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

+ **BAIL APPLN. 1777/2024**

MUSHIR ALAM @ BABLU

.....Petitioner

Through: **Mr. Tarish Vijay Sathe, Advocate**

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: **Mr. Utsav Singh Bains, SPP for NCB
with Mr. Satendra Yadav, Advocate**

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

18.09.2024

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1. This petition is filed seeking regular bail in Case No. VIII/36/DZU/2022, under Section 8(c), 22(c) & 29 of NDPS Act, registered at PS NCB RK Puram. Petitioner is in custody since 26th April 2022.

2. As per the case of the prosecution, on basis of a secret information on 19th April 2022, a parcel was intercepted bearing AWB No. 3330874654, dispatched by the consignor Nikhil Verma, a resident of Kanpur, India and the consignee named as Naga Veeragandham in California. On cutting the parcel, 3.24 kilos of Tramadol Tablets were found, interspersed between 12 foot-mats.

3. Counsel for petitioner contends that as per DHL, the package was consigned by Universal Express, which in turn stated that it was booked from KC Enterprises, which in turn stated that Mohd. Faizal had given the parcel. Mohd. Faizal in his disclosure statement stated that he had got parcel from petitioner, whereas petitioner stated that he got parcel from Babar, who stated that he received parcel from Anees. Babar is also in judicial custody whereas



Anees has not been traced, as per counsel for the NCB. As per counsel for NCB, a financial transaction took place between brother of petitioner Mushir Alam of Rs. 10,000/- to Mohd. Faizal.

4. Counsel for petitioner further pointed out that the proforma invoice affixed on the courier package, which forms part of charge-sheet dated 15th April 2022, mentions that there were 10 foot-mats of 0.1 kg each. He therefore, states that from a total of 1 kg of parcel a recovery of 3.24 kg of contraband could not have been generated. 3. Moreover, he submits, as per the sticker on the DHL parcel, weight of package is stated as 18.5 kg, he therefore contends that that would mean that there was 14 kgs of packing material, which is not tenable; he relies upon the decision of a Coordinate Bench of this Court in ***Birpal v. NCB*** 2020:DHC:2476.

5. He further contends that as per the disclosure statement of the DHL officer, there was a different Airway Bill namely, AWB No.7278107760 issued initially. Counsel for petitioner further states that post filing of charge-sheet, certain documents have been filed by the prosecution in order to correct the original Airway Bill as also the weight of parcel, which is unacceptable and therefore objects to grounds taken by the prosecution.

6. Counsel for petitioner essentially points out that aside from the fact that petitioner was arrested based on disclosure of Mohd. Faizal and as per statement recorded from him, it was clearly stated that he had got the parcel from one Mohd. Babar on 13th April 2022 and forwarded the same on the very date to Mohd. Faizal, who was dealing with the courier company Universal Express.

7. It is further contended that NCB's attempts to explain the discrepancy in the weight and air-way bill number, is 2 years after the filing of charge-sheet on 22nd October 2022. Relevant details have been provided through



communications addressed by officers of the courier companies dated 8th April 2024 and 10th April 2024, one by Virender Singh, Security Investigation Officer of DHL Express and the other by Pramod Kumar Singh, Proprietor of Universal Express, two years after charge-sheet has been filed. Moreover, the said persons have not been arrayed as witnesses in the said proceedings.

8. In this regard he states that notwithstanding that petitioner had been apprehended on basis of mere disclosure, which is not admissible, there is serious doubt about consignment itself which was seized allegedly having contraband.

9. Mr. Utsav Singh Bains, SPP for NCB has pointed out that petitioner has been involved in another matter relating to NDPS, however, he does confirm that there is no recovery from petitioner in that case. Counsel for petitioner states that petitioner has been implicated for the other offence after his incarceration in the present proceedings and therefore, is clearly a case of false implication.

10. Considering these facts and circumstances and taking into account decision of the Hon'ble Supreme Court in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, where it has been held that accused cannot be held basis merely on disclosure. Relevant paragraphs of the said judgment are extracted hereunder for ease of reference:

“158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS



Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

(emphasis added)

11. The Coordinate Bench of this Court in ***Phundreimayum Yas Khan*** (*supra*), in para 22 also stated as under:

“22. In the present case there is no narcotic substance or psychotropic substance recovered from the applicant or from his premises. There is no recovery. The disclosure statement made by the applicant, according to me cannot be read against the applicant. The fact that the anticipatory bail moved by Amarjit Singh Sandhu has been rejected by this Court or that Amarjit Singh Sandhu is absconding, cannot be a ground to deny bail to the present applicant.”

(emphasis added)

12. The Hon’ble Supreme Court in ***Mohd. Muslim @ Hussain v. State*** (2023) SCC OnLine 352 has held that the standard to be considered by the Court regarding conditions under Section 37 NDPS is of a reasonable satisfaction on a *prima facie* look at the material on record, that the accused may not be guilty. It does not call for meticulous examination of material collected during investigation. Based on these facts and circumstances, therefore, this Court is satisfied that there are reasonable grounds for a *prima facie* belief that he is not guilty for such offence for which he is being implicated, and there is no material on record to reach any conclusion that he is likely to commit any offence while on bail.

13. In light of the above, and the fact that the trial in this matter is likely to take up some time, while it would not be prudent to keep the petitioner behind bars for an indefinite period, this Court finds this to be a fit case for grant of bail to the petitioner. Consequently, the petitioner is directed to be released



on bail on furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount subject to the satisfaction of the Ld. Trial Court, further subject to the following conditions:

- i. Petitioner will not leave the country without prior permission of the Court.
- ii. Petitioner shall provide permanent address to the Ld. Trial Court. The petitioner shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.
- iii. Petitioner shall appear before the Court as and when the matter is taken up for hearing.
- iv. Petitioner shall join investigation as and when called by the IO concerned.
- v. Petitioner shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned. The mobile location be kept on at all times.
- vi. Petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.
- vii. Petitioner will report to the IO every alternate Saturday at 04:00 P.M. while he is enlarged on bail.

14. Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

15. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.



16. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

17. Order/judgment be uploaded on the website of this Court.

ANISH DAYAL, J

SEPTEMBER 18, 2024/sm