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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ BAIL APPLN. 725/2024 & CRL.M.A. 6468/2024
DEEPJYOTI MITRAPetitioner

Through: Mr. S. Hariharan, Advocate.

versus

NARCOTICS CONTROL BUREAURespondent

Through: Mr. Shashwat Bansal, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

% **ORDER**
18.10.2024

By way of the present petition filed under section 438 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks anticipatory bail in Case No. VIII/01/DZU/2022 registered under sections 8(c)/20/22(c)/29(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS') at P.S.: NCB, DZU, R.K. Puram, Delhi.

2. Notice on this petition was issued on 01.03.2024; consequent whereupon, Status Report dated 14.03.2024 and Additional Status Report dated 20.05.2024 have been filed on behalf of the NCB.
3. *Vide* order dated 01.03.2024, a Predecessor Bench of this court had granted to the petitioner an interim order directing that subject to the petitioner joining investigation as and when directed by the Investigating Officer, no coercive action shall be taken against him.



4. The court has heard Mr. S. Hariharan, learned counsel appearing for the petitioner; as well as Mr. Shashwat Bansal, learned counsel appearing for the NCB at length.
5. Mr. Hariharan's principal contention is that the *only* piece of evidence being cited against the petitioner is that that he was the *consignee* of a parcel which was intercepted and seized in Delhi, which was found to contain 43 grams of MDMA and 2.75 grams of Methamphetamine.
6. Counsel submits, that as per the record, information was received by the NCB on 10.01.2022 that a parcel bearing AWB No. Z70285037 had been sent by one Shubham Chahal to the petitioner; that the parcel was lying at DTDC Exp. Ltd. Super Hub, Samalkha, New Delhi; and was suspected to contain 'ecstasy' pills. It is the NCB's case, that pursuant to this information, the parcel was intercepted *at the Samalkha Office of the DTDC* on 10.01.2022 at about 12:30 p.m.; and it was found to contain 43 grams of MDMA and 2.75 grams Methamphetamine; and the parcel was accordingly seized.
7. Counsel however submits, that the Tracking Report of the said parcel - bearing AWB No. Z70285037 - which is one of the documents filed alongwith the complaint by the NCB, would show that on the date and time at which the NCB says they intercepted and seized the consignment *in Delhi*, the consignment was 'out for delivery' *in Kolkata*.
8. Furthermore, Mr. Hariharan points-out that the tracking report also shows that the consignment, which had been booked at the DTDC facility in Greater Noida *on 06.01.2022*, had passed through various channels of DTDC, and it would appear that *on 08.01.2022* the



consignment *was already at the Delhi Airport* as an ‘out-going load’ to be loaded onto the Kolkata flight *via* AVIAPRO Logistics Pvt. Ltd; and *on 09.01.2022* the consignment had already been received at the Kolkata airport. Counsel accordingly argues, that the NCB’s story of the parcel having been intercepted and seized at the DTDC’s Samalkha Office in Delhi *on 10.01.2022* is falsified and all proceedings arising therefrom must accordingly fail.

9. Pre-empting the argument to be raised on behalf of the NCB, *viz.* that since the petitioner has already been declared ‘Proclaimed Offender’ and ‘Absconder’ in proceedings under section 82 of the Cr.P.C., the present anticipatory bail petition is not maintainable, Mr. Hariharan submits, that it is important to notice that the *petitioner was never served* with summons in the matter; and the proceedings which led to him being declared P.O. and then Absconder, all arise from the assumption that service of summons upon the petitioner’s father was sufficient service upon the petitioner, even though the petitioner is not a minor. It is further pointed-out that even service of summons upon the petitioner’s father has been done, not at the petitioner’s residential address, but on the address from where the father runs a guest house, with which the petitioner has nothing to do, and where the petitioner does not reside. Counsel submits, that in fact at the relevant time, the petitioner was in a rehabilitation facility; and therefore the service upon the petitioner’s father was in any case not sufficient service.
10. Apart therefrom Mr. Hariharan argues, that the petitioner has not been named by any of the co-accused persons in their statements recorded under section 67 of the NDPS Act; nor is there any allegation in the



complaint that there were any financial transactions between the petitioner, the consignor of the parcel or any other co-accused in the matter.

11. On the other hand, vehemently opposing grant of any relief to the petitioner, Mr. Bansal appearing for the NCB submits, that in view of the decision of the Supreme Court in ***Prem Shankar Prasad vs. State of Bihar & Anr.***,¹ the anticipatory bail petition is not maintainable at all, since the petitioner had failed to appear despite a proclamation having been issued against him under section 82 of the Cr.P.C.; and the petitioner has not only been declared Proclaimed Offender but also an Absconder *vide* order dated 14.12.2023 passed by the learned Sessions Court.
12. Mr. Bansal submits, that notice under section 67 of the NDPS Act had been duly served upon the petitioner *through* his father; and therefore, there is no basis for the petitioner to allege that he was unaware of the proceedings pending against him.
13. Explaining the discrepancy between the tracking report of the parcel and the NCB's stand that they had intercepted and seized the parcel at the Samalkha Office of the DTDC in New Delhi, Mr. Bansal says, that in order not to alert the accused persons of the interception of the consignment, the NCB had instructed DTDC not to change the tracking record of the consignment, which is the reason why the tracking report reflects that the consignment had moved from the Samalkha Office of the DTDC *to* the Delhi Airport *then to* the

¹ (2022) 14 SCC 516



Kolkata Airport *and thereafter* was out for delivery to the petitioner's address in Kolkata.

14. Mr. Bansal further submits, that the NCB have also collected the relevant CDRs which show that several calls were exchanged between the petitioner and co-accused Sushant Naithani on the date on which the consignment was booked through DTDC and even on several dates preceding that, which CDRs have been placed on record.
15. Upon a conspectus of the facts and circumstances of the case, in the opinion of this court, the NCB's explanation of the *evident discrepancy* between their case that they had intercepted and seized the parcel (of which the petitioner is alleged to have been the consignee) at the DTDC Samalka Office in New Delhi on 10.01.2022 and the tracking report which shows that on the said date the parcel was already out-for-delivery in Kolkata, is something that the NCB would have to prove in the course of trial. At the present stage, based on a plain reading of the tracking report, the NCB's contention that they had intercepted and seized the parcel at the DTDC Samalkha Office in New Delhi on 10.01.2022, itself seems faltering.
16. What is seen from the material on record however, is that the *only* incriminating circumstance against the petitioner is that his name appears as the consignee of the parcel, which is alleged to have contained contraband. But the very interception and seizure of the parcel on the date claimed by the NCB is under shadow by reason of the discrepant tracking report. Notably, the tracking report also shows that the consignment had *left the DTDC Samalkha Office on 08.01.2022*; and was at the Delhi Airport *on 08.01.2022*; and then at



the Kolkata Airport and 09.01.2022; which casts a doubt on the NCB's claim that they had intercepted the parcel *at the DTDC Samalkha office in Delhi on 10.01.2022*.

17. Furthermore, it is not disputed that the petitioner has not been named by any of the co-accused persons in any statement recorded under section 67 of the NDPS Act; and that the NCB has not found any financial transaction between the petitioner and any of the other co-accused persons.
18. In the circumstances, this court is persuaded to grant to the petitioner – **Deepjyoti Mitra s/o Ranjan Mitra** – anticipatory bail, thereby directing that in the event of his arrest, the Investigating Officer/Arresting Officer shall release the petitioner on bail, subject to the following conditions :
 - 18.1. The petitioner shall furnish a personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousand Only) with 02 sureties in the like amount from family members to the satisfaction of the Investigating Officer/Arresting Officer;
 - 18.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;
 - 18.3. If the petitioner has a passport, he shall surrender the same to the Investigating Officer and shall not travel out of the country without prior permission of this court;
 - 18.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution



witnesses or other persons acquainted with the facts of 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.

19. Needless to add, that nothing in this order shall be construed as an expression of opinion on the merits of the matter.
20. The petition stands disposed-of in the above terms.
21. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 18, 2024

V.Rawat