IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28th May, 2024

+ **BAIL APPLN. 756/2024 & CRL.M.A. 6750/2024**

SURYA PRAKASH .... Applicant

versus

STATE NCT OF DELHI ..... Respondent

Advocates who appeared in this case:

For the Applicant :Dr. Sarosh Bastawala, Adv. (through VC) Mr. K. K. Tyagi, Mr. Iftekhar Ahmad and Ms. Garima Tyagi, Advs.

For the Respondent :Ms. Nandita Rao, ASC for the State with Mr. Amit Peswsani, Adv. with SI Roopesh Baliyan, ISC, Crime Branch.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application was filed under Section 439 of the Code of Criminal Procedure, 1973 seeking bail in FIR No. 289/2023 dated 16.12.2023, registered at Police Station Crime Branch, for the offence under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**'). Chargesheet was filed against

the applicant for the offence under Sections 20(b)(ii)(B)/29/27A of the NDPS Act.

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

2.1. It is alleged that pursuant to registration of an FIR against the members of Tillu Tajpuria gang, efforts were made to decipher the financial support of the gang. It is alleged that during investigation, it was found that accused Rahul and one person, namely, Dixit Uppal, were involved in cheating and supporting the gang financially. It is alleged that multiple suspicious transactions were found to have taken place from the bank accounts attributed to the accused Rahul.

2.2. It is alleged that the residence of accused Rahul was traced and on 15.12.2023, a raid was conducted there to uncover potential incriminating evidence related to the financial transactions. It is alleged that a chance recovery of 1.111 Kg of premium quality Ganja was made from accused Rahul. Thereafter, accused Rahul was arrested in the present case on 16.12.2023.

2.3. It is alleged that during investigation, accused Rahul revealed that the consignments of premium quality used to be procured through Dark Net from the United States of America. He revealed that one person, namely, Lakshay Jail, used to procure the contraband and deliver the same to Dixit Uppal whereafter the accused Rahul used to further deliver the same to customers.

2.4. During investigation, it was found that accused Rahul operated four bank accounts for the purpose of the illicit business of narcotic substances, out of which one is in the name of the applicant and three are in the name of M/s. Surya Enterprises that is owned by the applicant. It is alleged that the ATM cards of two of these banks were recovered from the possession of the accused Rahul at the time of his arrest.

2.5. Thereafter, the applicant was traced and arrested on 16.12.2023. It is alleged that the applicant confessed that he had lent his bank account to accused Rahul for operation in return of a consideration of ₹8,000/- to ₹10,000/- per month.

2.6. It is alleged that on scrutiny of the concerned bank accounts, large number of suspicious transactions were found. In particular it was found that an amount of ₹3,38,775/- was credited from one of the banks in the name of M/s Surya Enterprises to another bank account of M/s Surya Enterprises. Thereafter, ₹3,38,000/- was withdrawn from the said bank account by the applicant through cheque and handed to accused Rahul. It is alleged that the accused Rahul disclosed that he had bought the contraband (OG Kush Ganja) from his money.

2.7. It is alleged that the CDR and CAF of the applicant, co-accused Rahul and Dixit Uppal indicate that they were frequently in touch with each other.

2.8. The learned Trial Court dismissed the bail applications of the applicant *vide* orders dated 09.01.2024 and 20.02.2024 respectively.

3. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. He submitted that he is himself a victim of the conspiracy hatched by the main accused Rahul and his accounts have been misused.

4. He submitted that it is not the case of the prosecution that the applicant had opened the concerned bank accounts for the alleged transactions and the applicant has no nexus to the offence.

5. He submitted that no recovery has been effectuated from the applicant and he is implicated primarily on the basis of the disclosure statement of accused Rahul.

6. He submitted that a disclosure statement made under Section 67 of the NDPS Act is inadmissible as evidence in the absence of corroboration.

7. He further submitted that the applicant has no antecedents. He submitted that the charges have been framed in the present case and the trial is likely going to take a considerable amount of time.

8. He submitted that the contraband recovered from the applicant is of intermediate quantity and does not attract the rigors of Section 37 of the NDPS Act.

9. *Per contra*, the learned Additional Standing Counsel for the State vehemently opposed the grant of any relief to the applicant. She

submitted that the learned Trial Court had rightly dismissed the applicant's bail application.

10. She submitted that all the grounds of the applicant, including the contention that no recovery was effectuated from the applicant directly, has been effectively dealt by the learned Trial Court and requires no interference.

11. She submitted that the applicant was actively involved in the business of illicit contraband run by the syndicate on a large scale and the number registered in the name of the applicant was predominantly used for bank transactions, as indicated by the majority of the incoming messages from the banks. She submitted that there is enough material to implicate the applicant for having abated the offence in the present case.

ANALYSIS

12. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc. However, at the same time, period of incarceration is also a relevant factor that is to be considered.

13. It is not denied that the contraband recovered from the applicant is of premium quality Ganja weighing approximately 1.111 Kg which is an intermediate quantity, and the rigours of Section 37 of NDPS Act do not apply.

14. There is no cavil that only because the bar under Section 37 of the NDPS Act is not attracted, the accused would not be entitled for bail automatically. In such circumstances, the Court has to consider the parameters as enshrined in relation to grant of bail.

15. It is alleged that the applicant facilitated the accused persons to conduct transactions through his bank accounts in the operation of the illicit business of drugs. The main evidence against the applicant is the monetary transactions conducted by the co-accused persons through his bank account, the disclosure statement of the accused Rahul and the fact that the applicant was allegedly in regular contact with accused persons – Rahul and Dixit Uppal.

16. It is not the case of the prosecution that the applicant was involved in the procurement of the contraband or its distribution. It is argued by the learned counsel for the applicant that the applicant had lent his account in return for a nominal consideration of ₹8,000/- to 10,000/-. From the material on record, at this stage, it cannot be said that the monetary transactions were in relation to the sale/purchase of the contraband or that the applicant was aware that the accused persons were using his accounts for nefarious means. The allegations and defences in this regard would be a matter of trial.

17. The only evidence that links the monetary transactions to the commission of the offence is the statement of the accused Rahul.

18. It is relevant to note that while the veracity of the disclosure statement of the accused Rahul is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Supreme Court in ***Tofan Singh v. State of Tamil Nadu* : (2021) 4 SCC 1**, wherein it was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration. The relevant paragraphs of the said judgment is set out below:

> *"155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.*
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> *156. The judgment in Kanhaiyalal then goes on to follow Raj Kumar Karwal in paras 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overrules by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.*
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> *157. On the other hand, for the reasons given by us in this judgment, the judgments or Noor Aga and Nirmal Singh Pehlwan v. Inspector, Customs are correct in law.*
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> ***158. We answer the reference by stating:***
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> ***158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.***

> ***158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”***
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> (emphasis supplied)

19. It is pertinent to note that no recovery has been effectuated from the applicant in the present case.

20. Insofar as the CDR of the applicant is concerned, merely because the applicant was in regular touch with the co-accused persons, the same is not sufficient to *prima facie* establish the guilt of the applicant in the absence of recordings or transcripts of the conversations.

21. A Coordinate Bench of this Court observed as under in the case of ***Dalip Singh v. State (NCT of Delhi)*** **: 2019 SCC OnLine Del 6494**:

> “***11.*** *On perusal of the record, it is prima facie seen that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj.* ***Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co-accused which is per se not admissible without there being any corroboration.*** *Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts.* ***Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.***
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> ***12.*** *I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there*

are reasonable grounds to believe that petitioner is not guilty of the said offence."

(emphasis supplied)

22. The applicant is in custody since 16.12.2023. The chargesheet in the present case has been filed. In the opinion of this Court, no purpose would be served by keeping the applicant in custody during the trial.

23. It is not disputed that the applicant has clean antecedents, and is thus not likely to commit any offence whilst on bail.

24. In view of the facts of the case, in the opinion of this Court, the applicant has *prima facie* established a case for grant of bail.

25. The applicant is therefore directed to be released on bail on furnishing a personal bond in the sum of ₹20,000/- with two sureties of the like amount, subject to the satisfaction of the Trial Court/ Duty Metropolitan Magistrate/ Link Metropolitan Magistrate, on the following conditions:

a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

b. The applicant shall under no circumstance leave the boundaries of Delhi without the permission of the learned Trial Court;

c. The applicant shall appear before the learned Trial Court as and when directed;

d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;

e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

26. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

27. It is clarified that observations made in the present case are only for the purpose of considering the 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.

28. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

MAY 28, 2024