



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

% **Reserved on : 21.12.2023**
Pronounced on : 19.01.2024

+ **BAIL APPLN. 1991/2023 & CRL.M.A. 25894/2023**

TAHA TAUFIQ

..... Petitioner

Through: Ms. Rohini Musa, Mr. Nipun Katyal,
Ms. Anam Siddiqui, Mr. Naved
Ahmed and Ms. Kismat Chouhan,
Advocates.

versus

NARCOTICS CONTROL BUREAU NEW DELHI Respondent

Through: Mr. Subhash Bansal, Sr. Standing
counsel for NCB with Mr. Shashwat
Bansal, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

RAJNISH BHATNAGAR, J.

1. This is a petition filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case Crime No. VIII/09/09A/DZU/2020 under Sections 22(c)/23(c)/24/25/27A/29 NDPS Act registered at Narcotic Control Bureau.

2. In brief the facts of the case as per the prosecution complaint are that on 31.01.2020, on the basis of secret information, 4200 Tablets of Zolpidam (1.050 Kg) and 6000 Tablets of Alprazolam (1.200 Kg) were recovered from a parcel bearing No. 535153356 lying at TNT India Pvt. Ltd. (Fedex



Courier) near new Custom House, IGI Airport which was destined to Great Britain and the recovered contraband was seized as per law detailed in the panchnama in the presence of independent witnesses and was taken into safe custody and thereafter, the consignor/accused Dipu Singh was apprehended from Lucknow and from his house 12,000 Tablets of Tramadol (4.800 Kg) were recovered.

3. During investigation, accused Dipu Singh disclosed the names of other persons involved in the conspiracy including co-accused Tejas Patel, Sachin Makade, Barun Chauhan, Bablu Bhagwan Dangre. Furthermore, he disclosed the name of Taha Taufiq (Petitioner herein) R/O 485/44, Rafik Enclave, Mohan Makin, Near Railway Bridge, Daliganj, Lucknow and his mobile nos. 9889333201 & 7007832196.

4. Consequently, upon recovery from the parcel as well as from the residence of accused Dipu Singh and also based on his voluntary statement tendered under section 67 NDPS Act, he was arrested on 02.02.2020. During follow-up investigation, other accused persons, namely, Tejas Patel, Sachin Makade, Barun Chauhan, Bablu Bhagwan Dangre had also tendered their voluntary statements and seizure of incriminating documents/electronic devices and other evidences were effected therefrom.

5. The present petitioner, namely, Taha Taufiq was asked to join the investigation vide serving Notice dated 24.06.2020 and he joined the investigation on 04.08.2020 wherein he revealed that he was in constant touch with Dipu Singh. The petitioner in his voluntary statement tendered under section 67 NDPS Act on 04.08.2020 had admitted that he was in touch with accused Dipu Singh over phone and through WhatsApp chat



communication by his mobile No. 7007832196.

6. As per the Status Report filed by the NCB, the petitioner while tendering his voluntary statement had admitted that he used to provide orders from his clients to Dipu Singh for consideration, and therefore, he was in constant touch with Dipu Singh over phone and through WhatsApp communication. It is further stated in the Status Report that during investigation, analysis of mobile of accused Dipu Singh was done and mirror image was obtained from SIFS. In the mobile phone mirror image of accused Dipu Singh, huge chats regarding NRX medicines and address of consignee in foreign countries were found. The same chats were exhibited by petitioner Taha Taufiq. In the chats large number of addresses were found to which they were sending NRX medicines as disclosed by the accused.

7. On the basis of the statements and call details, the present petitioner Taha Taufiq was arrested on 04.08.2020 and it was revealed that the petitioner was in constant touch with co-accused Dipu Singh and there are several communications through WhatsApp which shows their involvement in illicit drug trafficking and the same is a part of a larger conspiracy.

8. I have heard the learned counsel for the petitioner, learned Sr. Standing Counsel for NCB, perused the Status Report filed by the NCB and also perused the records of this case.

9. Learned counsel for the petitioner submitted that the petitioner is a young man of 24 years of age with clean antecedents and has been falsely implicated in this case. She submitted that except the WhatsApp chats with



accused No. 1, the petitioner does not know anything about the contraband or about the transactions between the other accused persons and he is being falsely implicated without any direct evidence only on the basis of few WhatsApp chats. She further submitted that the petitioner was not having any possession whatsoever of the contraband and also, the statements given by accused No. 1 did not lead to any recovery of either the contraband or any additional fact from the petitioner. She further submitted that four co-accused persons have been granted regular bail and the petitioner thus seeks parity. She further submitted that the petitioner is in custody since 05.08.2020 and has undergone more than three years. She further submitted that the entire domain of evidence is in the nature of documentary evidence which has been seized by the Investigating Agency, the chargesheet has already been filed, the trial would take a long time to conclude as 16 prosecution witnesses are yet to be examined and thus, no purpose will be served by keeping him in judicial custody.

10. In support of her contentions, learned counsel for the petitioner has relied upon the following judgments:-

- *State of Kerala Vs. Raneef [(2011) 1 SCC 784];*
- *Union of India Vs. K.A. Najeeb [(2021) 3 SCC 713];*
- *Collector of Customs Vs. Ahmadalieva Nod ira [(2004) 3 SCC 549];*
- *Union of India Vs. Ratan Malik [(2009) 2 SCC 624];*
- *Surinder Kumar Khanna Vs. Directorate of Revenue Intelligence [(2018) 8 SCC 271];*
- *Tofan Singh Vs. State of Tamil Nadu [(2013) 16 SCC 31];*



- *Kalyan Chandra Sarkar Vs. Rajesh Ranjan [(2004) 7 SCC 528];*
- *Siddharam Satlingappa Mhetre Vs. State of Maharashtra [(2011) 1 SCC 694];*
- *Chaman Lal Vs. State of U.P. [(2004) 7 SCC 525];*
- *Dataram Singh Vs. State of U.P. [(2018) 3 SCC 22];*
- *Gudikanti Narasimhulu Vs. Public Prosecutor [(1978) 1 SCC 240].*

11. On the contrary, learned Senior Standing Counsel for NCB has vehemently opposed the bail application and has argued on the lines of the status report. He submitted that on 31.01.2020 on the basis of secret information, 4200 tablets of Zolpidam (1.050 Kg), and 6000 tablets of Alprazolam (1.200 Kg) were recovered from a parcel bearing No. 535153356 lying at TNT India Pvt. Ltd. near new custom house IGI Airport which was destined to Great Britain and the recovered contraband were seized and thereafter, the consignor/accused Dipu Singh was apprehended from Lucknow and from his house, 12000 tablets of Tramadol (4.800 Kg) were recovered. He further submitted that during investigation he has disclosed the names of other persons involved in the conspiracy. He further submitted that the petitioner tendered his statement under Section 67 of the NDPS Act and admitted his guilt and his involvement with co-accused Dipu Singh in providing the orders from his clients to co-accused Dipu Singh. He further submitted that the petitioner was in constant touch with co-accused Dipu Singh over phone and WhatsApp and there were several calls and WhatsApp messages.

12. He further submitted that at the time of arrest of the petitioner, one



mobile phone model One Plus Seven Pro with IMEI No. 865166041636633 and 865166041636625 was recovered and seized for the purposes of investigation vide separate seizure memo dated 04.08.2020 and the petitioner has also admitted in his statement tendered under section 67 NDPS Act, that he was using the mobile numbers 9889333201 and 7007832196, which is also corroborated from the Statement of Dipu Singh.

13. Learned Senior Standing Counsel for NCB submitted that during investigations, CDR in respect of the IMEI numbers 357328073033890, 865166041636633 and 865166041636630 was received from Reliance JIO Communication, Vodafone Essar Mobile services and Bharti Airtel Ltd. As per which the mobile set having IMEI number 865166041636630 was found to be used for mobile no. 9076725933 and upon investigation of CAF and CDR of the mobile connection number 9076725933 for the period from 20.01.2020 to 31.08.2020, the Cellular Service provider submitted the CAF and CDR of the mobile connection number 9076725933 and it was found that said mobile number is registered in the name of present petitioner. He further submitted that this number was in regular contact with co-accused Dipu Singh which corroborates the involvement of the petitioner in the commission of offence in conspiracy with accused Dipu Singh and the same shows that petitioner had been using this mobile number 7007832196 on fake identity to conceal his identity. He further submitted that the petitioner has intentionally concealed the facts to mislead the investigating agency to cover his criminal deeds in commission of offence. During the course of investigation, relevant CDR details of mobile numbers of accused were requisitioned and further the mobile data including WhatsApp chat from the



mobile phone of Dipu Singh had been obtained and from the said CDR details and transcript of WhatsApp chat, it transpired therefrom that petitioner was in constant touch with Dipu Singh, which further disclosed the names of narcotic medicines which are covered under NDPS Act and the tracking number of consignments.

14. He further submitted that the transcript of mobile phone data and furthermore, the statements as admitted by the petitioner shows that the petitioner used to procure orders from his clients and forward the same to Dipu Singh for consideration and in response Dipu Singh used to forward the tracking details of consignments sent by him to the petitioner. Thereafter, after receipt of tracking details, petitioner used to forward the same to his clients and the petitioner has also admitted that he received the money in cash from accused Dipu Singh and therefore, the aforesaid shows the complicity of petitioner in the offence and even the track record reveals that the present petitioner and Dipu Singh, both are involved in illicit trafficking of narcotics medicines covered under NDPS Act.

15. He further submitted that all the accused persons in their ascribed role were in conspiracy for illegal trafficking of Tramadol and other Narcotic tablets covered under the NDPS Act at an international level, i.e. from India to other countries and also dealing externally outside India and they made all preparations, took all steps in furtherance of their motive and all of them acted towards the fulfilment of their objective and thus, violating the provisions of the NDPS Act.

16. Ld. Senior Standing Counsel for NCB has pointed out that the present application filed by the petitioner is absolutely unwarranted, illegal and



devoid of merits and the petitioner does not have jurisdiction to file repeated alike applications, without any change in circumstances.

17. Lastly, he submitted that in the present case there is a recovery of commercial quantity of medicines from co-accused Dipu Singh who is also found to deliver the medicines illegally upon the orders placed through the present petitioner and both accused are found to be inter-connected through WhatsApp chat messages as well as through mobile phones. He further submitted that there is embargo under section 37 NDPS Act as there is recovery of commercial quantity of contraband, the case is pending trial as crucial witnesses are yet to be examined and if the petitioner is released on bail at this stage, there is strong likelihood of him absconding.

18. Learned Senior Standing Counsel for NCB, in support of his contentions, has relied upon the following judgments:-

- *State of Kerala Etc. Vs. Rajesh Etc. (2020 SCC Online SC 81);*
- *Collector of Customs Vs. Ahmadaliev Nodira [(2004) 3 SCC 549];*
- *Union of India Vs. Ram samujh and Ors. [1999 (9) SCC 429];*
- *Union of India Vs. Rattan Malik [(2009) 2 SCC 624];*
- *Union of India Vs. Prateek Shukla (Dated 08.03.2021);*
- *Union of India Vs. Md. Nawaz Khan (Dated 22.09.2021);*
- *NCB Vs. Mohit Aggarwal (Dated 19.07.2022)*

19. As far as the judgments relied upon by the Ld. Counsel for the petitioner are concerned, there is no dispute with regard to the proposition of law laid down in the said judgments that confessional statement made under



Section 67 of the NDPS Act will not be admissible in evidence, however, with due regard, the same are not applicable to the facts of the present case as perusal of the records of the case shows that the allegations against the petitioner are serious in nature as there is a huge recovery of medicines which falls under the category of '*commercial quantity*' as per NDPS Act. The petitioner was also in constant touch with co-accused person through WhatsApp chat messages as well as through mobile phone which is evident from the call records of the mobile phone used by the petitioner and the same shows the petitioner's complicity in the crime and therefore, there are no reasonable grounds for believing that the petitioner is not guilty of the offence.

20. In the present case, 4200 Tablets of Zolpidam (1.050 Kg) and 6000 Tablets of Alprazolam (1.200 Kg) have been recovered from co-accused/ consignor Dipu Singh and during search of his house, 12,000 Tablets of Tramadol (4.800 Kg) has also been recovered. It is pertinent to note that the total quantity of contraband recovered in this case is of commercial quantity and thus, embargo of Section 37 of the NDPS Act is applicable.

21. The scheme of Section 37 NDPS Act reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the Cr.P.C., 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.

22. The expression "*reasonable grounds*" means something more than *prima facie* grounds. It contemplates substantially 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.

23. As far as the contention of the Ld. Counsel for the petitioner that no recovery has been effected from the petitioner, the same has no force in it as mere absence of possession of the contraband on the person of the accused-petitioner herein, does not absolve him of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. Reliance can be placed upon ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, Criminal Appeal No. 1043 of 2021 (Arising out of SLP (Crl) No.1771 of 2021)*** and ***Union of India v. Rattan Mallik [(2009) 2 SCC 624]***.

24. Furthermore, the present petitioner is not entitled to parity with co-accused persons who have been released on bail as the co-accused have been released on regular bail considering that the evidence in those cases was only corroborative in nature, whereas there are specific allegations against the present petitioner that he was involved in illegal trafficking of Tramadol, Zolpidam and Alprazolam, Narcotic tablets covered under the NDPS Act at



an international level and he was also found to be in constant touch with co-accused Dipu Singh through WhatsApp chat messages as well as through mobile phone which is evident from the call records of the mobile phone used by the petitioner

25. Therefore, looking into the entire circumstances of the present case and the fact that total quantity of contraband recovered from the co-accused person in this case is of commercial quantity with whom the petitioner was in constant touch through WhatsApp chat messages as well as through phone calls, moreover, considering the period of incarceration as the petitioner has undergone nearly three years three months which is not even near to half of the minimum sentence of ten years, no ground for bail is made out. That being the case, the limitations prescribed for the grant of bail under Section 37 NDPS Act are also not satisfied and thus, no benefit can be given to him at this stage. The bail application along with pending application is, therefore, dismissed.

26. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

JANUARY 19, 2024/ib