



\$~J-

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

Date of Decision: 06th August 2024

+ BAIL APPLN. 2320/2019 & CRL.M.As. 20989/2021, 6309/2024

AMIT KUMAR SINGH

.....Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Amit Chadha, Mr. Aranayak Pathak, Mr. Tarun, Mr. S.S. Das and Mr. Harzod Singh Advocates.

versus

DIRECTORATE OF REVENUE INTELLIGENCE (DRI)

.....Respondent

Through: Mr. Akshay Amritanshu, Sr. Standing Counsel with Mr. Samyak Jain and Ms. Pragya Upadhyay, Advocates.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

By way of the present petition filed under section 439 of the Code of Criminal Procedure 1973 ('Cr.P.C.') read with section 37 of the Narcotic Drugs & Psychotropic Substances Act 1985 ('NDPS Act'), the petitioner seeks regular bail in case bearing DRI F. No. 338/XVIII/30/2013-GI, SC No. 3A/11/2014 and SC No. 7256/2016 (Old SC No. 08A/11), in which the petitioner was arrested on 02.05.2013.

Signature Not Verified

Digitally Signed By: ANJALI KAUSHIK

Signing Date: 06.08.2024 14:35:42



2. Notice on this petition was issued on 17.09.2019. Status report/reply dated 25.02.2020 has been filed by the respondent/Directorate of Revenue Intelligence ('DRI').
3. Nominal Roll dated 27.02.2024 received from the Jail Superintendent records, that as of that date, the petitioner has served actual custody of about 03 years and 04 months; that he was admitted to interim bail from 17.10.2017 to 29.11.2017 and again thereafter from 01.04.2018 to 06.04.2018; and most importantly, from 21.08.2018 onwards the petitioner has been on interim bail on medical grounds, which interim bail has been extended by various Benches of this court from time-to-time and continues till date.
4. As recorded in order dated 24.07.2024, for the reasons stated in that order, despite the unduly long period for which the petitioner has been out on interim bail, his interim bail was further extended during the period that the main bail petition was being heard, and judgment was reserved.
5. The main bail petition is being decided by the present judgment.
6. Briefly, the case arises from the following events:
 - 6.1. Based on information received from their sources, on 15.04.2013 officers of the DRI nabbed a green coloured 03-wheeler Mahindra Champion Luggage Carrier bearing registration number DL-1LN -7074 near the traffic signal of Sir Ganga Ram Hospital, Shankar Road, New Delhi, which was found to be carrying a consignment of contraband.
 - 6.2. The driver of the vehicle was accompanied by one Anil Kumar, who is a co-accused in this case. On searching the vehicle, the



DRI recovered around 11 white coloured HDPE bags containing a white coloured crystalline substance weighing about 272.80 kg, which was suspected to be '*methaqualone*'.

6.3. On 16.04.2013, the statement of Anil Kumar was recorded under section 67 of the NDPS Act, which led the authorities to one Manu Khosla, who is also a co-accused in this case. A search of the office premises of Manu Khosla led to further recovery of 33.45 kg of white crystalline substance, which was again suspected to be '*methaqualone*'. Thereafter, on the same day, the statement of Manu Khosla was also recorded under section 67 of the NDPS Act, in which statement he revealed information about one white Toyota Fortuner vehicle with registration number DL-13CA-1800 (the "said vehicle"), which he said had a huge quantity of contraband. The said vehicle was owned by Amit Kumar, namely the petitioner. In his subsequent statement dated 17.04.2013, Manu Khosla revealed the location of the said vehicle, whereupon the vehicle was found and recovery of another 951.35 kg of a substance suspected to be '*methaqualone*' was made from it.

6.4. The entire quantity of contraband recovered by the DRI from the various places was sent for forensic examination to the Central Revenue Control Laboratory, New Delhi, which returned the following results :

6.4.1. Of the 951.35 kg of contraband seized from the petitioner's Toyota Fortuner, 747.40 kg was confirmed to be '*ketamine hydrochloride*', whereas another 150 kg



was confirmed to be ‘methamphetamine’ and the remaining 53.95 kg was confirmed to be ‘phenylpropanolamine’.

6.4.2. The 272.80 kg of contraband seized from the 03-wheeler Mahindra Champion Luggage Carrier owned by Anil Kumar and the 23.40 kg seized from the premises of Manu Khosla were confirmed to be ‘ketamine hydrochloride’.

6.4.3. The report in respect of the remaining 10.05 kg of substance seized from the office premises of the petitioner reads :

“General narcotic drugs and psychotropic substances like Heroin, Morphine, Codeine, Cocaine, Amphetamine, Methamphetamine, MDMA, Methaqualone, Diazepam, Lorazepam, Clonazepam, Ketamine Ephedrine have not been detected.”

(emphasis supplied)

7. Based on the above, on 05.09.2014 a complaint was registered by the DRI against the petitioner herein, as well as against Anil Kumar and Manu Khosla for commission of offences under sections 22, 27-A, 29 and 30 of the NDPS Act; and thereafter, on 03.05.2016, charges were framed against the accused persons under sections 22(c) and 30 of the NDPS Act.
8. In support of the plea for grant of regular bail, Mr. Sudhir Nandrajog, learned senior counsel appearing for the petitioner has raised 05 principal grounds.



9. It is argued that in the present case, the seizure and testing of the samples of the alleged contraband has been conducted in violation of the provisions of section 52-A(2) of the NDPS Act, which completely vitiates the seizure.
10. It is pointed-out that seizure memo dated 16/17.04.2013 itself records that the 39 bags of the alleged contraband that were seized from the said vehicle were opened and representative samples were taken from each bag by officers of the DRI themselves, *without the authorisation and presence of a Magistrate*. The relevant portion of the seizure report, as pointed-out on behalf of the petitioner, reads as follows :

“Thereafter, the aforesaid 39 white coloured HDPE bags were opened one after another. On opening, each of these 39 HDPE bags was found to contain a transparent polythene bag, each of which was further found to contain another transparent polythene bag locked with onetime plastic interlock. On cutting these plastic interlocks of each of the transparent polythene bag, each of these transparent polythene bags was found to contain a white coloured crystalline substance which upon testing with the field detection kit in presence of Sh. Manu Khosla and other persons mentioned above, tested positive for Methaqualone, a psychotropic substance. Thereafter, the gross weight and net weight of each of the white coloured HDPE bags, each of which was found to contain white coloured crystalline substance suspected to be Methaqualone, a psychotropic substance was weighed and found to be as under :

* * * * *

“Thereafter, two representative samples, weighing 25 grams each, of the seized white coloured crystalline substance suspected to be Methaqualone, a psychotropic substance, were taken from each bag in zip locked polythene packets which were marked as 1-A to 39-A and 1-B to 39-B, from each of the 39 HDPE bags individually.”

(emphasis supplied)



11. It is argued that section 52-A(2) of the NDPS Act mandates that the inventory of any contraband seized and photographs thereof are required to be certified by a Magistrate. The permission of a Magistrate is also required for drawing the representative samples and the Magistrate is required to certify the correctness of the list of samples so drawn. The relevant provision of section 52-A(2) reads as follows :

52-A. Disposal of seized narcotic drugs and psychotropic substances:

(1) * * * * *

(2) *Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—*

(a) certifying the correctness of the inventory so prepared;
or

(b) taking, in the presence of such Magistrate, photographs of such drugs, substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(emphasis supplied)



12. It is argued that evidently, as per the narration contained in the seizure memo itself, the process of preparing the inventory, taking photographs and drawing the samples of the alleged contraband seized by the DRI was done neither with the permission nor in the presence of a Magistrate. This, it is argued, vitiates the entire seizure, inventorisation and sampling process.
13. In support of the aforesaid submission, Mr. Nandrajog has placed reliance on the decision of the Supreme Court in ***Yusuf @ Asif vs. State***,¹ in which the Supreme Court has held as follows :

“14. It is an admitted position on record that the samples from the seized substance were drawn by the police in the presence of the gazetted officer and not in the presence of the Magistrate. There is no material on record to prove that the Magistrate had certified the inventory of the substance seized or of the list of samples so drawn.

* * * * *

“16. In the absence of any material on record to establish that the samples of the seized contraband were drawn in the presence of the Magistrate and that the inventory of the seized contraband was duly certified by the Magistrate, it is apparent that the said seized contraband and the samples drawn therefrom would not be a valid piece of primary evidence in the trial. Once there is no primary evidence available, the trial as a whole stands vitiated.”

(emphasis supplied)

14. Reliance is also placed on another decision of the Supreme Court in ***Mohammed Khalid & Anr. vs. State of Telangana***,² in which the Supreme Court has reiterated that seizure and sampling of alleged

¹ 2023 SCC OnLine SC 1328

² 2024 SCC OnLine SC 213



contraband done without complying with the provisions of section 52A(2) of the NDPS Act, renders the consequential forensic testing nugatory. The following extract of the judgment is relevant :

*“26. Admittedly, no proceedings under section 52-A of the NDPS Act were undertaken by the investigating officer PW 5 for preparing an inventory and obtaining samples in the presence of the jurisdictional Magistrate. **In this view of the matter, the FSL report (Ext. P-11) is nothing but a waste paper and cannot be read in evidence.**”*

(emphasis supplied)

15. It is argued that a connection is being sought to be established by the DRI between the petitioner and the alleged recovery of contraband *only* on the allegation that the contraband has been recovered from the said vehicle, namely Toyota Fortuner bearing No. DL-13CA-1800, which vehicle stands registered in the name of the petitioner. However, Mr. Nandrajog points-out, that the alleged recovery of the vehicle based on the statement of co-accused Manu Khosla recorded under section 67 of the NDPS Act, is doubtful in view of the contradictions in the complaint itself.
16. In this behalf it is pointed-out that the complaint recites that in his statement recorded on 16.04.2013, Manu Khosla had disclosed that contraband had been stored in the said vehicle; and that Manu Khosla had disclosed *in his statement recorded on 17.04.2013* that the said vehicle would be found parked behind his residence, in a locked and covered condition; and that it was pursuant to that statement that the DRI recovered that said vehicle from the disclosed location, containing a huge quantity of contraband.



17. However, it is submitted that a perusal of Manu Khosla's statement dated 16.04.2013 recorded under section 67 would show that in that statement he had *only disclosed the registration number* of the said vehicle and *nowhere in that statement had he disclosed the location thereof*. The location of the said vehicle came to be disclosed only in Manu Khosla's statement recorded on 17.04.2013, and yet, the complaint filed by the DRI recites that *they had recovered the said vehicle at about 8 p.m. on 16.04.2013 itself*. It is argued that this contradiction shows that the said vehicle was not recovered by the DRI pursuant to the statement of Manu Khosla recorded on 16.04.2013, which casts doubt on the involvement of the said vehicle in the offence itself.

18. The relevant portion of the complaint reads as follows :

*“p) Acting on the disclosure made by Shri Manu Khosla that one white colour Toyota Fortuner car bearing registration No. DL 13 CA 1800, was parked in locked condition covered with car cover on the backside of his residence at 5/11, East Patel Nagar, New Delhi. containing narcotic drug/narcotic substance in huge quantity. A team of officers of DRI. comprising of Shri Diwakar Joshi, Intelligence Officer and Shri Ravi Burman, Senior Intelligence Officer, immediately rushed to the above said location and reached the backside of the residence of Shri Manu Khosla located at 5/11, 2nd Floor, East Patel Nagar, New Delhi-110008 **at around 2000 hrs on 16.04.2013.** After reaching the backside of the said residence, it was noticed that few vehicles were parked there. On inspection, it was found that one vehicle of the size and shape mentioned above, was parked there, covered with car cover. On opening the car cover, it was found to be a white colour Toyota Fortuner having registration No.DL13 CA 1800.”*

(emphasis supplied)



19. In fact, learned senior counsel submits that it is the petitioner's case that the said vehicle was stolen in Bulandshahar, U.P., in relation to which the petitioner had made a complaint dated 10.04.2013 to the concerned police station, which led to registration of FIR No. 210/2013 dated 18.04.2013 at P.S.: Kotwali, Bulandshahar, U.P. It is pointed-out that the complaint about the theft of the car was made by the petitioner on *10.04.2013 i.e.*, well before the date the car is stated to have been recovered at the instance of Manu Khosla from behind the latter's house.
20. It is further argued, that even if it is assumed that the said vehicle was recovered pursuant to the disclosure statement made by the co-accused Manu Khosla recorded under section 67 of the NDPS Act, such statement cannot be read against the petitioner, inasmuch as in ***Tofan Singh vs. State of Tamil Nadu***,³ the Supreme Court has held that the statement of a co-accused recorded under section 67 is merely in the nature of a confessional statement of a co-accused, which must be dealt with in accordance with the well settled principles under sections 25 and 27 of the Indian Evidence Act, 1872.
21. The petitioner argues that two co-accused persons, namely Anil Kumar and Manu Khosla have already been admitted to regular bail; and that therefore, he is also entitled to bail even on the ground of parity.
22. It is submitted that Anil Kumar was admitted to bail *vide* judgment dated 22.12.2022 passed in BAIL APPLN. No. 3638/2021 since he

³ (2021) 4 SCC 1



had already remained in custody for about 08 years; and that Manu Khosla was admitted to regular bail *vide* judgment dated 14.09.2023 passed in BAIL APPLN. No. 841/2021 by a Co-ordinate Bench of this court after a detailed consideration of the evidence on record, *inter-alia* observing as follows :

“19. In the present case, admittedly, public witnesses cited by the prosecution have turned hostile with regard to the identification of the vehicle from which substantial recovery of contraband was made. The said witnesses in their testimonies recorded before the learned Special Court have come up with a totally different story which is in complete contrast to the case of prosecution. The witnesses have been cross-examined by the prosecution and have been confronted with the documents they have signed. The ultimate test of the veracity of the testimony of these witnesses would be determined by the learned Special Judge but for the purpose of the present bail application, the contradictions in the case of the prosecution cannot be ignored.

* * * * *

“21. It is an admitted case of the prosecution that some of the case property has been tampered with and whether that would have an effect on the sanctity of the remaining case property would be determined by the learned Trial Court after completion of the evidence in the present case. It is also pertinent to note, that all the contraband at the time of initial drawing of the sample while being tested with the drug testing kit was stated to be ‘Methaqualone’. ‘Methaqualone’ is a psychotropic substance listed at serial no. 20 of the Schedule [in terms of clause (xxiii) of Section 2] of the NDPS Act. However, the CRCL report with regard to same was determined to be ‘Ketamine Hydrochloride’ which is a psychotropic substance listed at serial no. 111 read with serial no. 110 A of the Schedule to the NDPS Act, ‘Methamphetamine’ which is a psychotropic substance listed at serial No. 19 of the Schedule to the NDPS Act, 1985 and serial No.30 of the Schedule II to the NDPS Rules, 1985 and ‘Phenylpropanolamine’ which is a Controlled Substance under



Schedule B and C of the Narcotics Drugs and Psychotropic Substances (Regulation of Controlled Substances) Order, 2013.”

(emphasis supplied)

23. It is submitted that the fact that public witnesses cited by the prosecution have turned hostile with regard to the identification of the vehicle from which contraband is alleged to have been recovered; and the fact that the contraband allegedly recovered has also been tampered with, would also enure benefit of the petitioner, as it has in favour of Manu Khosla, who has been admitted to bail.
24. Lastly, it is argued that the petitioner has already suffered actual custody of about 03 years and 04 months as an undertrial; and only about 30 of the 42 prosecution witnesses cited by the DRI have been examined so far and the trial is unlikely to finish any time soon.
25. In this context, learned senior counsel has also placed reliance on order dated 13.07.2023 made by the Supreme Court in ***Rabi Prakash vs. State of Odisha***⁴ highlighting the following observations made in that matter :

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re : formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he was already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the

⁴ 2023 SCC OnLine SC 1109



statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

26. It is therefore argued, that the petitioner is also entitled to be released on regular bail by reason of the delay in completion of trial, which delay has not been occasioned by reason of any default on the petitioner's part.
27. On the other hand, Mr. Akshay Amritanshu, learned Senior Standing Counsel appearing for the DRI has opposed the grant of regular bail, by pressing the following submissions :
- 27.1. It is submitted that seizure of the contraband is not vitiated merely because its inventorisation and sampling was not conducted with the permission and in the presence of a Magistrate, since that principle was laid down by the Supreme Court in *Union of India vs. Mohanlal & Anr.*,⁵ which judgment only came to be pronounced on 28.01.2016, whereas in the present case the seizure, inventorisation and sampling of the contraband had taken place in 2013.
- 27.2. It is submitted that while conducting the seizure, inventorisation and sampling of the contraband in the present case, the DRI had followed the practice that was prevalent prior to the Supreme Court's pronouncement in *Mohanlal* (supra), and therefore, the seizure, inventorisation and sampling of contraband is valid and would be admissible in evidence.

⁵ (2016) 3 SCC 379



- 27.3. It is further submitted that forensic report dated 24.05.2013 received from the Central Revenue Control Laboratory, New Delhi in respect of the contraband seized, confirms the presence of *ketamine hydrochloride*, which is covered in the Schedule to the NDPS Act.
- 27.4. In response to the submission that in its judgment dated 14.09.2023, a Co-ordinate Bench of this court has recorded the admission on the part of the prosecution, that some of the case property has been tampered with, learned Senior Standing Counsel submits that since only *a part* of the case property was tampered with, the entire recovery cannot be discarded and a final decision on this must await conclusion of the trial.
- 27.5. It is also argued that the rigors of the additional twin conditions contained in section 37 of the NDPS Act would continue to apply, regardless of the period of custody that the petitioner may have suffered, since the observations contained in the Supreme Court's order dated 13.07.2023 in *Rabi Prakash* (supra) do not amount to law laid-down by the Supreme Court; and those were only observations made in the factual context of that particular case.
- 27.6. It is also argued on behalf of the DRI, that the petitioner's reading of *Tofan Singh* (supra) is misconceived inasmuch as the vehicle recovered pursuant to Manu Khosla's statement recorded under section 67 can very much be read against the petitioner as well, since the petitioner has been found to be the registered owner of the said vehicle.



28. In a brief rejoinder on behalf of the petitioner, it has been pointed-out that the decision of the Supreme Court in *Mohan Lal* (supra) referred to by the petitioner, which judgment is dated 28.01.2016, is not the first judgment that holds that breach of the conditions of section 52-A(2) of the NDPS Act vitiates a recovery; that the said principle was laid-down by an earlier decision of the Supreme Court in *Union of India vs. Mohanlal & Anr.*⁶ in 2012; and that therefore, the enunciation of the law in relation to section 52-A(2) was very much applicable to the present case, in which recovery is alleged to have been made on 16.04.2013.
29. Though much has been argued on behalf of the parties, upon a conspectus of the facts and circumstances of the case, and based upon the material on record, at this stage the following factors weigh with the court for the limited purpose of deciding the present bail petition:
- 29.1. Admittedly, the petitioner is being sought to be connected with the offences alleged based on the allegation that the Toyota Fortuner from which contraband is alleged to have been recovered, stands registered in the petitioner's name. Significantly, *vide* complaint dated 10.04.2013 made by the petitioner to the concerned police station in Bulandshahar, U.P., he had reported that his vehicle Toyota Fortuner bearing registration number DL-13CA-1800, had been stolen, which complaint came to be registered as FIR No. 210/2013 dated 18.04.2013 at P.S.: Kotwali, Bulandshahar, U.P. As per the

⁶ (2012) 7 SCC 719



record therefore, unless proven otherwise in the course of trial, the said vehicle had been stolen and was not in the possession or control of the petitioner from 10.04.2013, and therefore the association of the petitioner with the alleged recovery of contraband from the said vehicle on 16.04.2013, would have to be proved by the DRI at the trial;

- 29.2. Furthermore, as per the record, the inventorisation and sampling of the contraband allegedly recovered, has admittedly not been done either with the permission or in the presence of a Magistrate, which vitiates the inventorisation and sampling on the touchstone of section 52-A(2) of the NDPS Act, as enunciated by the Supreme Court in *Yusuf @ Asif* (supra), *Mohammed Khalid* (supra) and *Mohanlal (2012)* (supra) and the contraband so seized would therefore not be primary evidence admissible at the trial;
- 29.3. The petitioner has already suffered actual custody of about 03 years and 04 months as an undertrial; and in view of the number of prosecution witnesses still remaining to be marshalled, the conclusion of the trial does not seem likely in the near future;
- 29.4. Two of the co-accused persons, namely Anil Kumar and Manu Khosla, have already been granted regular bail by Co-ordinate Benches of this court; and
- 29.5. Lastly the petitioner has been on interim bail on medical grounds for a long time but there is no allegation that he has violated any terms or conditions of such bail; or that he has



tried to flee from justice; or that he has interfered in the process of trial in any manner.

30. As a sequitur to the above, this court is persuaded to admit the petitioner **Amit Kumar Singh s/o Omvir Singh** to *regular bail*, subject to the following conditions :

30.1. The petitioner shall furnish a personal bond in the sum of Rs.1,00,000/- (Rupees One Lac Only) with 02 local sureties in the like amount from family members, to the satisfaction of the learned trial court;

30.2. The petitioner shall furnish to the Investigating Officer a cellphone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

30.3. The petitioner shall surrender his passport to the learned trial court and shall not travel out of the country without prior permission of the learned trial court;

30.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case. The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

30.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the Investigating Office.

31. Nothing in this judgment shall be construed as an expression of opinion on the merits of the pending matter.



32. A copy of this judgment be sent to the concerned Jail Superintendent *forthwith*.
33. The petition stands disposed-of.
34. Other pending applications, if any, are also disposed-of.

ANUP JAIRAM BHAMBHANI, J.

AUGUST 06, 2024
ds

Signature Not Verified

Digitally Signed By: ANJALI
KAUSHIK

Signing Date: 06.08.2024
14:35:42