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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 1836/2024

HOTILAL PANDEY

.....Petitioner

Through: Mr. Pushpender Kumar Dhaka and
Mr. Vishal Chaudhary, Advocates.

versus

NCB OF DELHI

.....Respondent

Through: Mr. Bansal, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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14.08.2024

1. By way of present petition, the petitioner/applicant seeks regular bail in CS.No.VIII/07/DZU/2022 registered under Sections 8/21/23/29 of the NDPS Act.

2. Briefly stated, the facts relevant for adjudication of the said application are as follows:-

i. On 19.01.2022, on the direction of Director General of NCB u/s 50 of NDPS Act, 1985, controlled delivery of a parcel Airway bill no-1Z0559A50466482570 suspected to contain to Narcotics Drugs was carried out. During the search of the said parcel 760 grams of heroin was recovered at UPS Express Pvt Ltd DCSC cargo Terminal 3 next to Haj Terminal, Air cargo complex IGI airport New Delhi and the recovered contraband was seized as per law in presence of independent witness.

ii. That the parcel Airway bill No-1Z0559A50466482570 was sent by AbdereahamaneAlimani Marina, Dubai and receiver of parcel was mentioned as 'Hoti Lal Pandey R/o House No. N-36, Shree Radha Florence, Vrindavan, Mathura, Uttar Pradesh 281121 Agra, India'.

BAIL APPLN. 1836/2024

Page 1 of 7



iii. On 21.01.2022, believing that the present applicant was the consignee of the said parcel as the address mentioned on the parcel was of the applicant, it was decided to conduct the controlled delivery operation at the above said address at Mathura. That on 21.01.2022, during controlled delivery operation dummy parcel was received by the applicant. Thereafter, the applicant was apprehended and arrested on 21.01.2022.

3. Learned counsel for the applicant states that the applicant has been in custody since 22.01.2022. It is contended that the applicant was unaware of the contents of the parcel and has been falsely implicated in the present case. It is further submitted that search and seizure of the alleged parcel suffers from irregularity and doubt, as the said search was allowed to be conducted in the presence of one customs officer by Assistant Commissioner of police vide letter dated 19.01.2022. However, it is contended that neither customs officials nor a single independent witness was present at the time of the opening of the seized parcel.

It is further contended that the mention of \$500 in the WhatsApp chats is not true to the extent that the said chats neither pertains to the applicant nor it was recovered from the mobile phone of the applicant. Further, it is submitted that the applicant was going to be a consultant for investment in India and therefore, was under impression that *Peterson Zumba* was working on behalf of the company processing the MOU and other documents. It is argued that in this regard there is a conversation between the applicant and one *Martin Gary* in which both are talking about the MOU with other documents.

4. Additionally, it is submitted that the chargesheet has already been filed in the present case and no useful purpose will be served in keeping the



present applicant in the judicial custody. It is submitted that the applicant is around 72 years of age and was never knowingly connected with any illegal trafficking of drugs.

5. *Per Contra*, on behalf of NCB, it is submitted that in the present case parcel No. 1Z0559A50466482570 was apprehended and the same was found containing 760 gms of heroin, which is a commercial quantity. The said parcel had the name of the applicant as the receiver. Further, after seizure of contraband from said parcel, i.e., 760 grams of heroin, the dummy parcel under process of controlled delivery was received by the applicant, and during the said delivery the accused was apprehended. It is further argued that the accused claimed that he was providing consultancy to the company allegedly run by Martin Gary but has failed to show any documents to substantiate the said contention other than the WhatsApp chats on record. It is further stated that the said MOU was just a cover up to deceive. It is also to be noted that on disclosure from the present applicant, 830 gms of heroin was recovered from the house of co-accused *Louis Sunna Uzoma @Peterson Zumba* which is a commercial quantity. Further, it is stated that both these accused were found to be connected through one common person *Martin Gary*.

It is further submitted that as far as the contention of the applicant regarding custom official not being made witness is concerned, the NCB has made *Rajesh Jha* and *Arun Jha*, officials of UPS Express Pvt. Ltd. as two independent witnesses. Further, on a response received from the courier, it has been come on record that the applicant had earlier also received parcels from the same person based in Dubai, the last one being in the month of December, 2021. Lastly, it is submitted that the present case involves



commercial quantity, and therefore, the rigours of Section 37 of the NDPS Act will be applicable.

6. I have heard the learned counsels for the parties and perused the records.

7. The Supreme Court in the case of Union of India v. Ram Samujh and Ors reported as **1999 (9) SCC 429** has elaborated the parameters to be followed while considering an application for bail under the NDPS Act-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting deathblow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. Chief Secy., Union Territory of Goa [(1990) 1 SCC 95)] as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and



booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely, i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the accused on bail. Instead of attempting to take a holistic view of the harmful socioeconomic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

8. Further, more recently, in Mohd. Muslim alias Hussain v. State (NCT of Delhi), **2023 SCC OnLine SC 352**, the Hon'ble Supreme Court held as under:

"19. The conditions which courts have to be cognizant of are 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. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the



court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts : likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest.

20. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

9. It is established law that the court while considering an application for bail only has to examine whether a prime facie case exists and is not to dwell into the probative value of the material placed on record. In the



present case, the parcel in question was found to be in the name of the applicant containing 750 gms of heroin, which was delivered and also received by him during controlled delivery. Further to corroborate the said recovery, the seizure memo has been signed by the seizing officer and two independent witnesses.

As discernible from the records and also observed by the trial court the fact that in the WhatsApp chat there is a mention of only giving \$500 instead of \$400 as the balance owed to the applicant in itself is a proof that the applicant has been involved in the said crime since a long time and this was not the first time he was receiving such parcel. It further proves that the applicant was not giving any consultancy services rather was just receiving the parcels. Considering the aforesaid and taking into account that the provisions u/s 37 NDPS Act are to be applied strictly (Union of India v. Prateek Shukla in Crl.A. No. 284/2021), this court is of the opinion that there is enough evidence on record to support the prosecution case and the present application is devoid of reasonable grounds to infer that the applicant is not guilty of the said offences and is not likely to further commit offences while on bail.

10. Accordingly, the present application stands dismissed.
11. The application stands disposed of.
12. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

MANOJ KUMAR OHRI, J

AUGUST 14, 2024

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