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

Date of decision: 10th DECEMBER, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 373/2024**

ANGELINA HRANG THAN SAN

.....Petitioner

Through: Mr. J.S. Kushwaha and Ms. Tanya
Kushwaha, Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCERespondent

Through: Mr. Aman Tripathi, Advocate for Mr.
Satish Aggarwala, Sr. Standing
Counsel

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court for grant of bail in case bearing File No. DRI/DZU/ 34 / Enq- 15 / 2023 registered for offences under Sections 8, 21, 23, 27A & 29 of the NDPS Act.
2. The facts of the case reveal that on 13.06.2023, Ms. Kiran Sharma (Intelligence Officer) received an information regarding smuggling of huge quantity of contraband/ narcotics drugs into India through courier from Brazil and other South American countries by a Delhi based syndicate.
3. *Vide* an Intelligence Note dated 13.06.2023, Senior Intelligence Officer was informed that a courier consignment covered under Shipment No. Shipment No. 07EV24VVVW9 (Tracking No. 1Z07EV240499803642 & 1Z07EV240498777450) containing narcotics imported by a syndicate from Sao Paulo, Brazil to India is lying at UPS Courier Terminal, NCT, IGI



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Airport, New Delhi.

4. The team reached the UPS Courier Terminal NCT, IGI Airport, New Delhi. A Panchnama dated 13.06.2023 was drawn at UPS Courier Terminal, IGI Airport, New Delhi whereby two independent panchas/witnesses were called by the officers of DRI and were informed about the courier and that examination of the courier will be done. Thereafter, the panchas, DRI officers and Shri Akash Kumar Mastwal (Custodian Assistant of UPS Courier Terminal) moved to the examination area of UPS Courier Terminal.
5. The courier was presented which was in form of two cardboard boxes. One cardboard box marked as 1 of 2 was weighed and the gross weight of the said box came out to be 10.35Kgs. On opening the box, it was found containing 'Table center- decorative crystal show piece' along with small round thermocol balls. It was noticed that few balls had some unusual weight and appearance. One such ball was cut open with the help of a cutter and it was found that one transparent polythene packet was concealed inside the round thermocol ball which had some white powder. The white coloured powder was tested through NDPS field test kit and the powder tested positive for cocaine. Thereafter the DRI officers cut open all thermocol balls (4817 balls) and they found that 486 such balls were having white powder inside the themocol balls.
6. The white powder from these transparent polythene packets from these 486 balls were emptied into a transparent polythene bag which was marked as 'A' having weight 996 grams (net weight of cocaine - 977g).
7. Second cardboard box having Mark 2 of 2 was opened which also had the same contents and the gross weight was found to be 11.55Kgs. Out of the 4764 thermocol balls which were cut open, 486 balls had small round



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polythene packets having white powder inside which upon checking was found to be cocaine.

8. The white powder from these transparent polythene packets from these 486 balls were emptied into a transparent polythene bag which was marked as 'B' having weight 963 grams (net weight of cocaine - 945g). Thus, total 1922 grams of cocaine was found. Thereafter, efforts were made to find the consignee, Pooja Kumar, at the mentioned address in Delhi, however, she was not traced and no one in that locality knew anyone by that name. Various emails were being sent by the email id of Pooja Kumar constantly enquiring about the delivery of the package.

9. On 19.06.2023, the Courier Company received a mail sent by the said Pooja Kumar through email id 'poojakumar90@hotmail.com' wherein she authorised the Petitioner to receive parcels from the Courier Company in her place. Intelligence Officer Vikesh Kumar Singh, got a dummy parcel with the same tracking number to be delivered to the receiver.

10. Petitioner arrived at the office of UPS's with the authorization letter, requesting for the parcels sent to Pooja Kumar. DRI officers introduced themselves to the Petitioner who in turn told them that she had come to collect the parcels for her friend, Alex Louis @ Modetus MD. She also stated that she had collected INR 20K from Alex for payment of customs duty for receiving the parcels from UPS. The officers told her about narcotics/1922g cocaine found in those parcels. Petitioner assisted the DRI officers and took them to Alex Louis @Modetus MD who was then apprehended.

11. Summons under Section 67 of NDPS were issued to the Petitioner on 23.06.2023. The Petitioner then tendered her voluntary statement, admitting



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to the recovery, seizure and other incriminating facts. As per the prosecution, it is stated by the Petitioner that she did not know whose number was mentioned on the shipment, the consignor or any Pooja Kumar and that the said Alex @ Modetus MD had used the documents of Pooja Kumar for the said consignment. The documents and authorisation letter were handed to the Petitioner by Alex @ Modetus MD. It is also stated that Petitioner knew about the work but did it for money as can be seen from the WhatsApp chats between her and Alex @ Modetus MD. It is stated that she had previously collected similar parcels for Alex @ Modetus MD and delivered to him with payment in cash. Petitioner had been working with/for Alex @ Modetus MD for approx. 4-5 yrs.

12. The accused Alex @ Modetus MD disclosed that his friend Nonso had given his number to his brother Chuka Ozuburu for taking delivery of the consignments. He disclosed that Ozuburu, on receiving the call from the said accused, further called the Petitioner and assigned her the job of collecting the parcel. Alex @ Modetus MD had shared the Petitioner's number with Ozuburu and then *vide* email dated 19.06.2023, Ozuburu, in the name of Pooja Kumar, had authorised the Petitioner to receive the parcels. Ozuburu's friend gave Alex @ Modetus MD money out of which he remunerated P. The consignment was sent by Chuka Ozuburu and was to be received by Alex @ Modetus MD.

13. Alex @ Modetus MD in his statement under Section 67 of NDPS Act admitted to smuggling more than 50kgs of cocaine through imports, always submitting KYC of various persons and hiring them to avoid attention. He stated that he was a part of an international drugs smuggling syndicate and used to import courier consignments in name of different Indians. Further,



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he had delivered drugs to various unidentified persons for money. Investigation also reveals that the Petitioner and Alex @ Modetus MD were using numbers issued to by them using fake identity and address.

14. An application under Section 52A of the NDPS Act was filed and proceedings were conducted by the learned MM, Saket.

15. The forensic report of the mobile of the accused Alex @ Modetus MD' also showed details of a consignment at the Mumbai UPS. The DRI Mumbai officers recovered 500g of cocaine from the said parcel on 28.06.2023. It was informed that an African national named Okoro Samson was the mastermind of the Syndicate and he was operating from New Delhi. The said person was arrested by the Mumbai officers.

16. The investigation revealed that a conspiracy was hatched by Alex @ Modetus MD in connivance with the Petitioner, Chuku Ozuburu and Nonso and certain others who are yet to be apprehended, to smuggle cocaine from African and/or South American countries to Delhi by courier consignments to various persons.

17. The said consignments have been booked by Ozurburu and Nonso and others in the name of different Indians. Alex @ Modetus MD used to hire Indians or agents like the Petitioner for taking delivery on monetary basis and further sell the contrabands ahead to unidentified persons. Alex has admitted to smuggling more than 50kgs cocaine like this. The Petitioner used to work with him, receiving 20-30k per consignment for taking the delivery. It is stated that the other persons involved in the smuggling of 1992g recovered in the present case are yet to be examined and apprehended.

18. The last of the bail application filed by the Petitioner has been



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dismissed by the learned Additional Sessions Judge, Special Judge, Saket Courts, Delhi *vide* Order dated 23.12.2023. The bail application was rejected primarily on the ground that 1.9 kg of cocaine along with other incriminating material implicating the Petitioner was recovered.

19. Learned Counsel for the Petitioner contends that the Petitioner is neither a consignee or a consignor and the Petitioner did not have any knowledge of the contents of the parcel. He contends that there is no evidence for inferring any conspiracy between the Petitioner and the consignee. It is stated that since the Petitioner was not in a conscious possession rather she was going to collect the parcel and without there being any material to the contrary, it cannot be said that the Petitioner had the knowledge of the contents of the parcel. He contends that the only material with the Petitioner is a self-incriminating statement given under Section 67 of the NDPS Act which is not admissible in view of the law laid down by the Apex Court in Tofan Singh v. State of Tamil Nadu, **2021 (4) SCC 1**.

20. *Per contra*, learned Counsel for the Respondent contends that the investigation reveals that an email had been sent from the consignee authorizing the Petitioner herein to accept the delivery of the consignment. The investigation reveals that the Petitioner had shared the aadhaar card details and mobile number with accused Alex @ Modetus MD. It is stated that the Whatsapp chats does indicate that the Petitioner was aware of the contents of the parcel and that she had collected such parcels on behalf of Alex @ Modetus MD even in the past.

21. Heard learned Counsel for the parties and perused the material on record.

22. The parameters for grant of bail for offences punishable under the



NDPS Act, is governed by Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:-

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

23. The law relating to grant of bail for commercial quantity under the NDPS Act is governed by Section 37 of the NDPS Act. Under Section 37 of the NDPS Act, in case of commercial quantity, twin conditions have to be satisfied, i.e., notice has to be given to the Public Prosecutor to oppose the



bail application and that when there is a reasonable ground to believe that the person accused of the offence is not guilty of such offence and that the accused is not likely to commit any offence while on bail.

24. The parameters for grant of bail to an accused under Section 37 of the NDPS Act have been laid down by the Apex Court in a number of judgments. In Collector of Customs v. Ahmadalieva Nodira, (2004) 3 SCC 549, the Apex Court has observed as under:

"6. As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief



contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....."
(emphasis supplied)

25. In Union of India v. Rattan Mallik, (2009) 2 SCC 624, the Apex Court has observed as under :

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted



above, is *sine qua non* for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of “not guilty”. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.” (emphasis supplied)

26. In State of Kerala & Ors. v. Rajesh & Ors., (2020) 12 SCC 122, the Apex Court has observed as under :-

“19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression “reasonable grounds” means



something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

27. Applying the law laid down by the Apex Court to the facts of the present case, the CDR shows that the Petitioner was in touch with the other co-accused who was aware of the contents. It can be inferred from the facts that there are reasonable grounds to believe that the Petitioner is guilty of the offence.

28. Investigation reveals that apart from the statement given by the Petitioner under Section 67 of the NDPS Act, UPS also received an email sent by the so-called consignee authorizing the Petitioner herein to receive the parcel which indicates that the Petitioner has been actively involved in receiving such parcels in the past also. The additional documents filed by the Prosecution does indicate that the Petitioner was aware of the chats more particularly chats dated 23.03.2023 sent to the Petitioner herein.

29. The contention of the Petitioner that the Petitioner was only directed to go and see the consignment without having any knowledge of the contents of the parcel cannot be accepted. There are other materials as well which does indicate that the Petitioner was aware of the contents of the



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parcel. The material on record does indicate that the Petitioner is a part of the well organized drug syndicate which is actively involved in smuggling huge quantities of drugs into India through courier from Brazil and other South American countries and the possibility of the Petitioner repeating such offences in future cannot be ruled out.

30. In view of the fact that substantial amount of cocaine is involved in this case and the Petitioner was in constant touch with Alex @ Modetus Ms. Meenakshi Dahiya, APP, who is the accused in this case, the chats indicating that the Petitioner knew the contents of the parcel and the fact that the Petitioner had received such parcels in the past also, does lead to the conclusion that the Petitioner is involved in the case.

31. In view of the above, the bail application is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 10, 2024

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