



2024:DHC:5080



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 10.07.2024*+ **BAIL APPLN. 292/2024****RAAZ ALI**

..... Petitioner

Through: **Mr. Aditya Aggarwal, Mr. Manas
Agarwal and Ms. Pooja Roy, Adv.**

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: **Mr. Utsav Singh and Mr. Rana
Debnath, Adv.****CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed by the petitioner seeking regular bail under Section 439 of the CrPC, 1973 read with Section 36A (3) of the NDPS Act, 1985 in Crime No. VIII/65/DZU/2022 under Sections 8/22(c)/23(c)/29 of the NDPS Act registered at Narcotics Control Bureau.
2. *Vide* order dated 25.01.2024, notice was issued in the present bail application. The State has filed status report dated 28.02.2024, which forms part of the record.
3. The case of the prosecution as borne out from the status report is that on 23.08.2022, on the basis of secret information, NCB Delhi Zonal Unit has seized 14960 NRxZolpidem Tablets (commercial quantity) from a parcel having AWB No. N25175294 at DTDC Express Ltd., Samalkha, New Delhi.



The parcel in question was booked by accused Mohd. Raaz Ali on the directions of accused Quazi Mohd. Zuhaib through accused Anil Kumar on the fake Ids of Vinod Mishra.

4. Upon enquiry from the courier company the whereabouts of the present petitioner/accused Mohd. Raaz Ali and Anil Kumar were revealed and they were intercepted in Lucknow on 24.08.2022. Further, accused Quazi Mohd. Zuhaib was also intercepted in Lucknow on 24.08.2022. All the three accused persons were put under arrest being involved in the present crime. It is also mentioned in the status report that copy of Aadhar Card and PAN Card of Vinod Mishra were found attached with the parcel, however on verification, same were found forged.

5. During investigation of the case, the present petitioner/accused Mohd. Raaz Ali disclosed that he had booked the parcel in question. He further disclosed that the parcel in question was sent to him by co-accused Quazi Mohd. Zuhaib. He also disclosed that he used to book the parcels through accused Anil Kumar on the fake id's of Vinod Mishra.

6. The present petitioner further disclosed that other parcel which was booked by him through co-accused Anil Kumar from DTDC Courier Company is still lying in Delhi and the same would not have yet reached USA. On the basis of disclosure of the present petitioner Mohd. Raaz Ali & co-accused Quazi Mohd. Zuhaib, further recovery of 10800 NRx Tramadol tablets (commercial quantity) affected from a parcel having AWB No. N25077634 at DTDC Express Ltd., Samalkha, New Delhi on 27.08.2022.

7. Mr. Aditya Agarwal, learned counsel appearing on behalf of the petitioner at the outset submits that no contraband has been recovered from the petitioner. In such a scenario he submits that compliance with the



conditions of Section 37 of the NDPS Act cannot be insisted on in the present case. To buttress his contention he submits that no link has been established by the investigating agency between the petitioner and the alleged contraband, in as much as, there is no monetary transaction reflecting involvement of the present petitioner.

8. He further submits that the present petitioner has been arrested merely on the basis of the disclosure statement and it is trite that a confessional statement is inadmissible in law in view of the judgment of the Supreme Court in *Toofan Singh vs. State of Tamil Nadu: (2021) 4 SCC 1*.

9. Considerable arguments have been made by the learned counsel on the aspect that there is a discrepancy in the weight of contraband recovered by the investigating agency and the discrepancy pointed out has been tabulated in the following chart:

<u>Name of the Contraband</u>	<u>Weight at the time of seizure</u>	<u>Weight before the Ld. Magistrate at the time of sampling</u>	<u>Weight of each samples drawn before the Ld. Magistrate</u>	<u>Weight of samples received by the CRCL</u>
Zolpidem 1496*10= 14960 tablets	2.42gm*1496= 3.635 Kg	2.5gm*1496 = 3.740 kg (difference of 105 grams from seizure)	Two samples of 2.5 grams each containing 10 tablets in each sample (A-1,A-2)	3.8gm (Each strip) 3.8gm*1496= 5.684 kg (difference of 2.049 kg from seizure) (difference of 1.944 kg from the weight before the Ld. Magistrate) (A-1)
Tramadol 1080*10= 10800 tablets	2gm*1080= 2.160 Kg	2.8gm*1080 = 3.024 kg (difference of	Two samples of 2.8 grams each	3.7gm (each strip) 3.7gm*1080 = 3.996kg (difference of



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		864 grams from seizure)	containing 10 tablets in each sample (D-1,D-2)	1.836 kg from seizure)(difference of 972 gm from the weight before the Ld. Magistrate) (D-1)
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10. In support of his contention, the learned counsel has relied upon the judgment of the Supreme Court in *Rajesh Jagdamba Avasthi versus State of Goa (2005) 9 Supreme Court Cases 773* as well as the decisions of coordinate benches of this Court in *Sanjay Prasad v. State (Govt. of NCT) of Delhi in CRL. APPEAL No. 1074/2013*, *Kadir Versus State* (Bail application No. 553/2023) and *Mohd. Ramzan versus State (NCT of Delhi)* decided on 05.05.2005.

11. Mr. Agarwal has also drawn attention of the Court to order dated 15.04.2024 passed by the Special Judge, NDPS Act, Patiala House Courts New Delhi to contend that co-accused Anil Kumar has been granted regular bail on the ground of the discrepancy in weight of quantity of contraband at every stage. Likewise, co-accused namely, Quazi Mohd. Zuhaib has also been granted regular bail by the learned Trial Court on 03.06.2024.

12. Lastly, it is submitted by the learned counsel for the petitioner that the antecedents of the petitioner are clean and he is not involved in any other case besides the present one.

13. *Per contra*, the learned counsel for the respondent/NCB has argued on the lines of the status report. He submits that the offence is of serious nature and the total quantity of the contraband recovered from the petitioner as well as the co-accused is commercial, therefore, the petitioner has to satisfy the twin conditions mentioned in Section 37 of the NDPS Act before being



released on bail.

14. He submits that the complicity of the present petitioner is apparaent from the fact that petitioner was identified as Vinod Mishra by Akash Srivastav, an employee of DTDC Courier franchise, Lucknow from where the parcel in question AWB No. N25175294 was initially booked. He further submits that screen shots of chat between Akash Srivastav and Raaz Ali is also available.

15. He further submits that there is no dispute that the seized case property i.e. the strips of the contraband tablets (commercial quantity) were produced before the Ld. Magistrate and the samples were drawn before the Ld. Magistrate in compliance of Section 52A of the NDPS ACT, 1985. Further, no objection qua the procedure and drawing of samples was raised at the relevant time before the Ld. Magistrate, before whom the case property was produced and the samples were drawn.

16. He further submits that the contention of the learned counsel for the petitioner that the discrepancy in the weight of contraband corrodes the very foundation of the case of the prosecution and it does not hold any water. He submits that any discrepancy in the weight of the contraband and its effect has to be seen at the time of trial and not at the stage of bail. He also contends that minor discrepancy in the weight of the contraband does not wipe out the entire case of the prosecution. To buttress his submission he relies upon the judgment of a coordinate bench of this Court in ***Kulwant Singh Vs. Narcotics Control Bureau CRL. A 248/1997*** decided on 18.01.2008 as well as the judgment of the learned Single Judge of the Allahabad High Court in ***Chhotey Lal Vs. UOI, NCB*** in Criminal Misc. Bail Application No. 6298/2020.



17. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent and have perused the record.

18. The gravamen of allegations against the petitioner is that he has booked the parcel in question on the directions of co-accused Quazi Mohd. Zuhaib through co-accused Anil Kumar on the fake IDs of Vinod Mishra.

19. It is the case of the prosecution that Zolpidem weighing 3.635 Kg was seized from the parcel intercepted. However, the weight of the contraband before the learned Magistrate at the time of sampling was 3.740 Kg (difference of 105 gms from the seizure), which clearly manifests that there is a discrepancy in the weight of the contraband allegedly recovered at the instance of the petitioner. This discrepancy in the weight is unexplained by the prosecution at this stage, however, such a discrepancy of 105 gms is a factor which can enure to the benefit of petitioner but cannot be the sole ground for grant of concession of regular bail nor the same can shake the foundation of the case of prosecution at this stage. Similar is the situation with the tramadol tablets allegedly recovered on the basis of the disclosure statement of the petitioner. The discrepancy in weight and its effect on the case of the prosecution has to be seen by the learned Trial Court at an appropriate stage. Reference in this regard may be had to a judgment in ***Asha Vs. State of NCT Delhi, 2023 SCC OnLine Del 4302***, the relevant paragraph of which reads as under:

“13. Ld. counsel for the petitioner has further contended that when the contraband was weighed before the learned Metropolitan Magistrate, it's weight increased from 260 gm to 262 gm indicating that the case property was tampered, does not cut much ice as these are issues which do not go to the root of the matter warranting grant of bail and can be looked into at the time of trial as one doesn't know as to how



and in what condition the contraband was weighed in both situations. Furthermore, the present petitioner is not entitled to parity with co-accused Sunil @ Rahul as the co-accused has been released on regular bail considering that the contraband recovered from him is intermediate quantity whereas the contraband recovered from the petitioner herein is commercial quantity.”

20. Insofar as the incriminating material in the form of screen shots of chat between Akash Srivastav and Raaz Ali is concerned, relevant would it be to note that incriminating material in the form of chats cannot establish a live link between the petitioner and co-accused. Reference in this regard may be had to the judgment of Supreme Court in ***Bharat Chaudhary v. Union of India: (2021) 20 SCC 50***, the relevant para of which reads as under:

“10...Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited.”

21. It is also not in dispute that co-accused namely, Anil Kumar and Quazi Mohd. Zuhaib have been granted the concession of regular bail by the learned Trial Court on the ground of discrepancy in weight of contraband *vide* orders dated 15.04.2024 and 03.06.2024 respectively. The role of the petitioner being similar to that of the co-accused, he is also entitled to the benefit of parity.

22. Accordingly, in view of the aforesaid discussion, this court is satisfied that there are reasonable grounds for believing that the petitioner is not



guilty of the offence alleged. Further, it is not in dispute that the antecedents of the petitioner are clean and thus, he is not likely to commit an offence on bail.

23. Considering the aforesaid circumstances in entirety, this Court is of the opinion that the present petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is enlarged on regular bail subject to his furnishing a Personal Bond in the sum of Rs.50,000/- and one Surety Bond of the like amount to the satisfaction of the Trial Court/CMM/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- b) The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to the complainant or any of the prosecution witnesses or other persons acquainted with the facts of the case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.
- c) He shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/SHO;
- d) He shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

24. The petition stands disposed of.

25. It is clarified that any observation made herein-in-above is only for the purpose of deciding the present bail application and same shall not be



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construed as an expression of opinion on the merits of the case.

26. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.

27. Order dasti under signatures of the Court Master.

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

VIKAS MAHAJAN, J.

JULY 10, 2024
N.S. ASWAL