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

+ **BAIL APPLN. 1417/2024**

PRADEEP MANDAL

..... Petitioner

Through: Mr. D.B. Yadav and Mr. Sauraj
Yadav, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Shashwat Bansal, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

29.05.2024

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1. This application has been preferred on behalf of the applicant Pradeep Mandal S/o Late Sh. Shiv Narayan Mandal under Section 439 Cr.P.C. read with Section 482 Cr.P.C. seeking regular bail in Crime/File No.VIII/69/DZU/2021 registered under Sections 8/20/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at PS: NCB.
2. Status Report has been filed on behalf of the State. Case of the prosecution is as follows:

"On the basis of Information dated 08-11-2021, the NCB Team reached at Office of Professional Courier, Naraina, New Delhi and met Mr. Sindha, Operational Manager of Professional Courier. Mr. Sindha showed the parcels bearing Nos. CSP-4436473, VSP-4436466, VSP- 4436476, VSP-4436467, VSP- 4436469, VSP-4436475, VSP- 4436468 and VSP-4436467. The parcels were packed in white-colour gunny bag and were having name of receiver as Rajesh, Address-Bagichi Aluddin, Gali No. 4, House No. E10- 500, Dr. Chawla, Motia Khan, Paharganj, Mobile-7834923787 and name of sender was mentioned as Vikas- Mobile No. 9652252309 and said parcels were affixed with slip of Professional Courier Company. From the smell, the parcels were found to be containing Ganja. Two independent witnesses Sh. V. Ramesh and Sh. Shivam joined the



proceedings. At that time, Mr. Sindha, Operational Manager, informed the NCB Officer that he received a telephone call from Manager of Professional Courier at Vishakhapatnam and the caller had instructed to deliver the said parcels to one Rajesh at Office of Professional Courier, Karol Bagh. He also provided Mobile No. of Rajesh as 882697847. Accordingly, the NCB Team requested officials of Professional Courier to get the delivery of parcels done under their supervision. Meanwhile, to confirm the contents of parcel, a small amount of substance was taken out with help of Poker from the 08 parcels and on testing with DD Kit, said substance found positive for Ganja. Subsequently, the NCB Team alongwith two witnesses and parcels reached the Professional Courier Office, Joshi Road, Karol Bagh, Delhi. After sometime, two persons came who disclosed their identity as Rajesh and Vakil Singh and stated that they came to the Courier Office to receive said parcels. Upon enquiry, they disclosed that said parcels contained Ganja and Rajesh further disclosed that after receiving the parcels same were to be delivered to the main party near PP Jewellers, Karol Bagh. He also disclosed that he had also delivered similar type of parcels to said party in past as well. On said basis of information, the NCB Team alongwith Rajesh and vehicle of Courier company went to the area of PP Jewellers, Karol Bagh and upon reaching, Rajesh met one person and started conversation with him and said person was intercepted by NCB Team, who disclosed his identity as Arun Kumar Azad and stated that he came to the spot to receive the parcels and he indulged in illegal business of Ganja alongwith Ajay. Due to congested and crowded place, and difficulty in carrying-out seizure proceedings, the NCB Team alongwith Rajesh, Vakil Singh, Arun Kumar Azad, and both the independent witnesses as well with the suspected 08 parcels reached the Office of NCB Delhi Zonal Unit at R.K. Puram. On opening all the aforesaid parcels one-by-one, they found to contain jute bag and inside that a plastic bag and further inside a brown colour carton box. The carton box was cut-opened inside which packets rapped with brown colour tape were found. On opening the packets, same were found to be containing brown colour leafy substance. The substance of each of the packet was found to be same and on testing, gave positive test for Ganja. The total weight of the recovered Ganja from all 8 parcels came to be 306 Kgs. The contraband was seized vide Panchnama dated 08-11-2021 in the presence of independent witnesses. During investigations, in pursuance of Notice under section 67, NDPS Act, Rajesh Singh tendered his voluntary statement on 08-11-2021, and revealed his involvement in the illicit business of Ganja and his interception alongwith Vakil Singh at Karol Bagh while they came to receive the parcels of Ganja. The relevant details of his Statement is mentioned under para 7 of Complaint and his Statement is annexed as part of documents with the Complaint. Further, in pursuance of notice under section 67, NDPS Act, Vakil Singh tendered his self-written voluntary statement on 08-11-2021, wherein he disclosed that



alongwith Rajesh he went to office of Professional courier company Karol Bagh to receive the parcel of Ganja and that he indulged in business of Ganja. He further disclosed that said parcels were to be handed over to a party near PP Jewellers and interception of Arun Kumar Azad as the person who came there to receive the parcels of Ganja. During investigation, in pursuance of Notice under section 67, NDPS Act, Arun Kumar Azad tendered his voluntary statement on 09-11-2021 and revealed that he went to the spot near PP Jewellers, Karol Bagh to receive the parcel containing Ganja from Rajesh Singh and Vakil Singh. He further disclosed that he used to receive the parcel on instruction of Ajay and said parcels were to be delivered to a person namely Pradeep Mandal@Mistry. He also disclosed the mobile number of Pradeep Mandal and said parcels had to be delivered to him near Shalimar Bagh Metro Station. Subsequently, based upon disclosure of Arun Kumar Azad, the NCB Team alongwith Arun Kumar went near to the Shalimar Bagh Metro Station where Pradeep Mandal was found to be waiting for Arun Kumar Azad and upon identification of Pradeep Mandal by Arun Kumar, he was intercepted and served with Notice under section 67, NDPS Act, for further investigations. In follow-up, Pradeep Mandal, appeared and tendered his voluntary statement under section 67, NDPS Act, on 09-11-2021, wherein he revealed that he indulged in business of Ganja with Ajay and Arun Kumar Azad. He further disclosed that the recovered parcels were to be handedover to a person whom he knows as 'Uncle' and disclosed his mobile number. On 10-11-2021, in his further statement, he revealed that alongwith 'Uncle' another person namely Lagnu Mahto also used to come with said Uncle and he also indulged in sale/purchase of Ganja. He disclosed mobile number and address of Lagnu Mahto as House No. Y-48, Gali No. 15, Khasra No. 17/7, Libaspur Swaroop Nagar, Delhi. During course of investigation, based upon disclosure of Pradeep Mandal, the NCB Team with search authorization, reached at House No. Y-48, Gali No. 15, Khasra No. 17/7, Libaspur Swaroop Nagar, Delhi. Meanwhile, one person came out from said House and started walking towards outside, he was stopped and upon enquiry revealed his identity as Lagnu Mahto. During search of his aforesaid House in presence of Lagnu Mahto, it led to recovery of 01.400 Kg Ganja and Indian currency of Rs. 4,90,000/-. The recovered contraband and money was seized vide Panchnama dated 11-11-2021. Further, during investigation, Lagnu Mahto tendered his voluntary statement under section 67, NDPS Act, on 11-11-2021, wherein he disclosed that he indulged in sale/purchase of Ganja and used to purchase Ganja from Pradeep Mandal through 'Uncle'. He further disclosed about the search proceedings of his House and recovery of Ganja, Indian currency, documents, mobile phone from his house and stated that the recovered currency was the sale proceeds of the Ganja. Consequently, the accused persons Rajesh Singh, Vakil Singh were arrested on 08-11-2021. Accused persons Arun Kumar Azad and



Pradeep Mandal were arrested on 09-11-2021. The accused Lagnu Mahto, was arrested on 11-11-2021. The mobile-data was extracted and as per Complaint, the BlakTronics Lab had provided the attested photocopies of voice calling record of Pradeep Mandal with Arun Kumar Azad and same is filed alongwith Complaint as part of documents. As per Complaint, CDRs were received alongwith Certificate u/sec. 65B of Indian Evidence Act. Upon analysis of CDRs, it was found that all accused persons were connected. That during follow-up action accused Pradeep Mandal had tendered his voluntary statement where he disclosed that he was in touch with Arun and Arun used to send him photos of Ganja on whatsapp (Page 956 to 963) and also disclosed the name of Lagnu Mahto from whom 1.4 Kg of Ganja and Rs. 4,90,000/- were seized.”

3. Counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. No incriminating evidence is available against the applicant at this stage and there is only a disclosure statement of co-accused Arun Kumar Azad, who in his voluntary statement stated that he used to receive the parcel containing *Ganja* on instructions of co-accused Ajay and parcels were delivered to the applicant, which is inadmissible without corroboration, as held by the Supreme Court in ***Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1*** and by this Court in ***Md. Irshad v. State NCT of Delhi, 2022 SCC OnLine Del 1317*** and ***Amit Ranjan v. Narcotics Control Bureau, Delhi, 2022 SCC OnLine Del 1532***. Admittedly, there is no recovery of the contraband from the applicant.

4. Learned counsel further submits that as per the case of the prosecution, applicant in his voluntary statement under Section 67 NDPS Act revealed that he indulged in business of *Ganja* with Ajay and Arun Kumar Azad and that the recovered parcels were to be handed over to a person whom he knew as ‘Uncle’ and disclosed his mobile number. It is further alleged that applicant disclosed that another person, namely Lagnu Mahto also used to come with Uncle as he was also involved in selling/



purchase of *Ganja* and that at the instance of the applicant, when search was conducted at the house of Lagnu Mahto, 1.4 Kg *Ganja* was recovered along with Indian currency of Rs.4,90,000/-. It is submitted that the Trial Court vide order dated 24.01.2024 has granted regular bail to Lagnu on the ground that the 1.4 kg *Ganja* recovered from his house is an intermediate quantity of contraband and therefore, the bar of Section 37 of NDPS Act will not apply. Argument is that if Lagnu from whom 1.4 kg *Ganja* has been recovered, has been enlarged on bail, there is no reason to continue the applicant in custody as against him there is only a disclosure statement and admittedly no recovery. Applicant has clean antecedents and is not involved in any other criminal activity. Applicant has been in judicial custody since 13.11.2021 and the trial is not likely to conclude soon. Applicant has deep roots in the society and it is not the case of the Respondent that he is a flight risk or there is an apprehension that he may tamper with evidence or intimidate and threaten the witnesses.

5. Learned counsel for the Respondent contends that the allegations against the applicant are serious as he is involved in drug trafficking. Relying on the Status Report, it is argued that disclosure statement of the applicant led to the apprehension of Uncle and Lagnu Mahto, both of whom are involved in drug trafficking and it was at the instance of the applicant that Respondent reached the house of Lagnu from where 1.4 kg *Ganja* was recovered. 306 kgs of *Ganja* was recovered from co-accused Rajesh and Vakil Singh and 1.4 kg was recovered from Lagnu. Therefore, the total quantity of contraband recovered is a commercial quantity and the applicant will require to establish that he meets the twin conditions under Section 37 of NDPS Act.



6. Heard.

7. As per the case set up by the prosecution itself, there was no recovery of *Ganja* from the applicant and he was arrested on a disclosure statement made by Arun Kumar Azad. It is settled that disclosure statement is inadmissible under Section 67 NDPS Act and cannot be used to deny bail to an accused in the absence of any corroborative evidence. Supreme Court in *Tofan Singh (supra)* and this Court in *Md. Irshad (supra)* and *Amit Ranjan (supra)* have held that disclosure statement is inadmissible under Section 67 NDPS Act and cannot be used to deny bail to an accused in the absence of corroborative evidence. In *State of Haryana v. Samarth Kumar, 2022 SCC OnLine SC 2087*, the Supreme Court observed that an accused can avail advantage of the law laid down in *Tofan Singh (supra)* at the stage of arguing a regular bail application.

8. It is important to note that as per the case of the prosecution, the disclosure statement of the applicant led to apprehension of Uncle and Lagnu Mahto and a consequential recovery from the latter. However, Lagnu has been enlarged on bail by the Trial Court on the ground that the quantity of *Ganja* recovered from him was an intermediate quantity and rigours of Section 37 of NDPS Act will not apply. Counsel for the applicant is right in his submission that case of the applicant cannot be worse of than the case of Lagnu, from whom allegedly there was a recovery of 1.4 kg *Ganja*.

9. In view of the aforesaid facts and circumstances, in my view, applicant has made out a case for grant of regular bail. It is accordingly directed that applicant shall be released on bail upon his 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 and further subject to the



following conditions:-

- i. Applicant shall not leave the country without prior permission of the Trial Court;
 - ii. He shall provide his mobile number to the IO concerned and keep the same active at all times and shall not change the number without prior intimation to the IO and the Trial Court;
 - iii. He shall furnish his permanent residential address to the concerned IO and shall intimate the IO as well as the Trial Court by filing an affidavit regarding any change in his residential address;
 - iv. He shall appear before the Trial Court as and when the matter is taken up; and
 - v. He shall not indulge in any criminal activity or contact any witness and/or any other person associated with the present case.
10. It is made clear that nothing stated in this order shall tantamount to expression of an opinion on merits of the case.
11. Application stands disposed of.
12. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

MAY 29, 2024

B.S. Rohella