



2024:DHC:5182



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 15.07.2024

+ **BAIL APPLN. 3031/2022**

SUNIL KUMAR

..... Applicant

versus

**DIRECTORATE OF REVENUE
INTELLIGENCE**

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Aditya Aggarwal, Mr. Naveen Panwar
& Ms. Kajal Garg, Advocates.

For the Respondent : Mr. Satish Aggarwala, Sr. Standing
Counsel- (Indirect Taxes, Department of
Revenue) alongwith Mr. Gagan Vaswani,
Advocate.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 ('CrPC') seeking regular bail in DRI File No. DRI/DZU/23/INT/06/SIC, registered by Directorate of Revenue Intelligence ('DRI'), for the offence under Sections 23/28/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

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BAIL APPLN. 3031/2022

Page 1 of 17



2024:DHC:5182



2. It is the case of the prosecution that secret information was received that huge quantity of contraband was regularly smuggled to India from different countries through courier mode by a syndicate based in Delhi. Based on the said information, three suspicious consignments, being, DHL AWB No. 1633540134, DHL AWB No. 7699382132 and FedEx AWB No. 771807276042 lying at the DHL/FedEx Courier Terminal, NCT, IGI Airport, New Delhi were identified.

3. On 31.10.2020, during the examination of DHL AWB No. 1633540134, a brown coloured packet containing contraband was found concealed in each of the 6 automobile shockers. It weighed 982g but due to the unavailability of testing kit, it could not be identified as to which contraband it was. Later, on testing, the contraband was identified as Heroin.

4. FedEx AWB No. 771807276042 was then examined on 10.11.2020. During the examination of the said consignment, it was found to contain 7 automobile shockers with 998g of Heroin concealed inside the same.

5. Thereafter, DHL AWB No. 7699382132 was examined on 24.11.2020. On its examination, it was found to contain 8 items including printed clothes, ear rings, bracelet, etc. On a detailed examination, 2 pairs of leather slippers found in the consignment were suspected to be tampered. Due to the same, the sole of the said slippers were cut and examined. During the examination of the same, a blue coloured packet pasted with adhesive to the sole was recovered. The said packet contained 196g of Heroin.



2024:DHC:5182



6. In follow-up action, the residential premises of co-accused Cletus Okechukwu Martins *alias* Morgan and the residence of the applicant and his brother Anil Kumar were searched on 15.12.2020 with authorization. During the search, incriminating documents pertaining to illegal imports of Heroin by courier by way of concealment inside car shockers, sleepers, etc. were found. Furthermore, fake IDs and fake residential permits in the names of various persons were also recovered and seized.

7. It is alleged that from the email ID of the applicant, fake IDs of various persons were found.

8. Co-accused Cletus, who was staying in India on a business visa, disclosed that he had imported the seized drug consignments with the help of the applicant. In his statement, he asserted that the applicant used to arrange genuine looking addresses, rent agreement and photo IDs.

9. The applicant in his disclosure statement allegedly admitted his association with the co-accused Cletus since the year 2002 and stated that he had been offered a job by the co-accused Cletus to pick parcels and edit certain documents.

10. It is the case of the prosecution that according to intelligence and inquiries from FedEx, DHL and other sources, 10 consignments (including the three consignments already seized) were imported using fake IDs by co-accused Cletus in collaboration with the applicant. On the examination of these consignments on different dates, 9 of them were found to contain narcotic substances. The details of all the alleged consignments and the quantity of the narcotic substances



2024:DHC:5182



recovered from them and the dates on which the consignments were seized is stipulated hereunder:

AWB No.	Narcotic substance	Qty. in grams	Date on which intelligence received	Date on which the consignment was apprehended	Date on which the consignment was seized
1633540134 (DHL)	Heroin	982	30.10.2020	30.10.2020	10.11.2020
77180776042 (FedEx)	Heroin	998	30.10.2020	10.11.2020	10.11.2020
7699382132 (DHL)	Heroin	196	30.10.2020	24.11.2020	24.11.2020
9240523014 (DHL)	MDMA/ MDA	195	14.12.2020	15.12.2020	10.03.2021
9240528721 (DHL)	MDMA/ MDA	191	14.12.2020	15.12.2020	10.03.2021
772126859645 (FedEx)	Heroin	614	14.12.2020	15/16.12.2020	12.03.2021
815159798133 (FedEx)	Heroin	496	14.12.2020	12.03.2021	12.03.2021
8131092210260 (FedEx)	Heroin	272	14.12.2020	12.03.2021	12.03.2021
1Z55163W0464 890049 (UPS)	Cocaine	900*	14.12.2020	19.03.2021	19.03.2021

**weight of the drug along with the white cloth upon which the same was pasted*



2024:DHC:5182



11. It is alleged that the applicant was actively involved in the import of drugs in connivance with co-accused Cletus and the main role of the applicant was to arrange fake documents. It is alleged that the applicant also used to collect the parcels and hand them over to the co-accused Cletus.

12. The applicant and co-accused Cletus were arrested on 15.12.2020.

13. The learned Trial Court *vide* order dated 09.09.2022, dismissed the applicant's bail application and hence the present application.

SUBMISSIONS OF APPLICANT

14. The learned counsel for the applicant contended that the applicant has clean antecedents and he has been falsely implicated in the present case. He submitted that the applicant is in custody since 15.12.2020 and the matter is still at the stage of examination of prosecution witnesses.

15. He contended that the prosecution's sampling method, where contents of four packets from consignment no. 1633540134 were mixed together homogeneously before sampling, is against the established legal procedure.

16. He submitted that the samples should have been collected from each packet before being sent to FSL for testing.

17. He further contended that all the consignments were apprehended and seized on different occasions, then taken into



2024:DHC:5182



custody by the DRI. He argued that no samples were drawn from the seized consignments on the spot, which violates Standing Order No. 1 of 1988 dated 15.03.1988.

18. He submitted that the prosecution has failed to explain the unreasonable delay in apprehending the consignments despite knowing that the same were lying at the courier terminals suspecting that they contained the contraband.

19. He further submitted that neither the DRI officers carried any field testing kits nor were the drug-testing machines in working condition were available at the courier terminal. He submitted that there is no justification for the delay caused by the prosecution in testing and seizing the consignments.

20. He contended that the consignments allegedly remained in the custody of DRI from the day of seizure until the drawing of samples. He submitted that the prosecution has failed to provide a cogent explanation for the delay in filing the application under Section 52A before the learned Magistrate.

21. He contended that the prosecution admitted that the contraband packets were tampered with when found concealed in various items. He argued that the term "tamper" is vague and the lack of specific details raises significant doubts about the prosecution's case, especially since the consignments were not tested on the spot.

22. He submitted that despite having all the technological advantages equipped with the raiding officers, no photographs and videography of the search and seizure was conducted by them.



2024:DHC:5182



23. He contended that the applicant was unaware of any smuggling activities involving contraband in the imported consignments. He submitted that the applicant was engaged by co-accused Cletus for a nominal fee for help in importing the consignments and he believed in good faith that the co-accused was involved in the legitimate business of importing automobile spare parts, such as shock absorbers.

24. He further argued that according to the prosecution's case, the consignee of consignment no. 1633540134 was the applicant, however, the same is disputed. He submitted that the mobile number associated with the said consignment does not belong to the applicant. He submitted that there is no payment transaction to link the applicant to the said consignment as well.

25. He further submitted that even co-accused Cletus had stated that he used to book the consignments with different identity cards to avoid detection.

SUBMISSIONS OF DRI

26. On the other hand, the learned senior standing counsel for the respondent submitted that the procedures prescribed under the NDPS Act were followed diligently, with all proceedings conducted in the presence of independent panchas.

27. It was further submitted that the delay in testing was due to circumstances beyond the department's control, and the consignment remained securely stored as documented.

28. He contended that due to non-availability of Drug Test kit, the filing of application under section 52A of the NDPS Act before the



learned Magistrate was delayed even after DRI had taken all efforts to complete the procedure in due time.

29. He contended that the mixing of all the packets were carried out before learned Magistrate which was duly photographed and videographed and the correctness of the inventory had been duly certified.

30. He further submitted that the applicant allegedly played a crucial role in preparing forged or false identity documents for co-accused Cletus.

31. He submitted that several counterfeit documents were seized from the applicant, who also acted as the consignee in a consignment where a commercial quantity of Heroin was found.

CONCLUSION

32. It is unequivocally established that, to be granted bail, the accused charged with offence under the NDPS Act must fulfil the conditions stipulated in Section 37 of the NDPS Act. Section 37 of the NDPS Act reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and



2024:DHC:5182



(ii) where the Public Prosecutor oppose the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force, on granting of bail.”

33. The accusation in the present case is with regard to the recovery of commercial quantity of contraband. Once the rigours of Section 37 of the NDPS Act are attracted, as provided under the Section, the Court can grant bail only when the twin conditions stipulated in Section 37(1)(b) of the NDPS Act are satisfied in addition to the usual requirements for the grant of bail – (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (2) That the person is not likely to commit any offence while on bail.

34. The learned counsel for the applicant submitted that a liberal interpretation of Section 37 of the NDPS Act must be taken into account by the Court in the present case on the following grounds:

- a) The applicant did not have any knowledge about the imported parcels containing the contrabands;
- b) Delay in filing application under Section 52A of the NDPS Act and contravention of Standing Order No.1/88; and
- c) Delay in trial.



2024:DHC:5182



35. The learned counsel for the applicant has contended that the application under Section 52A of the NDPS Act was preferred with significant delay and no sampling was done on the spot which is in contravention of Standing Order No.1/88. It is argued that the safe custody of the recovered substance is doubtful as there is no documentary evidence as to where the seized substance was kept after seizure. The learned senior standing counsel for DRI has however contested the same and stated that the whereabouts of the seized samples was well documented. He also contended that the delay was due to factors beyond the control of the respondent department.

36. This Court in *Sovraj v. State* : **2024:DHC:5009**, advertent to a number of judgments, has concurred with the view of a Coordinate Bench of this Court in *Somdutt Singh @ Shivam : Narcotics Control Bureau* : **2023:DHC:8550**, and held that the accused persons cannot be allowed to go scot free on minute irregularities in procedure of sampling or belated compliance of the procedure under Section 52A of the NDPS Act and Standing Order No.1/88, especially when the prosecution has not had the opportunity to furnish an explanation. It was held that the alleged violation in manner of mixing of seized substances and whether the same has caused any prejudice to the applicant would be a matter of trial.

37. Considering that this Court has already found that there is doubt as to whether the applicant had knowledge about the contents of the consignments, this Court does not deem it apposite to comment as to whether any prejudice has been caused to the applicant on account of the delayed compliance or the alleged irregular procedure of sampling.



2024:DHC:5182



38. It is open to the applicant to press the aforesaid defences at the time of trial and contest that that the drawn samples were not true representatives of the seized substance.

39. It is the case of the prosecution that the applicant used to provide fake documents and collect parcels on instructions of co-accused Cletus. It is alleged that the applicant also disclosed that in March, 2020, co-accused Cletus had offered him the job of picking parcels from FedEx and DHL along with editing certain documents like expired passport copies, PAN cards, driving license and rent agreements for the purpose of importing parcels.

40. This Court has perused the disclosure statement of the co-accused Cletus as well as of the applicant. It is relevant to note that the prosecution has strongly relied upon the disclosure statements made by the accused persons. It is trite law that while the veracity of the disclosure statements is to be tested at the time of the trial, this Court cannot lose sight of the decision of the Hon'ble Apex Court in the case of *Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1*, wherein it was held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence without corroboration..

41. Even as per his disclosure statement, the applicant is claiming to be not aware that the parcels contained any contraband. The co-accused Cletus, who is alleged to be the main accused, has not stated that the applicant was aware that the contraband was being smuggled. The applicant came in contact with the co-accused during the Covid-19 time, and he offered the applicant a nominal sum of ₹5,000/- to 6,000/- for receiving the consignments.



2024:DHC:5182



42. The evidence produced by the prosecution, at this stage, in the form of disclosure statements and the recovered documents, *prima facie*, indicate that the applicant was helping the co-accused Cletus in the import of consignments. They, however, at this stage, do not indicate that the applicant was aware of the contents of the consignments. The prosecution has sought to impute knowledge of the presence of contraband on the applicant by contending that the amount paid for each consignment was quite high and would only be paid if the helper had the knowledge of the presence of the contraband.

43. From the statements of the co-accused persons, the *bona fide* of the applicant in helping the co-accused Cletus and him not being aware of the presence of the contraband in the consignments, cannot be ruled out. The applicant also has clean antecedents. Thus, in the opinion of this Court, there are reasonable grounds to believe that the applicant is not guilty of the offence. Whether the applicant had any knowledge that the imported consignments contained any contraband would be subject matter of the trial and will be seen after the evidence is led. However, at this stage, the benefit has to be given to the applicant.

44. Delay in trial and long period of incarceration is also an important factor which has to be kept in mind while considering the application for Bail.

45. In the present case, the matter is at the stage of prosecution evidence. It is stated that merely three witnesses have been examined out of the eighty-three listed prosecution witnesses. As noted above,



2024:DHC:5182



the applicant has been in custody since 15.12.2020. There is no likelihood of the trial being completed in the near future.

46. It is trite law that grant of bail on account of delay in trial cannot be said to be fettered by the embargo under Section 37 of the NDPS Act. The Hon'ble Apex Court, in the case of **Mohd. Muslim v. State (NCT of Delhi) : 2023 SCC OnLine SC 352** has observed as under:

“21....Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

22. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country²⁰. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

23. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

24. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald



2024:DHC:5182



Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

(emphasis supplied)

47. The Hon'ble Apex Court in ***Rabi Prakash v. State of Odisha*** : **2023 SCC OnLine SC 1109**, while granting bail to the petitioner therein held as under :

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

48. The Hon'ble Apex Court in ***Badsha SK. v. The State of West Bengal*** (order dated 13.09.2023 passed in **Special Leave Petition (Crl.) 9715/2023**), granted bail to the petitioner wherein who had been in custody for more than two years with the trial yet to begin.

49. Similarly, in ***Man Mandal &Anr. v. The State of West Bengal*** (**Special Leave Petition (Crl.) 8656/2023** decided on 14.09.2023), the petitioner therein had been in custody for almost two years and the Hon'ble Apex Court found that the trial is not likely to be completed



2024:DHC:5182



in the immediate near future. The petitioner was, therefore, released on bail.

50. In ***Dheeraj Kumar Shukla v. State of U.P. : 2023 SCC OnLine SC 918***, the Hon'ble Apex Court released the petitioner therein on bail, and observed as under:

“3. It appears that some of the occupants of the Honda City” Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

51. A Coordinate Bench of this Court in ***Gurpreet Singh v State of NCT of Delhi : 2024:DHC:796***, considered the effect of delay and observed as under:

“16. In addition to the above, only 2 (two) out of 22 witnesses have been examined by the prosecution, and that too partially, though more than three and a half years have passed since the arrest of the applicant. It may be true that the reason for the delay in the conclusion of the trial may be for various factors, may be not even attributable to the prosecution, like Covid 19 pandemic and restricted function of the Courts, however, as long as they are not attributable to the applicant/accused, in my view, the applicant would be entitled to protection of his liberty under Article 21 of the Constitution of India. Delay in trial would, therefore, be one of the consideration that would weigh with the Court while considering as application filed by the accused for being released on bail.”

52. From the foregoing, it is evident that despite the stringent requirements imposed on the accused under Section 37 of the NDPS Act for the grant of bail, it has been established that these requirements do not preclude the grant of bail on the grounds of undue



2024:DHC:5182



delay in the completion of the trial. Various courts have recognized that prolonged incarceration undermines the right to life, liberty, guaranteed under Article 21 of the Constitution of India, and therefore, conditional liberty must take precedents over the statutory restrictions under Section 37 of the NDPS Act.

53. In such circumstances, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail as there are reasonable grounds to believe that the applicant did not know about the contents of the consignments and due to the prolonged delay in the trial.

54. The applicant is also stated to be of clean antecedents. The applicant also has a wife and three minor children to take care of. Therefore, I am satisfied that reasonable grounds exist for believing that the applicant is not likely to commit any offence while on bail.

55. The applicant is, therefore, directed to be released on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:

- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
- b. The applicant shall under no circumstance leave the country without the permission of the learned Trial Court;



2024:DHC:5182



- c. The applicant shall appear before the learned Trial Court as and when directed;
- d. The applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
- e. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.

56. In the event of there being any FIR/DD entry / complaint lodged against the applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.

57. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the trial and also not be taken as an expression of opinion on the merits of the case.

58. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JULY 15, 2024