioner as being a member of his network and he had categorically stated that contraband was sent on the demand of co-accused Pankaj Gupta and the statements and courier receipts clearly shows that the contraband was ordered by co-accused Pankaj Gupta and delivered to Pankaj Gupta. He further submitted that during the course of its investigation, the NCB failed to obtain any records from social media companies to determine the true owners of the social media usernames "babygunna," "bakemeup," and "jackmalone," nor was it able to record any evidence that the petitioner or any other co-accused person had used those usernames. Lastly, he submitted that petitioner is in judicial custody since 27.09.2021 and no purpose will be served by keeping the petitioner in judicial custody.

9. In support of his contentions, learned counsel for the petitioner has relied upon the following judgments:-

- ***Amarsingh Rajimbhai Barot vs. State of Gujarat [(2005) 7 SCC 550]***
- ***Sanjeev Chandra Agarwal & Anr. vs. Union of India (Crl. Appeal No. 1273 of 2021)***
- ***Union of India v. Rattan Mallik [(2009) 2 SCC 624]***
- ***Nishad & Anr. vs. State of Kerala [(2021) SCC OnLine Ker 1296]***
- ***Ranveer Singh vs. State [(2021) SCC OnLine Bom 3036]***



- *Aryan Shah Rukh Khan vs. Union of India [(2021) SCC OnLine 4127]*
- *Ramesh Kumar v. Narcotics Control Bureau (Bail Appln. No. 1652/2018)*
- *Jay Haresh Somaiya vs. Narcotics Control Bureau (Bail Appln. No. 602/2020)*
- *Tofan Singh vs. State of Tamil Nadu [(2021) 4 SCC 1]*

10. On the contrary, learned senior Standing Counsel for NCB has vehemently opposed the bail application and has argued on the lines of the status report. He submitted that the total recovery in this case is of commercial quantity and 44.95 gram tablets of Ecstasy (MDMA), 66.5 grams Ganja, 6 grams Charas, 2 LSD blots, 0.67 grams LSD blots and 13.25 grams Charas has been recovered. He has pointed out that the petitioner was found to be working with co-accused Pankaj Gupta which is clear from the money transactions between them and the petitioner was found to be well connected with Pankaj Gupta who used to deliver the contrabands in his taxi at various addresses, at instance of the petitioner herein. He submitted that frequent and bulk transactions have been made through paytm and through bank account by the accused persons.

11. Furthermore, he submitted that in the mobile data extraction report, many photographs of narcotics drug, parcel receipt, drug trafficking WhatsApp chats and other incriminating documents were found. It was also found that the petitioner had shared tracking ID of the drug consignment, part of which was later recovered from Pankaj Gupta's House on 24.09.2021. He further submitted that on CDR analysis it was found that the petitioner and Pankaj Gupta were well connected to each other. Learned senior Standing Counsel for NCB submitted that there is embargo under



section 37 NDPS Act as there is recovery of commercial quantity of contraband. He further submitted that the trial is yet to commence and if the petitioner is released on bail at this stage, there is strong likelihood of him absconding.

12. Learned senior Standing Counsel for NCB, in support of his contentions, has relied upon the following judgments:-

- *State of Kerala Etc. vs. Rajesh (2020 SCC Online SC 81)*
- *Collector of Customs vs. Ahmadalieva Nodira [(2004) 3 SCC 549]*
- *Union of India vs. Ramsamujh and Ors. [1999 (9) SCC 429]*
- *Union of India vs. Rattan Malik [(2009) 2 SCC 624]*

13. As far as the judgments relied upon by the Ld. Counsel for the petitioner are concerned, there is no dispute with regard to the proposition of law laid down in the said judgments that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court has to see whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further, that he is not likely to commit an offence under the said Act if released on bail; however, with due regard, the same are not applicable to the facts of the present case as perusal of the records of the case shows that the present petitioner was in constant touch with co-accused persons, there are several money transactions which have taken place between them and moreover, petitioner had also shared a tracking ID of the drug consignment, a part of which was later recovered from co-accused Pankaj Gupta's house on 24.09.2021 which further shows petitioner's complicity in the crime and therefore, there are no reasonable grounds for believing that the petitioner is not guilty of the offence.



14. In the present case, 44.95 gram tablets of Ecstasy (MDMA), 66.5 grams Ganja, 6 grams Charas and 2 LSD blots have been recovered from co-accused Pankaj Gupta and during search of his house, 0.67 grams LSD blots and 13.25 grams Charas has also been recovered. It is pertinent to note that the total quantity of contraband recovered in this case is of commercial quantity and thus, embargo of Section 37 of the NDPS Act is applicable.

15. The scheme of Section 37 NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

16. The expression "*reasonable grounds*" means something more than prima facie grounds. It contemplates substantially 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.

17. The present petitioner was found to be working with co-accused Pankaj Gupta and there are numerous frequent and bulk money transactions



between them which have been made through paytm or bank account by the accused persons. As per the mobile data extraction report, many photographs of narcotics drugs, parcel receipts, drug trafficking WhatsApp chats and other incriminating documents have been found. Furthermore, it is also revealed that the petitioner had shared a tracking ID of the drug consignment, a part of which was later recovered from co-accused Pankaj Gupta's house on 24.09.2021 which shows his complicity in the crime. The CDR analysis has also confirmed that the present petitioner and co-accused Pankaj Gupta were well connected to each other and were in constant touch with each other.

18. As far as the contention of the Ld. Counsel for the petitioner that no recovery has been effected from the petitioner, the same has no force in it as mere absence of possession of the contraband on the person of the accused-petitioner herein, does not absolve him of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. Reliance can be placed upon ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, Criminal Appeal No. 1043 of 2021 (Arising out of SLP (Crl) No.1771 of 2021)*** and ***Union of India v. Rattan Malik [(2009) 2 SCC 624]***.

19. Furthermore, Ld. counsel for the petitioner has contended that the financial transactions being relied upon by the NCB were on account of repayment of a friendly loan by co-accused Pankaj Gupta to the petitioner, however, the same does not cut much ice as whether the financial transactions were for repayment of a friendly loan or not is a matter of trial and is not to be considered meticulously at the time of considering the bail application of the accused-petitioner.



20. Therefore, looking into the entire circumstances of the present case and the fact that total quantity of contraband recovered from the co-accused person in this case is of commercial quantity with whom the petitioner was in constant touch, several money transactions have taken place between the petitioner and co-accused persons and also, the recovery of part of the drug consignment from the house of co-accused Pankaj Gupta whose tracking ID was shared by the petitioner, there are no reasonable grounds for believing that the petitioner is not guilty of the offence. That being the case, the limitations prescribed for the grant of bail under Section 37 NDPS Act are not satisfied and thus, no benefit can be given to him at this stage. The bail application along with pending application is, therefore, dismissed.

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

RAJNISH BHATNAGAR, J

SEPTEMBER 05, 2023/p