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

Date of decision: 20.05.2024

(3)+ CRL.M.C. 5591/2022

THE DIRECTORATE OF REVENUE INTELLIGENCE ..... Petitioner

Through: Mr.Harpreet Singh, Sr. St. Counsel, Ms.Suhani Mathur, Mr.Jatin Kumar Gaur, Advs

versus

DEV SINGH ..... Respondent

Through: Mr.Brij Lal Chaurasia, Adv.

(4)+ CRL.M.C. 6437/2022

DIRECTORATE OF REVENUE INTELLIGENCE ..... Petitioner

Through: Mr.Harpreet Singh, Sr. St. Counsel, Ms.Suhani Mathur, Mr.Jatin Kumar Gaur, Advs

versus

ABDUL NASIR ..... Respondent

Through: Mr.Rana Kunal, Mr.Sanjeev Kr. Malik, Ms.Shivani Mehta, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking cancellation of the Bail granted to the respondents by the Orders dated 13.10.2022 and 10.11.2022 respectively (hereinafter collectively referred to as the

'Impugned Orders'), passed by the learned Additional Sessions Judge (Special Judge-NDPS), South District, Saket Courts, New Delhi (hereinafter referred to as the 'Trial Court') in SC No.370/2022 titled ***Directorate of Revenue Intelligence v. Dev Singh*** and ***Directorate of Revenue Intelligence v. Abdul Nasir***, respectively.

2. As common issues would arise for consideration in the present petitions and as both the petitions deal with the same set of facts, they are being considered by this common order.

3. It is the case of the prosecution that based on the specific information that some contraband goods might be concealed in a consignment imported vide Bill of Lading No. JEA/NSA/7065 dated 01.01.2022, declaring it to contain 'Rock Salt Powder' with consignee details as 'M/s Good Life Global', the officials of the respondent examined the four containers on 16.02.2022 and 17.02.2022. It is alleged that during the said examination of one of the containers, examined on 17.02.2022, two HDPE bags containing off-white yellowish colour substance having some pungent smell were found kept concealed in the third last rack inside the said container. It is alleged that the substance recovered from the said two HDPE bags was tested with the help of the field Drug Detection Kit and it gave a positive result for the presence of '*Heroin*'. It is alleged that the examination of said four containers has resulted in the recovery and seizure of 34.70 kg of Heroin.

4. The prosecution further alleges that M/s Lotus Darya Bandar Shipping Services Company Limited, Iran on behalf of M/s Hamed Karimi, Iran booked one consignment in the name of shipper, M/s

Hamed Karimi, Iran through one M/s RDS Shipping Company, Iran. It is alleged that as per the shipping instructions the Bill of Lading showed the shipper as M/s Hamid Karini, Iran and the consignee as Abetar Healthcare Pvt. Ltd. New Delhi; goods declared were Rock Salt powder. A pre-alert e-mail was sent by M/s RDS Shipping Company, Iran to M/s Bilander Logistics Pvt. Ltd., which sent the same to the declared consignee, that is, M/s Abetar Healthcare Pvt. Ltd.. It is stated that Mr.Lalit Singh, a Director of M/s Abetar Healthcare Pvt. Ltd., however, by the email dated 03.01.2022 informed M/s Bilander Logistics Pvt. Ltd that the said consignment was not in their knowledge and not even their purchase order. It is alleged that the booking agent M/s Hamid Karini, by the email dated 02.01.2022, requested for a change of the name of the consignee to M/s Good Life Global, New Delhi. It is stated that on the said request, the Bill of Lading was changed eventually in the name of M/s Good Life Global, New Delhi.

5. As regards the respondent Dev Singh (in Crl.M.C. 5591/2022), the prosecution alleges that he is one of the Directors of M/s Abetar Healthcare Pvt. Ltd., which is the original/initial consignee of the alleged Rock Salt Powder containing the alleged contraband. It is further alleged that the respondent has hatched a conspiracy with the other co-accused, including Monir Ahmed, who has used the Import-Export Code and other import documents of M/s Abetar Healthcare Pvt. Ltd., of which the said respondent is a Director, for the import of the alleged contraband. The prosecution further alleges that he and co-accused Monir Ahmad were in constant touch with each other and

there are WhatsApp calls between them indicating the same. It is stated that he has rented the basement of his shop to co-accused Nitish Kumar, who is stated to be the proprietor of M/s Good Life Global, for opening the office of the said proprietorship concern, which is also the eventual consignee of the consignment which is alleged to have contained the alleged contraband. He is alleged of paying a sum of Rs.7 Lakhs in cash to the co-accused Abdul Nasir (the respondent in Crl.M.C. 6437/2022) for clearance of the import consignment.

6. As far as the respondent Abdul Nasir (in Crl.M.C. 6437/2022) is concerned, the prosecution alleges that he along with the co-accused Monir Ahmad hatched a conspiracy to smuggle the alleged contraband and then contacted and involved the other co-accused, including Dev Singh and Nitish Kumar amongst others. It is alleged that he was also the witness to the Memorandum of understanding between the co-accused persons for the import of the consignment containing the alleged contraband in the name of M/s Good Life Global. He is also alleged to have approached government officials for customs clearance along with the co-accused Nitish Kumar. It is alleged that the co-accused, Nitish Kumar was found staying with the said respondent when they were apprehended. He is also alleged to have taken a sum of Rs.7 Lakhs in cash from the co-accused, Dev Singh, for the clearance of the import consignment.

7. The learned standing counsel for the petitioner submits that the respondents are involved in the import of alleged contraband/Heroin into India, that too of a commercial quantity. He submits that earlier they had tried to carry the import in the name of M/s Abetar

Healthcare Pvt. Ltd, and only when one of the directors of the said Company-Mr.Lalit Singh refused to accept the consignment, that they eventually carried out the import in the name of M/s Good Life Global. He further submits that there is ample evidence implicating the respondents in the case. He submits that the co-accused have also disclosed about their involvement. He submits that though the statement(s) of co-accused may not, eventually, be used in the trial to convict the respondents, however, at the stage of deciding an application for grant of Bail, the statement(s) would be relevant and should have been considered by the learned Trial Court.

8. On the other hand, the learned counsels for the respondents submit that barring the statement of the co-accused, there is no material implicating the respondents in the present case. Placing reliance upon the judgment of the Supreme Court in ***Toofan Singh v. State of Tamil Nadu,*** (2021) 4 SCC 1, they submit that the disclosure statement of the co-accused cannot be used to implicate the respondents.

9. I have considered the submissions made by the learned counsels for the parties and perused the Impugned Orders passed by the learned Trial Court.

10. The jurisdiction of this Court in a matter pertaining to cancellation of Bail is rather limited. The Supreme Court has clarified that it can be used either where the Order granting Bail to the respondent/accused is based on an incorrect application of a principle of law or incorrect appreciation of the facts. It may also be cancelled where the accused is alleged to have, in any manner, violated the

conditions of the bail. It is also to be kept in mind that this Court is not to exercise its appellate jurisdiction against the Impugned Orders. I may quote from the judgment of the Supreme Court in ***Deepak Yadav v. State of U.P.,*** (2022) 8 SCC 559, as under:-

> *"**C. Cancellation of bail***
> ***31.** This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).*
>
> ***32.** A two-Judge Bench of this Court in Dolat Ram v. State of Haryana, (1995) 1 SCC 349 laid down the grounds for cancellation of bail which are:*
> *(i) interference or attempt to interfere with the due course of administration of justice;*
> *(ii) evasion or attempt to evade the due course of justice;*
> *(iii) abuse of the concession granted to the accused in any manner;*
> *(iv) possibility of the accused absconding;*
> *(v) likelihood of/actual misuse of bail;*
> *(vi) likelihood of the accused tampering with the evidence or threatening witnesses.*
>
> ***33.** It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening*

circumstances. Following are the illustrative circumstances where the bail can be cancelled:

***33.1.** Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*

***33.2.** Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.*

***33.3.** Where the past criminal record and conduct of the accused is completely ignored while granting bail.*

***33.4.** Where bail has been granted on untenable grounds.*

***33.5.** Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.*

***33.6.** Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.*

***33.7.** When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case."*

11. In the present case, the petitioner has submitted that the learned Trial Court has erred in granting Bail to the respondents by applying incorrect principles of law and not appreciating the restriction on the grant of Bail as contained in Section 37 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (in short, 'NDPS Act').

12. I am unable to agree with the submissions made by the learned counsel for the petitioner.

13. The learned Trial Court was cognizant of the restriction on the power to release the accused on Bail, as prescribed under Section 37 of the NDPS Act. The Court even thereafter, considering the nature of the allegations against the respondents, found that as they are primarily based on the alleged statement of the co-accused persons while they were in custody, which may not be admissible in view of the judgment of the Supreme Court in ***Toofan Singh*** (supra), directed the release of the respondents on Bail. I do not find any infirmity in the said observation and in the reasons given by the learned Trial Court in the Impugned Order granting bail to the respondent(s).

14. Accordingly, I find no merits in the present petitions. The same are dismissed. There shall be no as to costs.

NAVIN CHAWLA, J

MAY 20, 2024/Arya/AS

Click here to check corrigendum, if any