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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment delivered on: 01.08.2024*+ **BAIL APPLN. 804/2024****MUKESH KUMAR PRAJAPATI**

..... Petitioner

Through: Mr Arjun Malik, Advocate
(DHCLSC).

versus

NARCOTIC CONTROL BUREAU

..... Respondent

Through: Mr Subhash Bansal, Sr. Special
Counsel with Mr Shashwat Bansal,
Advocate.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed under Section 439 CrPC read with Section 37 NDPS Act seeking regular bail in connection with Session Case No.62/2022 arising out of Crime No.VIII/40/DZU/2021 registered at Police Station NCB, under Sections 22(c), 23(c) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act").
2. *Vide* order dated 06.03.2024 notice was issued in the bail application of the petitioner and the respondent was directed to file the status report. The respondent has filed the status report dated 21.05.2024, which forms part of the record.
3. The case of the prosecution as borne out from the status report is that



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on the basis of secret information dated 28.06.2021, the Director-General, NCB, authorized the Zonal Director to undertake proceedings of Controlled Delivery and it was further assigned to Sh. Samuel C. Hangzo, I.O. with directions to take necessary further actions in connection with Parcel AWB 5383669992 lying at DHL Courier, Rama Road, New Delhi. The NCB Team reached DHL Express Private Limited, Rama Road, New Delhi and met Sh. Mayank Chauhan of DHL Express and inquired about the suspect parcel Airway Bill No.5383669992.

4. On the suspected parcel, the details of the consignor were Mr. Ramesh Rai, Near Mohalla Hanuman Mandir, Murgiya Raghunathpur, Samastipur, Bihar, Mobile-9807781134, email: pradeeppluse@gmail.com and details of consignee as Jessica...Ohio, U.S.A. During search of said parcel, it was found to contain 06 cylindrical shaped rolls of elastic, which upon further scrutiny revealed that in the rolls of elastic there was a layer of blue carbon paper and beneath that there was a strip of leucoplast plaster.

5. On removing the plaster, it was found that there were strips of tablets bundled together in the form of a roll and bound together using white thread. All the tablet strips were taken out and examined and were found to contain same information printed, "NRx Tramadol Hydrochloride Tablets, OL-Tram Tablets 100 MG; Manufactured by HAB Pharmaceuticals, SIDUCUL, Selaqui, Dehradun, Batch No. 964-08, Mfg. 01/2021. From all the rolls, in total 500 strips were found and each strip contained 10 tablets. All the 5000 tablets were weighed and found to be 2 Kgs.

6. The contraband was seized *vide panchnama* dated 29.06.2021 in the presence of a public witness. As per Complaint filed by the respondent, the



CCTV footage of booking of shipment No. 5383669992 was collected and filed alongwith Certificate under Section 65B of Indian Evidence Act.

7. During investigation, the witness Ms. Akansha Devanshi tendered her voluntary statement under Section 67 NDPS Act on 10.07.2021 wherein she revealed that she was working with DTDC Express at Hazratganj Office, as an executive officer, and stated that the said parcel was brought by Mr. Pradeep Srivastava (co-accused).

8. Further during investigations, on 10.07.2021, Mr. Faiyaz Ahmed in pursuance of Notice under section 67 NDPS Act tendered his voluntary Statement wherein he stated that the parcel No. 5383669992 was booked from retail counter of DTDC, Capital Cinema Building, Lucknow on 21.06.2021, which was booked by Sh. Pradeep Srivastava. Further, the said witness also led to the Office of Pradeep Srivastava and had identified him.

9. Thereafter, notice under section 67 NDPS Act was issued to Pradeep Srivastava, who appeared and tendered his voluntary statement on 10.07.2021, wherein he revealed that he had booked the said parcel No. 5383669992 on 21.06.2021 and also stated that he had packed the said tablets by hiding it under fancy *dori* (thin rope). He also revealed the details of the person who had provided him the said tablets. Consequently, Pradeep Srivastava was arrested on 10.07.2021. Further Pradeep Srivastava tendered his statement on 11.07.2021 and revealed about the involvement of co-accused Mukesh Prajapati (petitioner herein) who had provided the Tramadol tablets for packing in said parcel and for sending the same abroad.

10. During the course of investigation, notice under section 67 NDPS Act was issued to petitioner-Mukesh Kumar Prajapati, who tendered his



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voluntary statement on 20.07.2021 and stated that he had given parcel no.5383669992 to Pradeep Srivastava for booking purposes. He also revealed about involvement of Mohd. Saif Usmani as the person who provided the details of address of the receiver of said parcels. Consequently, Mukesh Prajapati was arrested on 26.08.2021 in the present case.

11. During investigation, the statement of Durgesh Kumar Mishra was also recorded under Section 67, NDPS Act on 21.07.2021, wherein he corroborated the involvement of petitioner in the commission of present offence under the NDPS Act.

12. The learned counsel for the petitioner submits that there is no recovery from the present petitioner. The parcel was also booked by Ramesh Rai and not by the present petitioner.

13. He further submits that insofar as the petitioner is concerned, he has not been identified by any witness nor any CCTV footage has been relied upon. He further submits that there is a violation of Section 52A of the NDPS Act inasmuch as there is delay of 38 days in drawing the samples for being sent to the FSL.

14. He submits that the only incriminating circumstance against the present petitioner is the transcript of conversation between the present petitioner and co-accused Pradeep Kumar Srivastava. According to the learned counsel, the incriminating circumstances invoked against the present petitioner are the disclosure statement of co-accused Pradeep Kumar Srivastava, as well as, the transcript of the conversations. He submits that insofar as the statement of co-accused Pradeep Kumar Srivastava is concerned, the same is recorded under Section 67 of the NDPS Act and



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cannot be relied upon in view of the *dicta* of Hon'ble Supreme Court in ***Toofan Singh vs. State of Tamil Nadu: (2021) 4 SCC 1.***

15. As regards the transcript of conversations, the submission of the learned counsel is that there is no corroboration of the said conversation. He further submits that the petitioner is in custody w.e.f. 26.08.2021 and has been incarcerated for 02 years and 09 months. He places reliance on the decision of the Hon'ble Supreme Court in ***Rabi Prakash vs. State of Odisha: 2023 SCC OnLine SC 1109***, to contend that the bar contained in Section 37 of the NDPS will not come in the way of granting bail to the present petitioner when there is an inordinate delay. It is further the contention of the learned counsel that the prosecution has cited 23 witnesses and till date only 03 witnesses have been examined.

16. *Per contra*, the learned senior special counsel for the respondent/NCB has argued on the lines of the status report. Learned counsel for the respondent/NCB submits that the offence is of serious nature and the total quantity of the contraband recovered from the petitioner along with 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. He submits that apart from the statement of the witnesses, namely Akansha and Faiyaz, there is CCTV footage of booking of the parcel which forms part of the record.

17. He further submits that the tablets which were seized were not in loose condition, therefore, no prejudice is caused to the petitioner in the event of delay in drawing the samples. He submits that the statement of the co-accused Pradeep Kumar Srivastava was recorded first and the same



stands corroborated by the transcript of conversations between the petitioner and the co-accused.

18. He submits that the petitioner cannot take advantage of the decision of the Hon'ble Supreme Court in *Rabi Prakash (supra)* in view of the three-Judge Bench of the Hon'ble Supreme Court in *NCB vs. Mohit Aggarwal: 2022 SCC OnLine SC 891*.

19. I have heard the learned counsel for the petitioner, as well as, the learned senior special counsel for the NCB and have perused the material on record.

20. As far as the contention of the learned counsel in respect of violation of Section 52A of the Act on account of 38 days delay in filing of application is concerned, suffice it to say that such a delay by itself is not a ground to grant the concession of bail to an accused absent serious prejudice being caused to him. Reference in this regard may be had to a judgment of the Coordinate Bench of this Court in *Somdutt Singh @ Shivam vs. Narcotics Control Bureau: 2023 SCC OnLine Del 7580* decided on 01.12.2023 the Court held as under:

“17. It is clear from a reading of the aforesaid judgments that there is no mandatory time duration prescribed for compliance of Section 52-A of the NDPS Act. Though it is desirable that the procedure contemplated in Section 52-A of the NDPS Act be complied with at the earliest, mere delayed compliance of the same cannot be a ground for grant of bail. The applicant will have to show the prejudice caused on account of delayed compliance of Section 52-A of the NDPS Act.

18. In the present case, the sampling of the seized psychotropic substances was carried out in the presence of the Magistrate and the accused persons and the samples were directed to be sent for testing. The applicant has failed to show the prejudice caused to



him on account of the delayed compliance of Section 52-A of the NDPS Act.

19. At this stage, it is apposite to refer to the judgments relied on by the counsel for the applicant. In Kashif (supra) and Tamir Ali (supra) no recovery was effected from the possession or at the instance of the applicants therein. Further, in Sarvothaman Guhan (supra), the recovery from the applicant was not of a commercial quantity. Therefore, reliance placed on the aforesaid judgments is misplaced as the rigours of Section 37 of the NDPS Act were not applicable therein.”

(emphasis supplied)

21. In the present case, the prejudice which may have been caused by the said delay has neither been argued nor pleaded in the present petition. Further, the learned senior special counsel has clarified that the contraband was not in loose condition and was sealed with the seal of the investigating agency, therefore, *prima facie*, there is no possibility of any tampering of the sample.

22. Insofar as the incriminating material in the form of WhatsApp chats between the petitioner and co-accused is concerned, relevant would it be to note that incriminating material in the form of WhatsApp chat 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.”



23. However, it cannot be lost sight of that the petitioner has been incarcerated from 26.08.2021, thus it can be safely presumed that the petitioner as on date has spent about little less than 03 years in custody. The trial of the petitioner is at an initial stage and many witnesses are left to be examined. Accordingly, the trial is going to be a protracted one and the petitioner cannot be kept in custody till the conclusion of the trial. Reference in this regard may be had to the judgment of the Supreme Court in ***Mohd. Muslim vs. State (NCT of Delhi): 2023 SCC OnLine SC 352***, wherein the Supreme Court after taking into account the decision of a Three Bench in ***KA Najeem vs. UOI: (2021) 3 SCC 713*** has held that the right of an accused person to a speedy trial as guaranteed by Article 21 of the Constitution cannot be circumscribed by the rigors of Section 37 of the Act. The relevant paragraphs of the judgment read as under:-

“20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which



does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. *Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling.* According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. *The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State as "a radical transformation" whereby the prisoner:*

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

24. *There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal" (also see Donald Clemmer's 'The Prison Community' published in 1940).*



Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.

25. For the above reasons, the appellant is directed to be enlarged on bail, subject to such conditions as the trial court may impose. The appeal is allowed, in the above terms. No costs."

(emphasis supplied)

24. Similarly, the Supreme Court in *Rabi Prakash (supra)* has held as under:-

"As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

(emphasis supplied)

25. Considering the aforesaid circumstances in entirety and the *dicta* of aforesaid decisions, 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



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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.
26. The petition stands disposed of.
27. 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 construed as an expression of opinion on the merits of the case.
28. Copy of the order be forwarded to the concerned Jail Superintendent for necessary compliance and information.
29. Order *dasti* under signatures of the Court Master.
30. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

AUGUST 01, 2024/MK