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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1110/2024**
MOHD. BABARPetitioner

Through: Mr. Aditya Aggarwal, Ms. Kajal Garg,
and Mr. Naveen Panwar, Advocates.

versus

NARCOTICS CONTROL BUREAURespondent
Through: Mr. Utsav Bains, SPP for respondent
(through VC)

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

% **ORDER**
23.10.2024

CRL.M.A. 9725/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 1110/2024

1. This petition has been filed seeking regular bail in Case No. VIII/36/DZU/2022 under Section 8(c), 22 (c) & 29 of NDPS Act, registered at PS NCB, RK Puram.
2. As per the case of the prosecution, on the basis of a secret information on 19th April, 2022, a parcel was intercepted bearing AWB No. 3330874654, dispatched by the consignor Nikhil Verma, a resident of Kanpur, India and the consignee named a Naga Veeragandham in California. On cutting the parcel, 3.24 kilos of Tramadol tablets were found, interspersed between 12 foot-mats.



3. It was contended by Mushir Alam in **BAIL APPLN. 1777/2024** that the parcel which had been intercepted was booked by KC Enterprises, which in turn stated that Mohd. Faizal had given the parcel. Mohd. Faizal in his disclosure statement stated that he had got parcel from Mushir Alam. Mushir Alam in turn stated that he got parcel from the petitioner. Petitioner stated that he received parcel from Anish who has not been traced as per the counsel for NCB.
4. There was also a discrepancy, which was noted in the bail order of Mushir Alam relating to the weight of the foot-mats which were recovered, as well as some discrepancy in relation to the Airway Bill no. 7278107760, as pleaded by the accused.
5. Counsel for petitioner, seeks bail on grounds of parity to Mushir Alam, who was enlarged on bail in **BAIL APPLN. 1777/2024** passed by this Court on 18th September 2024.
6. It is also contended that petitioner's case is on a better footing considering that he had been identified only on the disclosure statement of Mushir Alam and as per the Status Report, petitioner herein had also stated that he used to get parcels from one Anish who has never been traced or arrested in the matter. It is further reiterated that there is no recovery from the petitioner and he was arrested after 5 months of the FIR being registered (*While the complaint was registered on 19th April, 2022, the petitioner was arrested only after 5 months on 05th September, 2022*).
7. Mr. Utsav Bains, SPP for the NCB, appears through VC and points out to an additional Status Report which notes that mobile data analysis of petitioner's phone shows picture of same Tramadol tablets manufactured by the same company and screen shot of parcel tracking (*India to USA*), which



indicates that petitioner was continuously involved in drug-trafficking from India to foreign countries. Besides this, the additional Status Report notes that material was seized from his premises.

8. Counsel for petitioner, however, points out to the additional Status Report and states that the photographs which had been allegedly extracted from the mobile phone of the petitioner do not indicate that they form part of the consignment which has been seized by the NCB basis which, the complaint had been filed. Moreover, these pictures could be very well from photo gallery of the petitioner, and cannot simpliciter be implicated by virtue of just these photographs.

9. Importantly, it is contended that since Mushir Alam has been granted bail by this Court by order dated 18th September, 2024 and the petitioner was implicated on the basis of disclosure by Mushir Alam, bail ought to be granted to the petitioner as well.

10. It is also noted from the Nominal Roll that except for the other complaint which is related to a connected consignment, there is no other previous involvement of the petitioner.

11. As regards the aspect of the disclosure, the following decisions are also adverted to:

- i. ***Tofan Singh v. State of Tamil Nadu***, (2021) 4 SCC 1, where the Apex Court held that accused cannot be held basis merely on disclosure of the co-accused. 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)

- ii. ***Phundreimayum Yas Khan v. State (NCT of Delhi)***, 2023 SCC OnLine Del 135 whereby a coordinate Bench of this Court observed 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)

- iii. ***Mohd. Muslim @ Hussain v. State***, (2023) SCC OnLine 352 whereby the Supreme Court 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.



12. 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.

13. Considering that petitioner has been in custody for about 2 years and co-accused Mushir Alam has been granted bail on whose disclosure the petitioner was arrested, in the opinion of this Court, the petitioner is entitled to bail.

14. 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.
15. 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.
16. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.
17. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.
18. *Dasti.*
19. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 23, 2024/RK