

R. Kumar s/o Ramu	...	Applicant
versus		
Union of India and Anr.	...	Respondents

Dr. Yug Mohit Choudhari with Mr. Anush Shetty, for Applicant.
Mr. Saket R. Ketkar, Special PP for Respondent No.1.
Mr. H.J.Dedhia, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 13 NOVEMBER 2024

P.C.

1. The Applicant, who apprehends arrest in NDPS Special Case No.1506 of 2023 arising out of F.No.CIU/INV-23/2022-23/ACC(G)/E-Office F.No.GEN / INV / Misc / 229 / 2023-CIU-O / o COMMR-CUS-GEN-Zone III-Mumbai of CIU, Air Cargo Unit, Mumbai, for the offences punishable under Sections 22(c), 23(c) and 38 of the Narcotic Drugs and Psychotropic Substances Act, 1985, has preferred this application for pre-arrest bail.

2. On the basis of the intelligence input, one export consignment covered under Shipping Bill No.7996704 dated 23rd February 2023 of M/s. First Wealth Solution destined to Yasoub Adam Hamdoun, Atalbara (A), Juba, South Sudan with declared description in shipping bill and in export invoice as Tamol X-225, in 21 packages containing 10.5 lakhs tablets, having gross weight 729 kg. and net weight 720 kg., was intercepted by the Central

Intelligence Unit (CIU) Air Cargo Complex, Sahar (ACC) and kept on hold on 25th February 2023, for 100% examination by the officers of CIU, ACC, Mumbai.

3. A search panchanama was drawn on 27 February 2023 by the officers of CIU in the presence of the panch witnesses. The description on each boxes as well as on the inside packages was 'calcium carbonate 225 mg'. Quantity found was 9,99,500 tablets of Tamol-X. The goods were thus found to be mis-declared in terms of quantity and description. Thus, the consignment was seized under seizure memo. Samples were drawn and sent for analysis to CRCL Lab. The test was positive for Tramadol, a psychotropic substance.

4. Gudipati (A1) was the Chief operating Officer of M/s. First Wealth Solution, the consignor. Gudipati (A1) had placed the purchase orders with various manufacturers to manufacture Tramadol. The applicant was one of the manufacturers.

5. On 19 June 2024, when the application was listed before the Court, this Court was persuaded to grant interim protection to the applicant as similarly circumstanced co-accused were granted interim protection and the learned Special Judge by an order dated 8 November 2023 had initially granted interim protection to the applicant.

6. In the complaint (paragraph 217 to 217.4), it is alleged that the

applicant has committed or abetted the offences under Sections 22(c), 23(c) and 38 read with Section 8(c) of the Act, 1985, as the applicant had manufactured and supplied approximately 2,50,00,000 Tramadol tablets with brand name "New Royal" to M/s. First Wealth Solutions for export purpose. Under the terms of the manufacturing licence, the manufacturer was requested to obtain authorization from Narcotic Commissioner of India, CBN, Gwalior, before exporting the drug. The applicant failed to obtain the export authorization. Nor the applicant verified whether the export authorization was obtained by the exporter M/s. First Wealth Solutions.

7. Mr. Choudhary, learned Counsel for the Applicant submitted that, the applicant had manufactured the drugs in the regular course of business by obtaining the licence from the Competent Authority. A formal Production Contract was executed between M/s. First Wealth Solutions and M/s. Krebs Healthcare Pvt. Ltd. A purchase order was placed by the buyer – Neuro Pharma, based at Rwanda. A specific licence was obtained from the Director of Drug Control, Chennai with reference to the said purchase order. Under the Narcotic Drugs and Psychotropic Substances Rules, 1985, the export authorization is required to be obtained by the exporter and not the manufacturer. Therefore, the applicant cannot be roped in as a conspirator or abettor for the illegal acts of Gudipati (A1), the purchaser.

8. Mr. Ketkar, learned Special PP, resisted the prayer for pre-arrest bail. It

was submitted that the conditions subject to which licence for manufacture of drug was issued, was not fulfilled. The complicity of the applicant has been revealed in the statement of the applicant recorded under Section 67 of the Act, 1985. At any rate, pre-arrest bail cannot be granted when there are grave allegations of commission of offences under NDPS Act, 1985, involving commercial quantity of contraband substance. Thus, having regard to the gravity of the offences, the applicant does not deserve relief of pre-arrest bail.

9. The role attributed to the applicant is that of manufacturing and supplying Tramadol to M/s.First Wealth Solutions, who allegedly attempted to export the subject substance without obtaining export authorization by mis-describing the said substance. The pivotal question that wrenches to the fore is whether the applicant was statutorily enjoined to obtain export licence ?

10. While considering the prayer for regular bail of Gudipati (A1), the Chief Operating Officer of M/s. First Wealth Solutions – the consignor, I had elaborately dealt with the necessity of the export authorization in the context of the provisions contained in Section 8(c) of the Act and Rules 53 and 58 of the NDPS Rules, 1985. The observations in paragraph Nos.15 to 25 of the said order read as under :

“15. The relevant part of Section 8(c) of the NDPS Act, 1985 reads as under :

“8. Prohibition of certain operations.—

No person shall—

.....

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:”

16. Dealing with any narcotic drug or psychotropic substance in any manner is prohibited except for medical and scientific purposes and in the manner and to the extent provided by the provisions of the Act, the rules or order made thereunder. The Parliament has taken care to clarify that if there is a requirement of licence, permit or authorization for use of any narcotic drug or psychotropic substance for medical or scientific purpose then such use shall be in accordance with the terms and conditions of such licence, permit or authorization.

17. On first principles, the use of the terms ‘licence’, ‘permit’ or ‘authorization’, disjunctively, indicates that these terms have not been used interchangeably. It is a well recognized principle of statutory interpretation that the Parliament uses the words for a definite purpose. A provision cannot be interpreted in such a manner that a particular word is rendered redundant or surplus. If the submissions sought to be canvassed on behalf of accused Nos.1 and 4 that a ‘licence’ subsumes in its fold the “authorization” envisaged by Rule 58 of the NDPS Rules, 1985, the Parliament would not have used the terms licence and authorization disjunctively. On a plain construction of Section 8(c) of the NDPS Act, 1985 export of a psychotropic substance sans licence, permit or authorization under the governing rules or orders is expressly

prohibited.

18. If there is any doubt, the same stands dispelled by the provisions contained in Chapter VI of the NDPS Rules, 1985 under the heading "Import, Export and Transshipment of Narcotic Drugs and Psychotropic Substance'. Rule 53 reads as under :

"53. General prohibition.- Import into and export out of India of the narcotic drugs and psychotropic substances is prohibited except with an import certificate or export authorization issued under the provision of this Chapter;

Provided that import into India or export out of India of the narcotic drugs and psychotropic substances specified in Schedule I of these rules shall be for the purpose mentioned in Chapter VIIA"

(emphasis supplied)

19. The relevant part of Rule 58 reads as under :

"58. Application for export authorization.-

(1) No narcotic drug or psychotropic substance shall be exported out of India without an export authorization issued by the issuing authority in respect of the consignment, in Form No.5 appended to these rules.

....."

20. Rule 53 declares in clear and unambiguous terms that import into and export out of India of narcotic drugs and psychotropic substance is prohibited, except with a import certificate or export authorization issued under the provisions of the said Chapter.

21. The proviso to Rule 53, on which stress was laid by Mr. Sayed, does not advance the cause of the submission sought to be canvassed by him. The proviso mollifies the rigor of the prohibition contained in a main part of Rule 53 only for the purposes mentioned in Chapter VIIA of the NDPS Rules, 1985, which contains a

fasciculus of provisions regarding manufacture, possession, transport, import, export, purchase and consumption of narcotic drugs and psychotropic substances for medical, scientific, and training purposes. Therefore, the proviso to Rule 53 cannot be so construed as to dilute the rigor of the prohibition contained in main part of Rule 53 to the extent that no authorization as such is required if a narcotic drug or psychotropic substance is exported for medical purposes. Such a construction would run counter to the object of prohibiting import into and export out of the India of narcotic drugs and psychotropic substances sans regulation.

22. Sub-rule (1) of Rule 58 also emphasis the mandatory character of the said Rule. The necessity of export authorization is underscored not only by using the word, 'shall' but also by employing the legislative command in a negative form by using the word. 'No' at the beginning of sub-rule (1).

.....

25. I am therefore not inclined to accede to the submissions on behalf of Gudipati (A1) and Ahmed Saleh (A4) that there was no requirement of export authorization as envisaged by Section 8(c) read with Rule 58 of the NDPS Rule, 1985. This inference, effectively seals the fate of the application for bail of Gudipati (A1). Since there is overwhelming material to point the complicity of Gudipati (A1), the interdict contained in Section 37 of the NDPS Act, 1985 operates with full force and vigor.”

11. Was the applicant privy to the export of Tramadol sans export authorization ? Prima facie, it appears that the manufacture of Tramadol by the Applicant under the product name New Royal 225 Tab (Tramadol 225 mg.) was in regular course of business and in conformity with the licencing

requirements. Purchase order dated 9 June 2021 placed by M/s. Neuro Pharma, Rwanda, the importer, indicates that the order was placed with First Wealth Solutions, the seller. First Wealth Solutions, in turn, placed an order for supply of the product with KrebZ Healthcare Pvt. Ltd. (Exhibit F) on 3 July 2021. The Production contract came to be executed between First Wealth Solutions and KrebZ Healthcare Pvt. Ltd. First Wealth Solutions affirmed an affidavit (Exhibit H) to the effect that it was an exporter and it was planning to export New Royal 225 tab (Tramadol 225 mg.) to destination country Rwanda and the importer was M/s. Neuro Pharma. The Director of Drugs Control, Chennai, issued the drug permit on 28 July 2021 to M/s. KrebZ Healthcare Pvt. Ltd. to manufacture New Royal 225 Tab (Tramadol Hydrochloride Tablets USP) for export use only.

12. It is imperative to note the purchase order dated 9 June 2021 of Neuro Pharma, Rwanda, and of First Wealth Solutions dated 1 July 2021 were specifically referred to in the said licence and the name of importing country was specifically mentioned as Rwanda.

13. Learned Special PP laid emphasis on an endorsement in the licence that 'the manufacturer is requested to obtain export authorization from Narcotic Commission of India, Central Bureau of Narcotics, Gwalior before exports the drug'. It was urged that despite the aforesaid clear instructions, the applicant allowed the contraband substance to be exported by the co-

accused – Gudipati (A1) sans authorization .

14. Prima facie, I find it rather difficult to accede to the aforesaid submission of the learned PP. As noted above, manufacture and supply of the drug appeared to be with fullest possible disclosure to the concerned authorities. The name of the importer, the destination country, and the name of the supplier, were all disclosed. Manufacturing licence was obtained on the basis of the purchase order placed by the importer and supplier. It is true, there is an endorsement that the manufacturer is requested to obtain export authorization from Narcotic Commission of India, CBN, Gwalior.

15. Whether this requirement emanates from the statutory prescription ? Sub-Rule (1) of Rule 58 undoubtedly prohibits export out of India of narcotic drugs or psychotropic substance without an export authorization. However, on a plain reading and Rule 58 of the NDPS Rules, 1985, it appears that the requirement to obtain authorization is that of the exporter.

16. In the case at hand, there is material to show that the KrebZ Healthcare Pvt. Ltd. raised invoices and delivered the product to the consignee M/s. First Wealth Solutions. The latter was the named supplier and exporter. Prima facie, it was the responsibility of the exporter to obtain the export authorization. The endorsement on the licence, therefore, cannot be construed in such a fashion as to fasten the criminal liability on the manufacturer who obtained the licence and manufactured the drug after the

full disclosure of the purpose of the manufacture, the name of the importer and the supplier.

17. Even otherwise there is no material to indicate that the applicant was prima facie, complicit in the export of the contraband substance, sans authorization. The consignment was intercepted in the month of February 2023. The applicant was not arrested. Investigation seems to be complete for all intent and purpose. At this length of time, the custodial interrogation of the applicant does not seem to be warranted.

18. Prima facie, having regard to the material on record, the interdict contained in Section 37 of the Act, 1985, may not operate as there does not appear material to make out a prima facie case for the offences for which the applicant has been arraigned. The applicant has no antecedents. The Court may, thus, draw an inference that the interdict contained in Section 37 of the Act, may not be attracted. I am, therefore, inclined to make the order of interim bail absolute.

19. Hence, the following order :

ORDER

(i) The order of interim bail dated 19 June 2024 is made absolute on the terms and conditions incorporated therein.

(ii) In addition, the applicant shall regularly attend the proceedings before the jurisdictional Court.

(iii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.

Application disposed.

(N.J.JAMADAR, J.)