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

+ **BAIL APPLN. 1094/2024**

MOHD. BABAR

.....Petitioner

Through: Mr. Aditya Aggarwal, Ms. Kajal
Garg & Mr. Naveen Panwar, Advs.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Utsav Singh Bains, SPP with
Mr. Rana Debnath, Adv.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **23.10.2024**

1. This petition has been filed seeking bail in Case No. VIII/36/DZU/2022 registered at P.S. NCB under section 20(b)(ii) c of the NDPS Act. Petitioner was arrested on 4th January 2023 and was granted bail by order of this Court passed today i.e. on 23rd October 2024 in BAIL APPLN. 1110/2024 in VIII/36/DZU/2022.

2. The case of the prosecution is that as per the secret information received on 23rd April 2022, that a parcel bearing AWB No.3658 lying at Universal Express was suspected to contain contraband; raiding party was constituted; consignor of parcel was Nikhil Verma, resident of Kanpur and consignee was Neetu, resident of USA. The parcel contained 12 foot- mats of different colours wrapped in polythene, each mat contained 995 strips containing *tarmadol* with 10 tablets in each strip and total tables were 9950 and total weight was calculated to be 3.29 kgs.

3. Universal Express informed that that the parcel had been received from the by agent in Kanpur namely New Classic Courier Company. The



parcel was initially booked by Mohd. Siraj who on disclosure stated that it was booked by Mushir Alam and parcel had been received from Rishi Raj. Mushir further disclosed that parcel was given to him by petitioner. Petitioner disclosed that parcel was given to him by Anish who has not been traced or arrested in the matter.

4. It is stated by counsel for petitioner that there is no recovery from petitioner and he was arrested after 5 months of registration of FIR. It is contended that petitioner was arrested merely on statement of Mushir and there are only CDR connectivity on which he has been implicated. There are no monetary transactions and alleged source of said parcel being Anish has not been traced.

5. In similar circumstances where parcel AWB No. 3330874654 was intercepted containing tramadol tablets, both Mushir Alam and petitioner had been granted bail by this Court.

6. Mr. Utsav Singh Bains, SPP states that phone which was recovered from the petitioner was sent to the FSL for data recovery and certain chats have been recovered between petitioner and co-accused Mushir Alam with specific name of consignee in question.

7. Counsel for petitioner however states that as per petitioner's disclosure, he had simply forwarded the parcel that he had received from Anish.

8. Considering these facts and circumstances and taking into account decision of the Hon'ble Supreme Court in ***Tofan Singh v. State of Tamil Nadu***, (2021) 4 SCC 1, where it has been held that accused cannot be held basis merely on disclosure. Relevant paragraphs of the said judgment are extracted hereunder for ease of reference:

“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.”

(emphasis added)

The Coordinate Bench of this Court in ***Phundreimayum Yas Khan*** (*supra*), in para 22 also stated as under:

“22. In the present case there is no narcotic substance or psychotropic substance recovered from the applicant or from his premises. There is no recovery. The disclosure statement made by the applicant, according to me cannot be read against the applicant. The fact that the anticipatory bail moved by Amarjit Singh Sandhu has been rejected by this Court or that Amarjit Singh Sandhu is absconding, cannot be a ground to deny bail to the present applicant.”

(emphasis added)

9. The Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain v. State*** (2023) SCC OnLine 352 has held that the standard to be considered by the Court regarding conditions under Section 37 NDPS is of a reasonable satisfaction on a *prima facie* look at the material on record, that the accused may not be guilty. It does not call for meticulous examination of material collected during investigation.

10. Based on these facts and circumstances, therefore, this Court is satisfied that there are reasonable grounds for a *prima facie* belief that he is not guilty for such offence for which he is being implicated, and there is no



material on record to reach any conclusion that he is likely to commit any offence while on bail.

11. Consequently, the petitioner is directed to be released on bail on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Petitioner will mark presence physically/virtually before the concerned I.O. every Thursday at 4 p.m., and will be not kept waiting for more than an hour.
- vii. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.



12. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

13. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

14. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

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

ANISH DAYAL, J

OCTOBER 23, 2024/sm