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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 16th August, 2024

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BAIL APPLN. 1151/2024**SULTAN ANSARI**

.....Petitioner

Through: Mr. S.S. Das, Advocate.

versus

DIRECTORATE OF REVENUE INTELLIGENCE & ANR.

.....Respondents

Through: Mr. Satish Aggarwal, Sr. Standing
Counsel with Ms. Mala Sharma, SPP
& Mr. Gagan Vaswani, Advocate.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Petition under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking regular bail in SC No. 06A/2015 registered under Sections 22/25/25A/26/29/30/38 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter referred to as "NDPS Act, 1985"*) at Police Station Directorate of Revenue Intelligence (*hereinafter referred to as "DRI"*).
2. It is submitted that the petitioner is in the jail from 20.08.2015, except the interim bail period in which he was released.
3. *Briefly stated*, the DRI Officers had conducted various search operations at number of places on 19.08.2015 and 20.08.2015 which led to recovery of contraband substances i.e., psychotropic and controlled substances.
4. As per the case of the DRI, 250 kgs of Pseudo Ephedrine Hydrochloride – a controlled substance was recovered and seized on



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19.08.2015 from M/s Lakshaya Traders, Shakarpur, Delhi which was clandestinely and fraudulently removed from G.T. Biopharma Pvt. Ltd. on 17.08.2015.

5. It is further claimed that 100 kgs of Pseudo Ephedrine Hydrochloride was seized from M/s Aash Logistics Pvt. Ltd., Kamala Market, New Delhi on 20.08.2015 which had been received from M/s Daffohills Laboratories Pvt. Ltd., Dehradun and consigned to M/s Weishorn Biotech, Delhi.

6. *Vide* Search Authorisation dated 19.08.2015, the respondent conducted the search of factory premises of M/s G.T. Biopharma Pvt. Ltd. in which the petitioner was working as an employee and 75.370 kgs of Ketamine Hydrochloride and 20 kgs of Alprazolam Hydrochloride, a psychotropic substance under the NDPS Act, 1985 was found unaccounted in the statutory record of M/s G.T. Biopharma Pvt. Ltd. Likewise, 6000 tablets containing Pseudo Ephedrine, controlled substance was also unaccounted in the statutory record of M/s G.T. Biopharma Pvt. Ltd. The respondent had also made recovery of 25 kgs of Pseudo Ephedrine from M/s Daffohills Pvt. Ltd. The respondent also made various recoveries of controlled substance from M/s Dhari Chemicals, Badodra, which were supposed to be dispatched to M/s G.T. Biopharma Pvt. Ltd. and M/s Daffohills Laboratories Pvt. Ltd. It is further submitted that M/s G.T. Biopharma Pvt. Ltd. was having a valid licence or possession of psychotropic substances.

7. It is claimed that the petitioner had nothing to do with the alleged recovery of contraband from various accused persons and from the premises of M/s G.T. Biopharma.

8. The petitioner was arrested by the Officers of DRI under the NDPS



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Act, 1985, even though he had never dealt with these substances either in diversifying or misusing the substances and solely due to non-availability of the owner of the factory who is still absconding.

9. It is submitted that the petitioner was brutally tortured during his illegal custody by the Officers of the DRI and his confession was obtained which was dictated by the Officers of DRI under threat, even though there was nothing incriminating recovered from his possession or at his instance. The petitioner has already retracted from his confessional statement.

10. It is further asserted that he was working as a Production Chemist while accused No. 7-Sanjay Bhartiya and one Mukesh Bhasin were the two Directors of M/s G.T. Biopharma Pvt. Ltd. Mukesh Bhasin has never been summoned or interrogated under Section 67 of the NDPS Act, 1985 nor has he been arrayed as an accused while the complainant, who was only an employee of M/s G.T. Biopharma Pvt. Ltd., has been arrested. The petitioner's role was to produce/manufacture medicines and had nothing to do with the purchase of raw material or in sale of furnished products. The petitioner was not a beneficiary in any manner of sale of medicines. It is asserted that nothing incriminating was recovered from his possession of the petitioner and he never dealt with any controlled substance or psychotropic substance and he was only a salaried employee of M/s G.T. Biopharma. He was merely getting his monthly salary for his employment. Moreover, the petitioner had been duly authorised to manufacture the medicines mentioned in the complaint and the same were being manufactured in the factory of M/s G.T. Biopharma Pvt. Ltd. All the statutory records were being maintained by the two Directors of the said Company.

11. The petitioner has further asserted that there has been no compliance



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of Section 52A of NDPS Act, 1985 which mandates that the sample be taken before the learned Metropolitan Magistrate.

12. The petitioner has submitted that the co-accused, namely, Vishal Chaudhary (accused No. 4), Yogesh Shah (accused No. 5), IPS Chawala (accused No. 11) and Pritpal Singh (accused No. 12) have been admitted to bail. The case of the petitioner is better situated than the said co-accused persons and thus, the petitioner is entitled to be released on regular bail.

13. It is further submitted that no fruitful purpose would be served by keeping him in jail for an indefinite period.

14. The petitioner has taken a ground that delay in trial entitles the petitioner to bail. There are 53 prosecution witnesses, out of which the testimony of only 17 witnesses has been recorded in the past nine years and the trial would take a long time to get concluded. Therefore, it is submitted that the regular bail be granted to the petitioner.

15. The petitioner has placed reliance on the decision in Rabi Prakash vs. The State of Odisha, Special Leave to Appeal (Criminal) No. 4169/2023, wherein the Apex Court held that the 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 override the statutory embargo created under Section 37(1)(b)(ii) of NDPS Act, 1985.

16. The petitioner has also placed reliance on the decisions in Amit Singh Moni vs. State of Himachal Pradesh, CrI.A. No. 668/2020, Hasim @ Neta vs. State of NCT of Delhi, Special Leave to Appeal (Criminal) No. 935/2022, Jitendra Jain vs. NCB & Another, Special Leave to Appeal (Criminal) No. 8900/2022, Pradip @ Babu Dinabandhu Bahera vs. State of Gujrat, SLP



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CrI. NO. 6143/2021, Amal Das vs. State of Assam, CrI. A. No. 1295/2024, D.P. Saxena vs. DRI, decided by Co-ordinate Bench of this Court *vide* Bail Application No. 24/2023 on 16.05.2023 and Manu Khosla vs. DRI, decided by the Co-ordinate Bench of this Court *vide* Bail Application No. 841/2021 on 14.09.2023.

17. **The respondent in its Reply** has submitted that this Court *vide* Judgment dated 04.09.2023 passed in Bail Application No. 912/2017 dismissed the bail petition of the petitioner. Since then, there are no change of circumstances for which reason, the present petition is not maintainable. The respondent has placed reliance on the decision in State of Madhya Pradesh vs. Kajad, JT 2001 (7) SC 560.

18. The present bail petition has also been contested on the ground of embargo of Section 37 of the NDPS Act, 1985.

19. The evidence against the petitioner is embodied in the complaint which is a matter of record. The investigations have revealed that there was a conspiracy hatched at Delhi in the year 2014 amongst the accused persons operating the individual business at different places to indulge in illegal trade of controlled substances under the cover of their individual legal business.

20. It is further submitted that the averments of the petitioner that he is a victim and had not committed any offence are baseless and tantamount to misrepresentation of facts.

21. The petitioner was the Manager-cum-Chemist of M/s G.T. Biopharma Pvt. Ltd. who had been roped in by Sanjay Kumar, the Director of the Company in the execution of the criminal conspiracy. The petitioner was all along aware of the controlled substances and the psychotropic substances



which did not go into the manufacture of finished product and were removed as such under the cover of medicines.

22. It is submitted that during the course of search, various documents, psychotropic/controlled substances were found and on the scrutiny of these documents and based on the voluntarily tendered statement, the petitioner was found to have violated various provisions of NDPS Act, 1985 and was thus, arrested in the present case.

23. The allegations of the petitioner that he was lifted from his house on 19.08.2015 by the Officers of DRI and was continuously harassed for 36 hours or his signatures were obtained on some documents, are baseless and are an afterthought.

24. The petitioner in order to get the bail under Section 37 of the NDPS Act, 1985 has not only to prove that he is not guilty but also he is not likely to commit the offence.

25. The reliance has been placed on the decisions in Union of India vs. Rattan Mallik @ Habul, Criminal Appeal No. 137/2009 decided on 23.01.2009 by the Apex Court, N.R. Mon vs. MD Nasimuddin, 2008 (3) JCC (Narcotics) 170, Union of India vs. Shiv Shanker Kesari, (2007) 7 SCC 798 and NCB vs. Karma Phuntsok & Ors., (2005) 12 SSC 480.

26. The respondent has also placed reliance on the decisions in Customs vs. Ahmadaliev Nodira, Criminal Appeal No. 312/2004 decided on 11.03.2004 by the Apex Court, UOI vs. Mahabood Alam, 2004 (1) JCC 614 (SC), Babua alias Tazmul Hossain, 2001 SCC (Crl.) 351 and Intelligence Officer, Narcotics C. Bureau vs. Sambhu Sonkar & Anr., 2001 SCC (Crl.) 346.

27. The respondent has further placed reliance on the decision in State of



Punjab vs. Balbir Singh and Arvind Yadav to submit that these are issues of trial which cannot be considered at the time of consideration of the Bail.

28. Therefore, the present bail petition has been vehemently opposed.

29. **Submissions heard.**

30. It is not in dispute that the petitioner is judicial custody from 20.08.2015 and out of 53 prosecution witnesses, the testimony of 17 witnesses has been recorded so far in the last nine years.

31. Moreover, the accused persons, namely, Vishal Chaudhary (accused No. 4), Yogesh Shah (accused No. 5), IPS Chawala (accused No. 11) and Pritpal Singh (accused No. 12) have been admitted to bail.

32. In Mohd. Muslim vs. State (NCT of Delhi), Special Leave Petition (Criminal) No. 915/2023, the Supreme Court held that undue delay in trial can be a ground for grant of bail under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, despite Section 37 of the Act putting heavy limitations on the grant of bail.

33. Considering the totality of the circumstances as narrated above and also, in the last nine years, the testimony of only 17 prosecution witnesses has been recorded, out of 53 prosecution witnesses and the trial may take a long time; and the petitioner was earlier granted interim bail and the conditions thereof were not flouted by him in any manner, the present petition is allowed and the petitioner is admitted to regular SC No. 06A/2015 registered under Sections 22/25/25A/26/29/30/38 of the NDPS Act, 1985 at Police Station Directorate of Revenue Intelligence upon his furnishing a personal bond in the sum of Rs. 1,00,000/- and two sureties of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions: -



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- a) Petitioner shall not leave Delhi/NCR without prior permission of the Court;
 - b) Petitioner shall appear before the Court as and when the matter is taken up for hearing;
 - c) Petitioner shall provide his mobile number and also the mobile number of their wife/surety to the IO concerned, both of which shall be kept in working condition at all times and they shall not change the mobile numbers without prior intimation to the Investigating Officer concerned;
 - d) Petitioner shall inform the IO and the Jail Superintendent the address where he shall be available in Delhi;
 - e) Petitioner shall remain 100 meters away from the complainant;
 - f) Petitioner shall not leave the country without prior permission of the learned Trial Court and shall surrender their passport, if any, before the learned Trial Court;
 - g) Petitioner shall not try to contact, threaten or influence any of the witnesses of this case; and
 - h) Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
34. The Registry is further directed to communicate this Order to the learned Trial Court and as well as to the concerned Jail Superintendent.
35. Accordingly, the present petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 16, 2024
S.Sharma