



\$~

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

%

Reserved on: 06.03.2024***Pronounced on: 12.03.2024***+ **BAIL APPN.2178/2023****GURMAIL SINGH @ GELA**

..... Petitioner

Through: Mr. Pulkit Jain, Ms. Alisha,
Ms. Anjali Kumari and Mohd.
Anas Ansari, Advocates

versus

NARCOTICS CONTROL BUREAU (NCB) RespondentThrough: Mr. Subhash Bansal, Sr.
Standing Counsel for NCB
with Mr. Shashwat Bansal,
Advocate**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The present application under Section 438 of the Code of Criminal Procedure, 1973 ('Cr.P.C'), has been filed on behalf of the applicant/accused seeking grant of anticipatory bail in case arising out of Case bearing No. VIII/05/DZU/2023 registered by the Narcotics Control Bureau ('NCB'), Delhi for offences punishable



under Sections 8/18/23 of the Narcotic Drugs and Psychotropic Substances Act, 1985('*NDPS Act*').

2. Briefly stated, facts of the present case are that on 10.02.2023, on the basis of secret information regarding a parcel airway bill No.298502393 at DHL Express India, Rama Road, Kirti Nagar, Delhi containing psychotropic substance, a search of the same parcel had been conducted by the NCB, whereby it had been found that the said parcel contained 977 grams of suspected opium. The *panchnama* was prepared in the presence of the independent witnesses and after that the present case was registered by the NCB. Thereafter, during the investigation on 10.03.2023, a notice under Section 67 of the NDPS Act had been issued to the co-accused person namely Paramjit Kaur, who had tendered her statement that parcel in question had been booked by her on the direction of her brother Kuldeep Singh, who is presently living in Canada and that the parcel had been handed over to her by the present applicant/accused. After that, the co-accused had been arrested on 10.03.2023 by NCB, Delhi and notices under Section 67 of the NDPS Act had been issued against the present applicant/accused to join the investigation.

3. Learned counsel appearing on behalf of the applicant/accused submits that the NCB had issued two notices to the present applicant/accused under Section 67 of the NDPS Act. However, the applicant/accused had filed an anticipatory bail application before the learned Trial Court on 24.03.2023 and thereafter, *vide* order dated



15.04.2023, the learned Trial Court had asked the present applicant/accused to join the investigation on 18.04.2023 at 10 AM in respondent's office and had granted interim protection to him till the next date of hearing before the learned Trial Court i.e., 12.05.2023. It is submitted that pursuant to grant of interim protection, the applicant had joined investigation on three occasions i.e., 18.04.2023, 21.04.2023 and 04.05.2023. It is argued that during investigation, the applicant had deposited his VIVO smart phone and had also provided bank statements to the concerned investigating officer of NCB. It is submitted that the interim protection granted to the applicant/accused was further extended by the learned Trial Court till 02.06.2023. It is further submitted that *vide* order dated 02.06.2023, the learned Trial Court had dismissed the anticipatory bail application of the applicant on the ground that the applicant had destroyed evidence and had misled the investigating agency. However, learned counsel for the applicant in this regard submits that the applicant had joined investigation and had fully cooperated with the investigating officer and further that the disclosure statements of the co-accused persons against the present applicant do not have any evidentiary value in the eyes of law. Therefore, it is prayed that the present applicant/accused be enlarged on anticipatory bail and that the applicant/accused is ready to abide by any stringent conditions imposed by this Court.

4. *Per contra*, learned Special Public Prosecutor (‘SPP’) for NCB strongly opposes the present anticipatory bail application and argues



that in the instant case, opium weighing around 977 grams has been recovered which was being transported abroad and that the present applicant/accused is the supplier of the said opium. It is vehemently argued by learned SPP that despite interim protection being granted by the learned Trial Court, the present applicant/accused has not cooperated with the investigation and has rather destroyed the evidence. It is further submitted that custodial interrogation of the present applicant/accused is required for his role to be ascertained and for the entire conspiracy in this case to be unearthed and also to identify other persons, if involved in commission of the said offence. Therefore, it is prayed that the anticipatory bail application of the present applicant/accused be rejected.

5. This Court has heard arguments on behalf of both the parties and has perused the material placed on record.

6. It is the case of the prosecution that on 11.02.2023, on the basis of secret information regarding a parcel airway bill no.298502393 at DHL Express India, Delhi containing psychotropic substance, the same was checked and 977grams of opium was recovered from the said parcel. The *panchnama* was prepared in the presence of independent witnesses. On 10.03.2023, a notice under Section 67 of the NDPS Act was issued to the co-accused person, who had tendered her statement that the parcel in question was booked by her on the direction of her brother Kuldeep Singh, who presently lives in Canada. The said parcel was handed over to her by the present



applicant/accused. After that, on 13.03.2023, a notice under Section 67 of NDPS Act was issued to the present applicant/accused with the direction to appear in NCB office on 20.03.2023. However, the present applicant had not responded to the said notice. Thereafter, second notice under Section 67 of NDPS Act was again issued to the applicant/accused through speed post on 21.03.2023 and as per the said notice, he was directed to appear before NCB office for recording his statement on 27.03.2023. However, he had again not responded to the said notice. It is further noted that during investigation, repeatedly notices were sent under Section 67 of the NDPS Act to the applicant/accused with the direction to appear before NCB and to tender his statement regarding his knowledge/involvement in the present case. However, the applicant/accused had moved an anticipatory bail application before the learned Trial Court.

7. This Court further takes note of the fact that *vide* order dated 15.04.2023, the learned Trial Court had granted the present applicant/accused interim protection and had directed him to appear before NCB. Pursuant to same, the applicant/accused had joined the investigation on 18.04.2023 and had tendered his statement under Section 67 NDPS Act, wherein he had informed that he knew Kuldeep Singh, who lives in Canada, since he is his childhood friend. He had further informed the I.O. that his VIVO smart phone was damaged on 13.04.2022 during his farming work and that he had not



joined investigation as he knew that opium was seized from the said parcel. The applicant/accused had requested to be given some time to provide his VIVO smart phone to NCB. After that, another notice was issued to applicant/accused by the NCB to appear before it on 21.04.2023 which the applicant/accused had complied with and had joined investigation on 21.04.2023 and had deposited his VIVO smart phone for further investigation. He was asked about his bank transactions; however, he had requested to be given some time to provide the same. On 04.05.2023, the present applicant/accused had appeared before the I.O. and had provided some documents regarding the bank transactions as requested. Furthermore, during the investigation, it had come to the notice of NCB that mobile location of the present applicant/accused was found at the same location as disclosed by other co-accused person in her statement under Section 67 of the NDPS Act. On being confronted with the same and being asked about Kuldeep's number, he had tendered in his statement under Section 67 of NDPS Act that the same mobile number, which was mentioned on the parcel as a consignee was Kuldeep's mobile number.

8. In his statement under Section 67 of the NDPS Act, the present applicant/accused had informed that his VIVO phone was damaged on 13.04.2022. However, as per analysis of CDR of mobile number and IMEI of his mobile phone, it came to the notice of NCB that the same mobile number was used on his VIVO smart phone upto



22.03.2023. During further analysis of IMEI and CDR of the VIVO mobile phone of the present applicant/accused, it came to notice of NCB that the said VIVO mobile phone was used for mobile number 9968940**** only for one day i.e., on 23.03.2023 and on the same day another mobile number 805463**** was used in the said VIVO mobile phone upto 21.04.2023. A report in this regard has been placed on record by NCB.

9. The records placed before this Court reveal that though the applicant/accused had joined investigation when he was granted interim protection, he not only did not cooperate with investigation, rather while being on interim protection, the present applicant had destroyed crucial evidence i.e., had formatted his VIVO mobile and had tried to mislead the investigating agency regarding the fact that his phone was damaged, although the report filed on record revealed that his phone was in working condition with another SIM number for a considerable period of time i.e. upto 21.04.2023. The said conduct of the present applicant/accused is questionable as he has deliberately destroyed the evidence and has further not cooperated with the investigation.

10. In view thereof, this Court is of the opinion that custodial interrogation of the present applicant/accused may be required and considering the overall facts and circumstances of the case, no ground for grant of anticipatory bail is made out.



11. Accordingly, the application for grant of anticipatory bail stands dismissed.
12. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.
13. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 12, 2024/ns