



2024:DHC:5493



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

Date of decision: 23rd JULY, 2024

IN THE MATTER OF:

+ **BAIL APPLN. 1377/2024**

ALLAH NOOR

.....Petitioner

Through: Ms. Meghan, Mr. M S Faisal,
Advocates

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Shashwat Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has filed the present petition under Section 439 Cr.P.C for grant of bail in Case No. VIII/32/DZU/2019 registered at Narcotics Control Bureau, R.K. Puram, Delhi for offences under Sections 8(A)/21(c)/23(c)/29 of the NDPS Act.

2. The facts of the case leading to the filing of the instant petition are as follows:-

- i. It is the case of the prosecution that on 17.08.2019, at about 11:30 AM, secret information was received that one person, namely, Noorzai Gul Amin is arriving by Ariana Airlines Flight No. FG-311 at Terminal-3, I.G.I Airport. He has swallowed narcotic drugs in the form of capsules.
- ii. The said information was reduced into writing by the Investigating Officer and a note was put up before his superior



2024:DHC:5493



officer. Accordingly, a team was formed to take necessary action. At the IGI Airport, the said person was identified and intercepted.

- iii. On enquiry Noorzai Gul Amin accepted that he had swallowed the drug capsules. He was taken to Safdurjung Hospital, where the Doctor on duty confirmed about the presence of foreign body in the stomach of Noorzai Gul Amin. It is stated that the said Noorzai Gul Amin expelled 119 capsules through passage of stool on 20.08.2019. It is stated that the capsules were counted in the presence of independent witnesses, interpreter, doctor on duty and the team of the NCB. The doctor on duty tested each capsule and upon testing it was found that the capsules contained heroin. On weighing all the 119 capsules, it was found that Noorzai Gul Amir was carrying 770 Grams of heroin.
- iv. Notice under section 67 of NDPS Act was issued to Noorzai Gul Amin who gave voluntary statement in his native language, Pashto, which was translated by the Interpreter.
- v. In his voluntary statement Noorzai Gul Amin revealed that one person namely Naimatullah Mangal offered him Rs.50,000/- for carrying the drug capsules in his stomach and gave him 119 capsules of Heroin, which he swallowed. He also revealed that upon reaching India he had to hand-over the capsules to one person called *Doctor* about whom he does not know much. He revealed that Naimatullah Mangal gave him the mobile number of the said person which is 7290901992. He also revealed that



2024:DHC:5493



Nimatullah Mangal would arrive in India on 21.08.2019 by KAM Airlines at Delhi Airport. Accordingly, preparations were made to intercept the said Nimatullah Mangal. On his arrival on 21.08.2019, Nimatullah Mangal was apprehended at IGI Airport.

- vi. Notice under section 67 of the NDPS Act was issued to Naimatullah Mangal and in pursuance thereof, he tendered his voluntary Statement accepting that the drug capsules swallowed by Noorzai Gul Amin had to be supplied to one Doctor @ Allah Noor, i.e., the Petitioner herein and one Hikmatullah Hikmati.
- vii. Naimitullah Mangal revealed that he can identify the house of the Petitioner herein. The Petitioner was apprehended from his House at 137, F-Block, 3rd Floor, Lajpat Nagar-I, New Delhi. Search was conducted at his house. In the search, a mobile phone and some other articles were recovered.
- viii. Notice under Section 67 of the NDPS Act was issued to the Petitioner herein. In his voluntary statement, the Petitioner herein revealed that the capsules were to be supplied to one Chinonso Stanly Alex who is living with one Goddy and 2-3 other Nigerians at House No. A-27, 1st Floor, Anand Vihar, Near Metro Pillar-595, New Delhi. Hikmatullah Hikmati also tendered his voluntary Statement in Pashto language confirming that the heroin was to be supplied to one Stanley Alex and some Nigerians.



2024:DHC:5493



- ix. The NCB Team reached House No. A-27, 1st Floor, Anand Vihar, and at the said premises Godday Nemonye along with other Nigerians were present. During search of the premises, 3.4 kgs. heroin was recovered.
- x. Hikmatullah Hikmati and the Petitioner herein were arrested on 23.08.2019.
- xi. On 19.12.2019, Chinonso Stanley Okorie@ Chinonso Iwuzo, Brght Right @ Obina Oguchukwu, Collins Nnebolinsa Chiwetalu @ Chidi Nwankwu and Alex Edet Nelson@ Ifeanyi Nwafor surrendered in Deportation Centre New Delhi. Obina Stanley disclosed that he along with Alex Edet Nelson and Collins were living at House No. 1238, Islampur Village, Sector-38, Gurugram, Haryana, and have kept drugs there. Upon search of said House, 220 grams of Cocaine was recovered and seized on 19.12.2019.
- xii. It is stated that in the entire operation 770 grams of Heroin was recovered on 20.08.2019 from Noorzai Gul Amin, 3.4 kgs. of heroin was recovered on 22.08.2019 from House No. A-27, 1st Floor, Anand Vihar and 220 grams of Cocaine was recovered on 19.12.2019 from House No. 1238, Islampur Village, Sector-38, Gurugram.
- xiii. The Petitioner herein had approached this Court by filing an application for grant of bail being Bail Application No.1207/2021 and this Court *vide* Judgment dated 25.06.2021 dismissed the said bail application.



2024:DHC:5493



- xiv. The Petitioner is in custody since 23.08.2019 and has approached this Court for grant of bail by filing the instant bail application.
3. Notice was issued in the matter. Status Report and the Nominal Roll has been filed in the matter.
4. It is stated by the Ld. Counsel for the Petitioner that there was no recovery made from the Petitioner and no charges except conspiracy can be framed. It is further stated that the proceedings under Section 52A of the NDPS Act were carried out after an inordinate delay of 3 and a half years, which is in clear violation of the law laid down by the Apex Court in various judgments. It is also stated that all the co-accused in the case have been granted bail and one co-accused namely Hikmatullah Hikmati has been granted bail by this Court vide judgment dated 20.02.2024 and therefore the Petitioner should also be granted bail on the ground of parity.
5. Per contra, it is stated by the Ld. Counsel for the Narcotics Control Bureau that the Petitioner was involved in conspiracy for illegal trafficking of contraband drugs which were under seizure commercial quantity and such an offence is serious in nature. It is stated that the Petitioner being a foreign national, has no roots in the soviet and that increases the likelihood to jump the bail and frustrate the process of trial. It is further stated that the trial is at the stage of prosecution evidence and crucial witnesses are yet to be examined. It is also stated that apart from this Court, the bail application of the Petitioner has also been dismissed by the Trial Court vide order dated 18.11.2023.



2024:DHC:5493



6. The quantity of heroin and cocaine recovered in the instant case is commercial quantity.

7. The argument of the Ld. Counsel for the Petitioner stating that bail should be granted on the ground of parity cannot be accepted as the circumstances wherein the co-accused have been granted bail are wholly distinct as that of the Petitioner. It is on record that the recovery made from Noorzai Gul Amin, Naimatullah Mangal, Godday Nemonye, Chinonso Stanley Okorie, Alex Edet Nelson, Bright Right and Collins Nnebolinsa Chiwetalu was inadmissible as there was a violation of proceedings Section 52A of the NDPS Act and they were granted bail on this ground whereas no recovery was made from the Petitioner and he is the kingpin behind the offence of trafficking of drugs into the country. The fact that no recovery was made cannot be the sole ground for granting bail to an accused under the NDPS Act keeping in view the role played by the Petitioner in the cartel. One of the co-accused namely Hikmatullah Hikmati, from whom no recovery has been made, was granted bail by this Court as there was no evidence against him except a disclosure statement. On the contrary, photographs of Heroin and capsules, image of passports, image of Currency and chats between Naimatullah Mangal and the Petitioner herein and their photographs were found from the phone of the Petitioner which is enough to demonstrate the involvement of the Petitioner in the crime.

8. It is well settled that the jurisdiction of a Court to grant bail for offences under NDPS Act in cases of recovery of commercial quantity is circumscribed by the provision of Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:-



2024:DHC:5493



"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]"

9. A perusal of Section 37 of the NDPS Act indicates that bail can be granted only when there are reasonable grounds for believing that the accused is not guilty of an offence and he is not likely to commit any offence when released on bail. The parameters for grant of bail to an accused under Section 37 of the NDPS Act have been laid down in a number of judgments. The Supreme Court in Collector of Customs v. Ahmadalieva Nodira reported as **(2004) 3 SCC 549** has observed as under:



2024:DHC:5493



*"6. As observed by this Court in Union of India v. Thamisharasi [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. **The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.***

*7. The limitations on granting of bail come in only when the question of granting bail arises on merits. **Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....."** (emphasis supplied)*

10. In Union of India v. Rattan Mallik reported as (2009) 2 SCC 624, the Supreme Court has observed as under :

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused



2024:DHC:5493



of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on “reasonable grounds”.

13. *The expression “reasonable grounds” has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.*

14. *We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of “not guilty”. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further*



2024:DHC:5493



that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail." (emphasis supplied)

11. In State of Kerala & Ors. v. Rajesh & Ors. reported as (2020) 12 SCC 122, the Supreme Court has observed as under :-

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."



2024:DHC:5493



12. Applying the law laid down by the Supreme Court to the present case, the material on record, at this juncture, shows the involvement of the Petitioner as a part of the drug syndicate. Heroin was concealed in capsules ingested by persons. It shows that the operation was extremely well planned. A total of 770 grams of Heroin was recovered on 20.08.2019 from Noorzai Gul Amin, 220 grams of Cocaine was recovered on 19.12.2019 from House No. 1238, Islampur Village, Sector-38, Gurugram and 3.4 Kgs. of Heroin was recovered on 22.08.2019 from House No. A-27, 1st Floor, Anand Vihar on the basis of the disclosure statement of the Petitioner . Photographs of Heroin and capsules, image of passports, image of Currency and chats between Naimitullah Mangal and the Petitioner herein and their photographs were found from the phone of the Petitioner which demonstrates the complicity of the Petitioner in the crime. The well organized operations of this syndicate shows the possibility of the Petitioner indulging in the same activity again if he is released on bail. The discrepancy in the seal movement register and its effect would be considered/analysed at the stage of trial and that discrepancy alone is not sufficient for this Court to come to the conclusion that the entire case of the prosecution is false at this stage. This Court is, therefore, not inclined to grant bail to the Petitioner herein.

13. Accordingly, the petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 23, 2024

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