



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

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Reserved on : 15th May, 2023

Pronounced on : 02nd June, 2023

+ **BAIL APPLN. 3053/2022**

MEHABUB RAHAMAN ALIAS EMPHA

..... Petitioner

Through: Mr. Pramod Kumar Dubey, Sr. Adv.with
Mr. Prince Kumar, Ms. Aditi, Mr. Shivam
Kumar and Mr.Satyam Sharma, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for the State
with Insp. Mr. Rakesh Kumar, PS: Spl. Cell.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed seeking Regular Bail in FIR No. 160/2019 registered at PS Special Cell under Section 21/29/61/85 of the NDPS Act. The petitioner has been in custody for about 1 year and 10 months.

2. The case of the prosecution is that certain mobile phone numbers being used by members of the syndicate upon surveillance were found to be involved in suspicious activities and permissions were taken for lawful interception. The interception revealed that the conversations on these mobile numbers were in code words.

3. On 18th September 2019, SI Raj Singh was present in the office of the Special Cell and was informed by a secret informer that two men namely



Bajlur Rahaman and Abu Bakar, both residents of Malda, West Bengal were involved in the illegal supply of heroin along with their partner Saidul, and supply heroin in Delhi, Uttar Pradesh and West Bengal. As per the information, they were to supply heroin to the contact of Saidul in truck No. WB-57B-5270 between 03:00 pm to 04:00 pm on the outer ring road, Majnu ka Tilla, Delhi. After completing legal formalities, a raiding party was organized, and around 02:45 pm a truck with the same number halted at the Outer Ring Road and two persons came out from the said truck. The persons were surrounded and apprehended and were found to be Bajlur Rahaman and Abu Bakar. Both of them were served notice under Section 50 NDPS Act, a search was conducted after the completion of legal formalities, and 10.5 kg of heroin was recovered from their possession.

4. Upon interrogation, they disclosed that they had come to give contraband at the direction of Saidul, to his contacts Akbar and Sanjeet. The FIR 160/2019 was therefore registered. Upon further interrogation, they disclosed that received the contraband from Saidul and they have been working as part of this drug syndicate. Samples were deposited in FSL Rohini for analysis and expert opinion.

5. Later a police team led by SI Rakesh Kumar along with Abu Bakar departed from Delhi on 20.09.2019 and reached Malda, West Bengal, on 22.09.2019. NBW of Saidul was obtained from the Learned Trial Court and on the basis of further secret information a trap was laid down near Motihari to Samastipur Main Road where Saidul was apprehended at about 07:50 pm on 09th January 2020. No recovery was made from him. However, upon interrogation, he allegedly admitted that he had supplied contraband to Bajlur



Rahaman & Abu Bakar. He further disclosed that the contraband was handed over to Bajlur Rahaman & Abu Bakar for supplying it to the contact of Mehabub Rahaman (the petitioner herein). Subsequently, the mobile numbers seized from each of these persons were verified for their subscriber details. Samples were taken and deposited.

6. Further, exhibits of voice samples were deposited at CBI, Lodhi Road for comparison of voice samples. The CFSL results opined that the voice exhibits of the accused persons were matching with the intercepted voice calls. After a technical analysis of the mobile number of Bajlur Rahaman, Abu Bakar, Saidul & the petitioner, and one Nasir, it was found that the accused persons were in touch with each other through these mobile numbers which showed the presence of conspiracy. Charge-sheet under sections 21 & 29 NDPS was filed against Bajlur Rahaman and Abu Bakar and under Section 29 NDPS against the petitioner and Saidul. The petitioner was absconding and NBW was obtained against him. It later transpired that during the investigation the petitioner was arrested in FIR No. 91/2020, PS Kaliachak, Malda, West Bengal under section 21 NDPS Act, and was in judicial custody. Production warrant was obtained and the petitioner was formally arrested in this case on 13.03.2020. Supplementary charge sheet was filed against the petitioner on 25th August 2020.

7. Interim bail was granted and extended for four weeks by this Court by order dated 22.11.2022 on the ground of the medical condition of the wife which was potentially life-threatening. Interim bail was extended by four more weeks vide order dated 09.02.2023, and the petitioner surrendered thereafter.



8. The petitioner has two further involvements in GR NO.-577/2017, Case No.-104/2017, U/S- 302/34 IPC, PS- Kalia Chak, Malda, West Bengal and in Case No.-91/2020 Dated 02-02-2020, U/S- 21(c) NDPS ACT, PS- Kaliachak, Malda, West Bengal.

9. Learned senior counsel for the petitioner has contended that the petitioner is entitled to be enlarged on bail since there is no recovery from either the petitioner or at his instance; *secondly*, there is nothing on record other than the disclosure statement of the co-accused Saidul; *thirdly*, the transcript of the conversation between the petitioner and Saidul revealed nothing incriminating against the petitioner since code words like *kapda* and *saman* go without any basis and also that Saidul owned a garment and textile shop and these conversations would be considered normal between persons who were related as well (Saidul was the son in law of the brother of the petitioner); *fourthly*, transcripts, CDR, and matching of voice samples do not constitute substantive pieces of evidence and can at best be considered for corroboration; *fifthly*, matching of voice samples and CDR cannot be a ground for denying bail to the petitioner, since they would not be sufficient to hold the petitioner guilty and there were no conversations relating to any drugs; *sixthly*, no case is made out suggesting petitioner being involved in the conspiracy to commit offences under the NDPS Act and there is nothing to connect him with the recovery of the contraband; *seventhly*, the involvement of the petitioner in other cases cannot be an impediment, since he has been admitted to bail in FIR No. 104/2017 under Section 302/34 IPC, PS Kaliachak, Malda, West Bengal.



10. The petitioner in support of his submissions has relied upon the following decisions: **Anurag Vardhan v. Central Bureau of Investigation**, 2003 SCC OnLine Del 581; **Mahabir Prasad Verma v. Surinder Kaur**, (1982) 2 SCC 258 (on the evidential value of tape-recorded conversation); **Kayoom v. State**, 2022 SCC OnLine Del 1375 (on the matching of voice samples); **Harpreet Singh Bahad v. D.R.I.**, 2009 SCC OnLine Del 3013 and **Manoj Kumar Gupta v. State N.C.T. of Delhi**, 2002 SCC OnLine Del 1402 (on the prosecution burden under Section 37 NDPS Act).

11. Learned APP in support of his arguments for the State has relied upon **Union of India v. Ram Samujh**, (1999) 9 SCC 429 (on the menace of the dangerous drug flooding in the market and the intent of the NDPS Act); **Ishika v. State**, 2021 SCC OnLine Del 3131 (on the issue of proving conspiracy); **Neeru Yadav v. State of U.P.**, (2016) 15 SCC 422 (on the issue of previous involvements in other cases) and **Narcotics Control Bureau v. Mohit Aggarwal**, 2022 SCC OnLine SC 891 (on Section 37 and the grant of bail).

12. Learned senior counsel for the petitioner also contended that even as regards conspiracy, there was no time period defined of the conspiracy, no evidence of participation, no investigation on the fact from where the goods originated, absence of any real evidence available with the prosecution, and that there was no conversation of the petitioner with Bajlur Rahaman and Abu Bakar. Ld. APP, however, contended that this is a clear case of conspiracy as the various accused were working as part of a syndicate and therefore any argument on disclosure being not relevant was untenable since



the conspiracy had to be proved, there is no direct evidence of conspiracy except circumstances. Moreover, the voice samples had been taken, checked and verified, and matched. As well as there were two previous involvements including an NDPS case, the petitioner was absconding and NBW had to be issued against him and he was only arrested while he was in judicial custody in the other NDPS matter.

13. The Hon'ble Supreme Court in *Narcotics Control Bureau v. Mohit Aggarwal* (*supra*) has held that:

"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 charge-sheet 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 37 of the NDPS Act."

(emphasis added)



14. Also, as regards the conspiracy the following passages from *Ishika v State* (*supra*) are extracted for reference:

“6. On the similar facts, the Hon'ble Supreme Court in the case of Saju v. State of Kerala : (2001) 1 SCC 378, held as under:

8. ...It is a settled position of law that act or action of one of the accused cannot be used as evidence against other. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the Court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other.”

7. Further, it is relevant to quote that in Mir Nagvi Askari v. Central Bureau of Investigation : (2009) 15 SCC 643, it was ruled that while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, it must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same.

8. The Supreme Court in the case of Mohd. Amin v. CBI : (2008) 15 SCC 49 has held as under:

“74. The principles which can be deduced from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participants in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy.”



9. Further, in *Union of India v. Ram Samujh* : (1999) 9 SCC 429, the Supreme Court observed as under:

“8. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that accused is not guilty of such offence; and

(ii) that he is not likely to commit while on bail, are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the spirit with which the Parliament, after due deliberation, has amended.”

10. The aforesaid dictum has been relied upon by this court in the case of *Amit Ranjan v. Narcotic Control Bureau, Delhi* in Bail Appln.1102/2019 decided on 05.07.2019. Accordingly, the judgment relied upon by the petitioner is not helpful in the facts and circumstances of the case in hand.

11. In view of above submissions, I find no ground to grant bail to the petitioner.”

(emphasis added)

15. Therefore, pursuant to appreciation of the contentions of the parties and perusal of records of the case, in the considered opinion of this Court, the possibility that the petitioner would be likely to commit an offence while on bail cannot be ruled out considering his antecedents as also it would be



difficult to reach a *prima facie* conclusion at this stage that he was not involved in the conspiracy of supply of heroin. This Court also takes note of the investigating agency's strong reliance on the various interceptions of phone conversations over a period of time, along with matching voice samples of Bajlur Rahaman, Abu Bakar, Saidul, and the petitioner, and the large recovery of 10.5 kg of heroin, the source of which was finally traced out to the petitioner, as part of the investigation. Even though disclosure statements alone are not admissible, the existence of the conspiracy would have to be proved during the trial and it would be difficult in these circumstances to accord satisfaction that there are reasonable grounds to believe that he is not guilty of such an offence.

16. It is also noted that the NBWs were issued against the petitioner who was absconding, and he was only arrested in this case while in custody in FIR No. 91/2020 in PS Kaliachak Malda, West Bengal under Section 21 NDPS Act where he was on judicial custody.

17. In the circumstances, it would be difficult for the Court to arrive at a satisfaction that the petitioner would not be likely to commit any offence while on bail. Therefore, it is submitted that the conditions under Section 37 of the NDPS Act are not satisfied and the plea for regular bail of the petitioner cannot be granted at this stage.

18. Accordingly, the petition is therefore dismissed. Pending applications (if any) are rendered as infructuous.

19. Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JUNE 02, 2023/RK