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

+ **BAIL APPLN. 2840/2023**

SHAMIM AHMED

..... Applicant

Through: Mr.Mohit Mathur, Sr. Adv.
with Mr.Yogesh Saxena,
Ms.Priya Saxena, Ms.Renu
Meena, Advs.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr.Subhash Bansal, Senior
Standing Counsel with
Mr.Shashwat Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

12.02.2024

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1. This application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for the applicant to be released on bail in Case No.SC/526/2022, titled as **NCB v. Razi Haider & Ors.**, File No.VIII/39/DZU/2021, registered at Police Station NCB, R.K. Puram under Sections 8(C), 21(C), 23, 25, 27A, & 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short, 'NDPS Act') pending before the Court of Special Judge, NDPS Court at Patiala House Courts, New Delhi.

2. It is the case of the prosecution that on 27.04.2022, a raid was conducted on the basis of the information that stock of suspected contraband (Heroin) is kept in a house at Jamia Nagar, Okhla, New Delhi. When the police team reached at the spot, the accused Razi



Haider Zaidi was found, and during the search of the house, 50 packets of flipkart packaging were recovered containing white powdery substance. Upon testing the same, it showed positive result for Heroin. The weight of each of the packets was 1 kg. A sum of Rs.30 Lakhs was also recovered from the accused.

3. During the investigation, his statement under Section 67 of the NDPS Act was recorded on 27.04.2022, 28.04.2022 and 29.04.2022.

4. In his statement recorded on 29.04.2022, he disclosed that the money received by him on selling heroin was to be distributed with one Shahid and on the basis of instruction received by him, he used to hand over the same to the accused Azeem as also to the applicant who was at Laxmi Nagar. He further disclosed that on one occasion, he had handed over Rs.20 lakhs to the applicant, while on the other, he handed over Rs.6 lakhs to the applicant at the instruction of Shahid. He further disclosed that on the second occasion, there was a shortfall of a sum of Rs.11,000/-, therefore, that amount was transferred from the account of Azeem to the bank account of the applicant.

5. It is further alleged that in the disclosure statement dated 29.04.2022 of the applicant, the applicant admitted that he had received Rs.20 lakhs on the instruction of Shahid and this amount was, according to him, paid to Shahid at Dubai. He further admitted that on the second occasion, he had received Rs.12.5 lakhs on the instruction of Shahid at Delhi, which again was paid to Shahid at Dubai. In one of these payments, there was a shortfall of Rs.11,000/-, which was informed to Shahid, and on his instruction, his brother Azeem had transferred the same to the bank account of the applicant.



6. The prosecution further alleges that on CDR comparison, it was found that the co-accused Razi Haider Zaidi and the applicant were at Laxmi Nagar on 12.03.2022, that is, the date of handing over of Rs.12.50 lakhs by Razi Haider Zaidi to the applicant.

7. The prosecution further alleges that though the applicant tried to set up a case that Rs.11,500/- was transferred to his bank account against an invoice dated 04.04.2022, the said amount, however, was actually transferred on 16.03.2022, that is, much before the date of the invoice, thereby causing a doubt on the story being set up by the applicant.

8. The learned senior counsel for the applicant submits that the entire case of the prosecution is based on the alleged statement of the co-accused, Razi Haider Zaidi, and that of the applicant himself, recorded under Section 67 of the NDPS Act. He submits that these statements are not admissible in evidence.

9. The only other evidence against the applicant is of the transfer of Rs.11,500/- from the brother of Shahid, that is, Azeem. He submits that though the applicant has given an explanation for the transfer of the said amount, this would be a matter of evidence.

10. He further submits that merely because the location of Razi Haider Zaidi and the applicant was found to be at Laxmi Nagar on 12.03.2022, it cannot be a proof of the allegations made against the applicant.

11. He submits that the applicant does not have any criminal antecedent and is a man of business; proof of the same has been filed



on record in form of the Registration Certificate granted by Krishi Upaj Mandi Samiti, Shahdara and other documents.

12. On the other hand, the learned senior Standing Counsel for the State points out that in the present case, the applicant has admitted to have obtained money at the behest of Shahid at Delhi knowing fully well that he is in the business of drugs. He has further admitted to having paid the said amount to Shahid at Dubai at least on two occasions. There is also evidence of him receiving an amount of Rs.11,500/- through banking transaction from the brother of Shahid, that is, Azeem. He submits that the prosecution has also recovered a handwritten diary from Razi Haider Zaidi which also notes the two transactions of Rs.20 lakhs and Rs.12.50 lakhs. He submits that, therefore, the applicant has not met the test of Section 37 of the NDPS Act for being released on bail.

13. I have considered the submissions made by the learned counsels for the parties.

14. From the above narration of facts, it is apparent that the only allegation against the applicant is that he had allegedly received two payments from the co-accused, Razi Haider Zaidi, of Rs.20 lakhs and Rs. 6 lakhs (as claimed by Razi Haider Zaidi in his statement recorded on 29.04.2022) or Rs.12.50 lakhs (as allegedly admitted by the applicant in his statement recorded on 29.04.2022). There is no recovery of any contraband from the applicant.

15. It is again only on the basis of the alleged disclosure statement of the applicant himself recorded on 29.04.2022, that the prosecution



alleges that he knew that the money received by him and thereafter transmitted to Shahid was generated by selling drugs.

16. The entire case of the prosecution hinges on the alleged statement of co-accused Razi Haider Zaidi and of the applicant himself, recorded under Section 67 of the NDPS Act. As held by the Supreme Court in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1, these statements cannot be used as confessional statements in the trial under the NDPS Act. In *Somdutt Singh v. NCB*, 2023 SCC OnLine Del 7579, this Court has reaffirmed the principle laid down in the judgement of the Supreme Court in *Tofan Singh* (supra), and granted bail to the applicant therein.

17. The only banking transaction is of Rs.11,500/- from the co-accused Azeem to the bank account of the applicant. The nature of this transaction would have to be proved during the course of trial.

18. As far as the CDR showing that the applicant and the co-accused Razi Haider Zaidi were present at Laxmi Nagar on 12.03.2022, cannot *prima facie* be sufficient to charge the applicant. In absence of other corroborative evidence, this cannot be used as a ground to deny bail to the applicant.

19. It is relevant to note here that the applicant does not have any criminal antecedent and is otherwise having deep root in the society.

20. In my view, therefore, the applicant has been able to make out a case for grant of bail applying the test of Section 37 of the NDPS Act.

21. Accordingly, the applicant Shamim Ahmed is directed to be released on bail in Case No.SC/526/2022, titled as *NCB v. Razi Haider & Ors.*, File No.VIII/39/DZU/2021, registered at Police



Station NCB, R.K. Puram under Sections 8(C), 21(C), 23, 25, 27A & 29 of the NDPS Act pending before the Court of Special Judge, NDPS Court at Patiala House Courts, New Delhi, on furnishing a personal bond in the sum of Rs.50,000/- with one local surety of the like amount to the satisfaction of the learned Trial Court, and further subject to the following conditions:

- i. The Applicant will not leave the country without the prior permission of the learned Trial Court.
- ii. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- iii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- v. The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses. In case the Applicant is found involved in another case, it will be open to the prosecution to file an



appropriate application seeking cancellation of his bail in the present case as well.

22. 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.

23. The bail application is disposed of in the above terms.

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

NAVIN CHAWLA, J

FEBRUARY 12, 2024/Arya/ss

Click here to check corrigendum, if any