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

Reserved on: 28th August, 2024

% ***Pronounced on: 1st October, 2024***

\+ **BAIL APPLN. 1100/2024**

RAJAT GUPTA
S/o Shri Ramesh Gupta,
R/o H. No. 11, Gali No. 2,
Govind Nagar, Sultanwind,
Amritsar, Punjab ..... Petitioner

Through: Mr. Amit Chadha, Mr. Manish Sharma, Mr. Atin Chadha & Ms. Munisha Chadha, Advocates.

versus

STATE (NCT OF DELHI)
Through SHO,
PS Crime Branch, New Delhi ..... Respondent

Through: Ms. Richa Dhawan, APP for State.
S.I. Rohit, PS Crime Branch, Delhi.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present present Petition under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking grant of regular bail in FIR No. 151/2022 registered under Sections 21/27A/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 *(hereinafter referred to as* "NDPS Act, 1985"*)* at Police Station Crime

Branch, South West, Delhi.

2. According to the prosecution on 22.07.2022, a Crime Team was led by Inspector Jasbir Singh who along with raiding team apprehended co-accused Shammi Kumar @ Sunny Kumar on the pointing out of the secret informer while he was waiting for auto/taxi on the roadside. On the search of his bag, 500 grams of Heroin and Rs. 22,00,000/- cash was recovered. He was served with the Notice under Section 50 of NDPS Act, 1985.

3. The co-accused Shammi Kumar @ Sunny Kumar disclosed that he had worked at Printing Press and had come into contact with the co-accused Pankaj who owned SP Tour and Travels and SP Jewellers in Amritsar and had offered the job to him in his travel business. After a year, Shammi Kumar @ Sunny Kumar started selling blankets in Amritsar, Punjab. The co-accused Pankaj later informed the accused-Shammi Kumar @ Sunny Kumar about the job in Delhi, promising him a salary of Rs. 40,000/-, which was accepted by the accused-Shammi Kumar @ Sunny Kumar and he began working with the co-accused Pankaj.

4. The co-accused Shammi Kumar @ Sunny Kumar provided the names and contact details of others involved in the drugs syndicate. He revealed that Rs. 22,00,000/- recovered from him had been provided by the co-accused Pankaj. He also disclosed that 10.5 kgs of DRM could be recovered from the rented property i.e., Flat No. A 595, Second Floor, Gali No. 15, Mahavir Enclave Part-II, Delhi, but nothing was recovered. The documents which got recovered from the accused-petitioner's house revealed that he was handling the drug business and the co-accused Pankaj was financing the petitioner for illegal contraband activity.

5. The case of the prosecution is that the co-accused Shammi Kumar @

Sunny Kumar further revealed that he had come into contact with the accused-petitioner and Ashish Verma, while working at the Printing Press. The accused was arrested without any written Notice. The drugs that were found during the raid at Rajat's house, were tested with field testing kit, however, nothing suspected was found. Since there was no recovery of contraband from him, the bar under NDPS Act, 1985 is not applicable to the petitioner.

6. The petitioner has claimed that the only evidence against him is the disclosure statement of the co-accused persons. The statement of Bank Account of the petitioner, which had been seized, does not reflect any illegal transactions and the transactions so reflected in the statement are only the business transitions.

7. Moreover, during his personal search, only his Driving Licence and Rs. 12,000/-, aside from Notice under Section 50 of NDPS Act, 1985, were recovered. There is no recovery of any kind of contraband from him.

8. The petitioner has placed reliance on the decisions in *Himanshu Singh vs. State*, MANU/DE/0672/2023 and *Chand Mehra vs. State*, MANU/DE/0784/2023, to claim that in similar circumstances, the bail had been granted to the accused persons.

9. There are 19 prosecution witnesses and the trial would take long to complete. Therefore, keeping the petitioner in custody for indefinite period is not necessary when his presence can be secured otherwise. The petitioner in jail for more than eighteen months despite there being no recovery effected from him. The petitioner has asserted that he has been falsely implicated in the present case on the basis of false and manipulated disclosure statement of the co-accused persons. The Chargesheet has

already been filed in the present matter before the learned Trial Court. The petitioner submits that he undertakes to abide by any conditions that may be imposed on him while granting regular bail.

10. Therefore, it is submitted that the regular bail may be granted.

11. **The Status Report** has been filed on behalf of the State, wherein it is submitted that there was no recovery effected from the accused and there are no CDRs connecting the petitioner to the alleged co-accused persons.**?????**

12. It is submitted that co-accused-Shammi Kumar @ Sunny Kumar during his remand, had disclosed that some goods used for procuring Heroin is lying at his Flat No. A-595, 2nd Floor, Gali No. 15, Mahavir Enclave Part-II, Delhi and the raid was conducted at the said flat and at his instance 10.5 kgs heroine in three polythene bags was seized by the police after due compliance of Section 55 of NDPS Act, 1985.

13. It is submitted that during the investigations, the police went to Amritsar, Punjab at the instance of co-accused-Shammi Kumar @ Sunny Kumar, where he pointed out the house of petitioner/accused-Rajat Gupta and further disclosed that he was involved with the co-accused-Pankaj along with his brother, Ashish. The accused-Rajat Gupta was apprehended from the house who during interrogation disclosed that he had closed his connection with main accused-Pankaj and but was carrying various documents and articles relating to the main accused-Pankaj.

14. It is submitted that the only incriminating evidence collected by the Investigating Officer are two money transactions i.e., Rs. 50,000/- and Rs. 1,00,000/- with the co-accused Pankaj.

15. The other incriminating evidence is the recovery of documents pertaining to the financial statements i.e., Income Tax Returns etc., of co-

accused-Pankaj from his possession.

16. It is also submitted that three mobile numbers i.e., 7901955444, 9988337786 and 8872587939, out of four sim cards, recovered from the accused-petitioner, were found to be registered in his name.

17. It is submitted that co-accused-Pankaj disclosed about Mahender Singh @ HM, Shamsher Singh and Lovepreet @ Love Sarpanch as his associates. Mahender Singh @ MH was arrested on 19.02.2023 from Punjab, 1820 grams of Heroin and Rs. 19,30,000/- were recovered from his possession.

18. The bail is opposed on the ground that the offence committed by the petitioner is serious in nature and an International Drug Syndicate is involved. Further, the recovery made is of commercial quantity and hence, Section 37 of NDPS Act, 1985 is applicable.

19. **Learned counsel on behalf of the petitioner has argued** that there is no compliance of mandatory and statutory provisions of Section 41(2), Proviso NDPS Act, 1985, Section 42(2), Proviso NDPS Act read with Section 100 of Cr.P.C., 1973 and Section 52(a) of NDPS Act, 1985.

20. It is further argued that the petitioner is not named in the FIR and no recovery of any contraband has been effected from the petitioner. The only material available with the prosecution against the petitioner is the disclosure statement of co-accused-Shammi Kumar @ Sunny Kumar which did not lead to any new fact nor could any recovery effected from the co-accused persons, connect them or attribute any direct or indirect role of the petitioner. The only material to connect the petitioner with the co-accused persons is that the documents which are Tax Invoices, Pan Card, Bank Passbooks, Cheque Books, Pollution Certificate, Visa Card, Master Card,

Agreement for Sale, Loan Payment Receipts and signed Cheques. These documents in no manner either establish a case under NDPS Act, 1985 or show complicity of the petitioner in this or any other crime.

21. It is also argued on behalf of the petitioner that the other material to connect with the present crime are two financial transactions of Rs. 50,000/- and Rs. 1,00,000/- both dated 18.08.2021 in the account of the accused/Pankaj from the Rajat Gupta/petitioner. Rs. 50,000/- was in respect of sale of scooty, for which the requisite documents i.e., affidavit of sale, transfer of ownership and report of transfer of ownership are annexed with the application.

22. The other amount was deposited by the father of petitioner/Rajat Gupta through Rajat Gupta as they had borrowed this amount from the petitioner. These transactions in no manner establish even a *prima facie* connect the petitioner with the alleged crime under NDPS Act, 1985.

23. Learned counsel for the petitioner has also argued that Rajat Gupta was working as an Accountant which has been verified by the Investigating Officer during the hearing of his bail application before the learned Trial Court. Rajat Gupta, being the Accountant, was looking into the accounting works of the accused-Pankaj; the recovery of the documents pertaining to the financial establishments of the accused-Pankaj in no manner establishes or connects the petitioner to any crime, much less under NDPS Act, 1985.

24. It is argued that since there is no recovery from the petitioner, the bar under Section 37 of the NDPS Act, 1985 is not attracted. The only available evidence is the disclosure statement which is not admissible in evidence.

25. It is also submitted that the charges are yet to be framed in the present case which would take a considerable time.

26. Moreover, the co-accused persons, namely, Shamsher and Ramesh @ Lala Seth have already been admitted to regular bail by the learned Trial Court.

27. The accused-petitioner is in judicial custody from 27.07.2022. Therefore, it is submitted that the petitioner is entitled to bail.

28. **Submissions heard.**

29. The incriminating evidence against the petitioner is recovery from his possession of various finance and accounts documents of the co-accused Pankaj who is alleged to the main person managing the International Drug syndicate. However, it has been explained that the petitioner is the Accountant of the accused-Pankaj and it is natural that the financial documents of accused-Pankaj were in possession of the petitioner herein. These financial documents do not in any manner show any illegal transactions. Though it is claimed by the prosecution that the money was being used for illegal drug activity but *prima facie*, at this stage, no such connecting/linking evidence has been brought on record on behalf of the State. Merely because the financial documents have been recovered from the possession of the petitioner, the same cannot be termed as incriminating evidence.

30. The other evidence against the petitioner is two money transactions of Rs. 50,000/- and Rs. 1,00,000/- both dated 18.08.2021 in the account of the accused-Pankaj from the accused-Rajat Gupta. Rs. 50,000/- was in respect of sale of scooty, for which the requisite documents i.e., affidavit of sale, transfer of ownership and report of transfer of ownership are annexed with the application.

31. The other incriminating evidence against the petitioner is the

disclosure statements of the co-accused persons which *per se* not admissible in law.

32. In *Bharat Chaudhary and Ors. vs. Union of India and Ors*, MANU/SC/1240/2021, wherein the Apex Court observed that in the absence of any psychotropic substance found in the conscious possession of the accused, mere reliance on the statements made by the co-accused persons under Section 67 of NDPS Act, 1985 would be too tenuous a ground to deny the bail to the accused.

33. A three-Judge Bench of the Apex Court in *Tofan Singh vs. State of Tamil Nadu*, 2020 SCC OnLine SC 882, similarly observed that the statements of co-accused persons against the petitioner being the only evidence, entitles him to grant of bail.

34. The Co-ordinate Bench of this Court in *Phundreimayum Yas Khan vs. State (NCT of Delhi)*, 2023 SCC Online Del 135 has held that when there is no material to link the applicant with the recovery of commercial quantity from the co-accused, the rigors of Section 37 of NDPS Act, 1985 would apply. Moreover, the disclosure statements of co-accused are *per se* no admissible without there being any corroboration. Furthermore, the absence of any financial dealings, recovery of narcotic substance or psychotropic substances from the applicant or from his premises or at his behest, the calls between the applicant and the co-accused simplicitor cannot be a ground to deny the bail. Similar observations have been made in *Amit Ranjan vs. Narcotic Control Bureau, Delhi*, 2022 SCC OnLine Del 1532.

35. The petitioner is in judicial custody from 27.07.2022 and the trial is likely to take a long time. As recognised in *Rabi Prakash vs. The State of Odisha*, MANU/SCOR/83201/2023, the Apex Court observed that

prolonged incarceration generally militates against the most precious Fundamental Right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must overreach the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985.

36. A plea has also been taken that there was a delay in sampling under Section 52(a) of the NDPS Act, 1985. However, this aspect has been settled by the Apex Court in the case of *Union of India vs. Mohanlal & Anr.*, (2016) 3 SCC 379, wherein it was observed that the scheme of the act in general and Section 52(a) of the NDPS Act, 1985 in particular does not prove any delay in the matter of making an application for drawing of samples and certification. While there is no room for prescribing or reading a timeframe into the provision. An application for sampling and certification ought to be made without undue delay.

37. Therefore, the delay of 6 days in drawing the sample as alleged by the petitioner may not enure to his benefit at the stage of consideration of bail application and is a subject matter of trial, to consider if any prejudice has been caused to the petitioner on account of delay in moving the application and taking the samples.

38. Likewise, the contention that there was a variation in the weight of the samples taken before the Magistrate and thus received in FSL, is again subject to various explanations and thus, is a subject matter of trial.

39. In the present case, no material link of the petitioner with the recovery of the contraband has been placed on record.

40. Considering the aforesaid circumstances, the petitioner is admitted to bail in FIR No. 151/2022 under Sections 21/27A/29 of NDPS Act, 1985 at Police Station Crime Branch, Delhi, subject to furnishing a personal bond in

the sum of Rs.50,000/- with one surety of the like amount; to the satisfaction of the learned Special Judge/Trial Court with the following conditions:

a. The petitioner shall appear before the Court as and when the matter is taken up for hearing.

b. The petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.

c. The petitioner shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of an affidavit.

d. The petitioner shall seek prior permission from the Court before travelling abroad.

e. The petitioner shall report to the Investigating Officer on every third Monday between 10:00 to 11:00 AM;

f. The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

g. The petitioner shall not make any attempt to tamper with the evidence or influence the witnesses.

41. Accordingly, the present petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 01, 2024
S.Sharma