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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: August 17, 2023**+ **BAIL APPLN. 2970/2022****GAURAV MENDIRATTA**

..... Petitioner

Through: Mr. Vikram Hegde, Mr. Abhinav
Hansaraman and Mr. Sumit Sharma,
Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Senior Standing
Counsel for NCB with Mr. Raghav
Bansal, Advocate.**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present application under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') seeks regular bail in Case No. SC/213/19 arising out of NCB F No. VIII/34/DZU/2018 under Sections 22(c), 23(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') registered by the Narcotics Control Bureau (hereinafter referred to as 'NCB'), pending trial before the Court of the learned Special Judge (NDPS Act), Patiala House, New Delhi.

2. The case of the prosecution, as per the complaint dated 27.04.2019, is as under:



- i. On 01.11.2018, at 1030 hours, secret information was received at the office of the NCB that a parcel bearing AWB No. 8250438140 is lying at DHL Express Pvt. Ltd. at 71/3, Rama Road, Kirti Nagar, New Delhi and the same is containing a huge quantity of narcotic drug/psychotropic substances. Acting on the said information, a team of NCB reached the aforesaid spot at about 1150 hours. The parcel in question was searched in the presence of two independent witnesses and it lead to a recovery of the following:
 - Tablet Ativan 2 Mg. (Lorazepam), Batch No. W87860 (Manufactured by Pfizer Ltd) - **33 strips of 30 tablets each = 990 tablets = 49.5 grams.**
 - Tablet Alpz 1 mg (Alprazolam) Batch No. DVNTD248 (Manufactured by Neuro Vision) - **198 strips of 10 tablets each = 1980 tablets = 396 grams.**
 - Tablet Clox-2, 2 mg (Clonazepam), Batch No. MB/160479 (Manufactured by SBS Bio-Tech) - **45 strips of 10 tablets each = 450 tablets = 90 grams.**
 - Tablet Dizy-10 (Diazepam-10 mg), Batch No. JDT3407 (Manufactured by JI Drugs) - **60 strips of 10 tablets each = 600 tablets = 90 grams.**
- ii. Based on the documents recovered, it was **recorded** that the packet was sent by one Dheeraj Jain and was consigned to WYNN Industries, 9115, Ridge Road, Suite 18, New Port, Richey, Florida.
- iii. A preliminary enquiry revealed that the parcel was booked from Overseas Courier, who in turn informed the NCB that that booking



with them was made by Kavya International Courier Services, Connaught Place. Tapis Kumar of Kavya International Courier Services, in turn, informed the NCB that the parcel was booked by one Jitendra @ Bobby of Paharganj, who revealed that it was sent by one Deep Chand.

iv. On 02.11.2018, a team of NCB reached Paharganj, where they searched a car belonging to the aforesaid Deep Chand, in his presence. From his car, the following was recovered:

- Zolpidem Tartrate Tablet (Inzofresh-10) Batch No. A6CMR004 (Manufactured by Pavenbhel Health Care (P) Ltd.) - **498 strips of 10 tablets each = 4980 tablets = 747 grams.**
- Lonazepam Tablet (Repam-2), Batch No. JDT-3374 (Manufactured by JPEE Drugs) - **98 strips of 10 tablets each = 980 tablets = 147 grams.**
- Tablet Ativan 2 Mg. (Lorazepam), Batch No.W87860 (Manufactured by Pfizer Ltd.) - **34 strips of 30 tablets each = 1020 tablets = 51 grams.**
- Dizy-10 (Diazepam-10 mg) Batch No.JGT3407 (Manufactured by JI Drugs) - **98 strips of 10 tablets each = 980 tablets = 147 grams.**
- Tablet Alpz 1 mg (Alprazolam) Batch No.DVNTD248 (Manufactured by Digital 176, Vision - **198 strips of 10 tablets each = 1980 tablets = 396 grams.**

v. On 02.11.2018, pursuant to a notice under Section 67 of the NDPS Act, co-accused Deep Chand disclosed that the recovered parcels were given



to him by Gaurav Mediratta, i.e., the applicant and had arrived at Apex Courier, Mahipalpur in his name. Co-accused Deep Chand admitted to their involvement in illicit trade of psychotropic substances. Deep Chand was arrested on 03.11.2018. On 09.11.2018, the house of Deep Chand was searched but nothing incriminating was recovered.

- vi. Thereafter, on 20.01.2019, a notice under Section 67 of the NDPS Act was issued to the applicant. Pursuant to the said notice, the applicant tendered his statement on 21.01.2019 and admitted that both the parcels were sent to Deep Chand by him and that he had also deposited a sum of Rs. 15,000/- in his bank account. The applicant allegedly admitted to his involvement in illicit trade of psychotropic substances. Thereafter, the applicant was arrested on 22.01.2019. On 23.01.2019, the house of the applicant was searched and certain documents pertaining to his bank accounts in Canara Bank and Axis bank were recovered.
 - vii. On 27.04.2019, upon completion of investigation, the NCB filed a compliant before the Court of the learned Special Judge (NDPS Act), Patiala House.
3. Learned counsel appearing on behalf of the applicant submitted that the case against the applicant is primarily built on the following grounds:
- i. The disclosure statements of the applicant and co-accused tendered under Section 67 of the NDPS Act.
 - ii. The money allegedly paid by the applicant to the courier agency.
 - iii. The involvement of the applicant in another case registered by the NCB, i.e., Case No. VIII/04/DZU/2019.



iv. The statement of one Satpal - recorded under Section 67 of the NDPS Act.

v. The phone calls exchanged between the applicant and co-accused.

3.1. It was submitted that as far as the statements made by the applicant and co-accused Deep Chand under Section 67 of the NDPS Act are concerned, the same cannot be used as a confessional statement and are inadmissible against them. Reliance in that regard is placed on a judgment of the Hon'ble Supreme Court in **Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1**.

3.2. It was further submitted that as far as the other case, i.e., Case No. VIII/04/DZU/2019 is concerned, a learned Single Judge of this Court has granted bail to the applicant in the said case *vide* judgment dated 07.02.2022 passed in BAIL APPLN. 1610/2021, taking note of the present case as well, which was not challenged by the respondent/NCB.

3.3. It was submitted that the prosecution has not placed any document on record to substantiate that the applicant had transferred money to the account of co-accused Deep Chand. It was submitted that while the NCB had alleged that the Applicant had transferred money to a courier agency, no document evidencing the same has been produced by the NCB. The documents only show the deposit of cash into the account of a courier company. The link of the said courier company with co-accused Deep Chand is not known and none of the documents demonstrate that the money was deposited by the applicant.

3.4. It was further submitted that no incriminating material has been recovered from the house of the applicant either.



3.5. It was also urged that the NCB has not placed any Call Detail Records ('CDR') on record to show that contemporaneous phone calls were made between the applicant and co-accused Deep Chand.

3.6. As far as the statement of Satpal is concerned, it is submitted that in his statement dated 21.01.2019 recorded in Case No. VIII/04/DZU/2019 titled 'NCB v. Birpal & Ors.', he does not say that he knew the applicant. However, in his statement recorded subsequently in the present case on 19.04.2019, he states that the applicant had sent the parcels in question.

3.7. Lastly, learned counsel for the applicant contended that the latter has been in judicial custody for over four years since his arrest on 21.01.2019. Only six out of the twenty witnesses cited by the prosecution have been examined so far and the trial is likely to take a long time and in view thereof, the applicant should be released on bail pending trial.

3.8. In support of his contentions, learned counsel for the applicant placed reliance on the following judgments:

- i. Sanjeev Chandra Aggarwal v. Union of India, 2021 SCC OnLine SC 1268.
- ii. Gurmito v. CBI, 2022 SCC OnLine Del 2316.
- iii. Rahim Mondal v. State of West bengal, Order dared 30.11.2022 passed by the Hon'ble Supreme Court in Criminal Appeal No. 2106/2022.
- iv. Md. Irshad v. State NCT of Delhi, 2022:DHC:1723.
- v. Sakib Mirdha v. The State of West Bengal, Order dated 04.01.2023 passed by the Hon'ble Supreme Court in Criminal Appeal No. 23/2023.

4. *Per contra*, learned Senior Standing Counsel ('Sr. SC') appearing on behalf of the NCB submitted that in the present case, a commercial quantity



of contraband has been recovered from the packet recovered at DHL Express Pvt. Ltd. as well as the car belonging to co-accused Deep Chand. It was submitted that the recovered tablets were supplied by the applicant from Agra to co-accused Deep Chand in Delhi. It was further submitted that in his voluntary statement tendered on 21.01.2019 under Section 67 of the NDPS Act, the applicant has categorically admitted to his involvement in the alleged offences. It was submitted that the role assigned to the applicant is further corroborated by the disclosure statement of co-accused Deep Chand. It is further urged that the applicant used to regularly interact with co-accused Deep Chand and also deposited a sum of Rs. 15,000/- in cash in his bank account. Attention of this Court was also drawn to the statement of Satpal recorded under Section 67 of the NDPS wherein he stated that he had sent a packet belonging to the applicant from Agra to Apex Courier, Delhi.

5. Learned Sr. SC further submitted that the applicant has supplied a commercial quantity of manufactured drugs with a view to illegally export them. There are serious allegations against him and charges *qua* him for which he is facing trial. It was submitted that in view of the facts of the case and especially the role assigned to the applicant, the twin conditions contained in Section 37 of the NDPS are not satisfied and hence, he should not be released on bail.

6. In support of his contentions, learned Sr. SC placed reliance on the following judgments:

- i. State of Kerala Etc. v. Rajesh Etc., 2020 SCC OnLine SC 81.
- ii. Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549.
- iii. Union of India v. Ram Samujh & Ors. (1999) 9 SCC 429.



- iv. Union of India v. Rattan Malik, (2009) 2 SCC 624.
7. Heard learned counsel for the parties and perused the record.
8. It is the case of the prosecution that the applicant had deposited a sum of Rs. 15,000/- to the bank account of co-accused Deep Chand as commission for supplying the recovered carton to a courier company for onward shipment abroad. The case of the prosecution is that on a secret information, a parcel lying at DHL Pvt. Ltd. was searched and the said tablets were recovered. On further investigation, it was revealed that the parcel was booked from Overseas Courier, who in turn informed the NCB that that booking with them was made by Kavya International Courier Services, Connaught Place. Tapis Kumar of Kavya International Courier Services, in turn, informed the NCB that the parcel was booked by one Jitendra @ Bobby of Paharganj, who revealed that it was sent by one Deep Chand. It is the case of prosecution that Bobby informed the NCB that the said parcel was booked by co-accused Deep Chand, who would come again to give another parcel and thereafter the present applicant was apprehended and thereafter, Deep Chand had disclosed that he had received the parcel from the applicant.
9. The prosecution has sought to place reliance on the disclosure statements under Section 67 of the NDPS Act to establish the involvement of the applicant in the alleged offences. Apart from an assertion to that effect, there is no material on record to demonstrate that it was the applicant who had deposited Rs. 15,000/- in the account of co-accused Deep Chand. It is pertinent to note that this Court, *vide* judgment dated 31.05.2023 passed in BAIL APPLN. 850/2022 titled Deep Chand Kumar v. Narcotics Control Bureau, has granted bail to co-accused Deep Chand.



10. Charges in the present case were framed by the learned Trial Court on 23.11.2019. It is noted that out of the 20 witnesses cited by the prosecution, only 03 have been examined so far and the trial is likely to take a long time. The present applicant was arrested on 22.01.2019. As per the nominal roll dated 05.04.2023, he has been in custody for 03 years 06 months and 05 days. The Hon'ble Supreme Court, in **Union of India v. K.A. Najeeb, (2021) 3 SCC 713** observed that if a timely trial is not possible, courts are ordinarily obligated to release the undertrial on bail and statutory restrictions do not exclude the discretion of constitutional courts to grant bail on grounds of violation of fundamental rights enshrined in Part III of the Constitution. It was held as under:

“15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India* [*Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India*, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39], it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. **However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.**

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17. It is thus clear to us that **the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute**



as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

(emphasis supplied)

More recently, *vide* order dated 13.07.2023 passed in **Special Leave to Appeal (Crl.) 4169/2023** titled **Rabi Prakash v. The State of Orissa**, the Hon'ble Supreme Court held that prolonged incarceration of a person overrides the statutory restriction contained in Section 37(1)(b)(ii) of the NDPS Act. It was held as under:

"2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was



arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. **The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”**

(emphasis supplied)

11. The investigation in the present case is complete, the chargesheet stands filed. The trial is likely to take a long time. Out of the 20 witnesses cited by the prosecution, only 06 have been examined so far. The applicant has been in custody since 22.01.2019 and no useful purpose will be served by keeping the applicant in judicial custody any further.

12. In view of the facts and circumstances, the application is allowed.

13. The applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith two sureties of like amount to the satisfaction of the learned trial Court/Duty Magistrate, further subject to the following conditions:

- i. The memo of parties shows that the applicant is residing at E-717, Kamla Nagar, Agra, Uttar Pradesh - 282005. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer.



- ii. The applicant shall not leave India without the prior permission of the Trial Court.
 - iii. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - iv. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.
 - v. In case it is established that the applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled *forthwith*.
14. The application stands disposed of along with all the pending application(s), if any.
15. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case.
16. Let a copy of this judgment be communicated to the concerned Jail Superintendent.
17. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

AUGUST 17, 2023/nk