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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 232/2024 & CRL.M.A. 2516/2024,
CRL.M.A. 6243/2024

JAGJEET SINGH

..... Applicant

Through: Mr. Amit Agnihotri, Adv.
(through VC)

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Utsav Singh Bains,
SPP, NCB (through VC)
Mr. Prashant Pathak, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

02.04.2024

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1. The present application is filed under Section 438 of the Code of Criminal Procedure, 1973 seeking pre-arrest bail in Crime No. VIII/71/DZU/2022 for the offences under Sections 8/18 (B)/ 23 (B)/ 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The brief facts of the case are as follows:

2.1. On 30.09.2022, secret information was received that a parcel was lying at DHL Exp. Pvt. Ltd., Near Kirti Nagar, Delhi and the same was suspected to have narcotic drugs or psychotropic substances. On the basis of the secret information, the NCB team reached the spot and met with the Security Incharge of DHL. The parcel was thereafter produced before the NCB team. The name of the sender of the parcel was



mentioned as Rohit Kumar and the name of the consignee was mentioned as Sunny. It is alleged that a pair of brown shoes were found in the parcel. It is alleged that the shoes were cut open and 54 grams of Opium and 36 grams of Opium were recovered from both the shoes respectively. The total weight of the recovered contraband thus came to be 90 grams.

- 2.2. It is alleged that during investigation, the Manager, DHL, Kirti Nagar, Delhi informed that the shipment was booked by the wholesaler HPL Logistic Ludhiana.
- 2.3. It is stated that HPL Logistic Pvt. Ltd. vide email dated 08.10.2022 informed that the shipment was initially booked by Ludhiana Enterprises at Ludhiana. It was also informed that one person was getting the information regarding the parcel through a mobile number 769696XXXX. The said number has been attributed to the applicant.
- 2.4. It is alleged that the applicant had connected telephonically with the Booking Clerk and co-accused Rohit Kumar.
- 2.5. It is alleged that the Booking Clerk in his statement under Section 67 of the NDPS Act disclosed that the package was booked by co-accused Rohit and another person had come to enquire about the parcel physically. The said person had allegedly also inquired about the status of the parcel through WhatsApp and calls from mobile number 769696XXXX.
- 2.6. It is alleged that co-accused Rohit in his disclosure



statement disclosed about the involvement of the applicant in booking of the parcel.

3. The learned counsel for the applicant submits that the applicant has clean antecedents and has been falsely implicated in the present case.
4. He submits that no recovery has been effectuated at the instance of the applicant. He submits that admittedly the parcel was booked by the co-accused Rohit and all the documents for booking the concerned parcel were submitted by him as well.
5. He submits that co-accused Rohit was granted regular bail by the learned Trial Court by order dated 23.02.2023 on account of the fact that recovery of intermediate quantity is involved in the present case.
6. He submits that the applicant did not know that co-accused Rohit was trying to smuggle Opium. He submits that the applicant was a friend of a colleague of co-accused Rohit. He submits that the co-accused Rohit is illiterate and the applicant had only inquired about the parcel on his repeated requests.
7. He submits that charges have been framed in the present case and no purpose will be served by arresting the applicant.
8. The learned SPP for the respondent vehemently opposes the grant of any relief to the applicant. He submits that the applicant had called the co-accused Rohit twenty-one times while co-accused Rohit had only called him twice, which belies the stand of the applicant that he was merely assisting co-accused Rohit.
9. He further submits that even though the applicant claims to have helped co-accused Rohit to book the concerned parcel as he is illiterate, however, co-accused Rohit Kumar in his statement has stated he is a Graduate (B.Sc.). He submits that even the



learned Trial Court while granting bail to co-accused Rohit has noted that he is a graduate.

10. He further submits that enquiry about the parcel in question by the applicant from the Booking Clerk is corroborative material.

11. He submits that the proceedings under Section 82 of the CrPC were initiated against the applicant by the learned Trial Court on 18.12.2023 as the applicant had not appeared before the respondent despite service of notices under Section 67 of the NDPS Act. He submits that the proceedings under Section 82 of the CrPC were initiated prior to filing of the present application.

12. I have heard the counsel for the parties and perused the record.

13. It is noted that the applicant in the present case has not disputed that he was inquiring about the parcels, but has stated that he was merely doing so to assist co-accused Rohit. The reason for extending such assistance has been stated to be that co-accused Rohit works with the applicant's friend and is illiterate. It is apparent from the bail order of co-accused Rohit and also his disclosure statement that he is a Graduate.

14. It is also pointed out that the applicant made as many as twenty-one calls to co-accused Rohit while co-accused Rohit only called the applicant twice. The applicant had also admittedly kept track of the parcel containing the contraband.

15. In view of the said facts, at this stage, the allegations do not appear to be frivolous or to have been levelled against the applicant to injure or humiliate him.

16. It is also relevant to note that this Court had granted interim protection to the applicant *vide* order dated 27.02.2024. The Status Report filed subsequently states that the applicant did



not cooperate with the investigation and failed to disclose his present address despite the best efforts of the Investigating Officer.

17. It is settled law that the custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC [***State v. Anil Sharma : (1997) 7 SCC 187***]. In the present case, it seems that the applicant has failed to cooperate with the investigation even after he was granted interim protection by this Court. Granting anticipatory bail to the applicant would undoubtedly impede further investigation. An order of bail cannot be granted in a routine manner so as to allow the applicant to use the same as a shield.

18. Another aspect to be considered is that the process under Section 82 of the CrPC had been initiated against the applicants. The Hon'ble Apex Court in ***Prem Shankar Prasad v. State of Bihar : (2022) 14 SCC 516*** has specifically observed as under:

“10.2. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that Respondent 2-accused is absconding and even the proceedings under Sections 82/83CrPC have been initiated as far back as on 10-1-2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to Respondent 2-accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc. which came to be considered by the learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under Sections 82/83CrPC by simply observing that “be that as it may”. The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

10.3 In State of M.P. v. Pradeep Sharma [State of



M.P. v. Pradeep Sharma (2014) 2 SCC 171 : (2014) 1 SCC (Cri) 768] , it is observed and held by this Court that if anyone is declared as an absconder/proclaimed offender in terms of Section 82CrPC, he is not entitled to relief of anticipatory bail...

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11. Thus the High Court has committed an error in granting anticipatory bail to Respondent 2-accused ignoring the proceedings under Sections 82/83CrPC.”

(emphasis supplied)

19. It is pointed out that co-accused Rohit has been granted bail by the learned Trial Court. It is relevant to note that the considerations governing the grant of anticipatory bail are materially different than the application for grant of regular bail where the accused is already under arrest and the substantial investigation *qua* the concerned accused person has been carried out by the investigating agency.

20. Considering the aforesaid discussion, this Court is of the opinion that no case is made out for grant of pre-arrest bail to the applicant.

21. The present application is accordingly dismissed.

22. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

APRIL 2, 2024

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