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

+ **BAIL APPLN. 3717/2023**

DEEPAK KHURANA

..... Petitioner

Through: Mr. Subodh Kumar Pathak, Advocate.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

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

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

21.03.2024

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1. This application has been filed under Section 439 read with Section 482 Cr.P.C. for grant of regular bail in Complaint Case No. VIII38/DZU/2022 under Sections 8(c)/22(c)/25/27A/29/61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') registered at NCB, DZU, R.K. Puram, New Delhi.
2. Status report has been filed and nominal roll has been placed on record.
3. Case of the prosecution is that on the basis of information received, NCB team on 26.04.2022 intercepted a vehicle MG Hector bearing Regn. No.HR-87E-1111 at Sarai Kale Khan, New Delhi. The said car was found to be driven by a person named Md. Imran, who on enquiry revealed his involvement in drug trafficking activities and disclosed that he was carrying heroin in the car. Upon search of the car, a light grey colour packet was found and on being opened, it contained heroin which on weighing was 01



kg. During further investigation, Md. Imran revealed that a huge quantity of narcotic drug has been concealed in a godown located at Saraswati Colony, Muzaffarnagar, U.P. and upon search by the NCB team, recovery of 34.250 kg heroin was made from the godown.

4. It is stated in the status report that Md. Imran also disclosed the role and involvement of other accused persons namely, Azeem Ahmed, Qari Hamidullah Yusufi, Mohammad Haikim Salimi, Avtar Singh and Abdul Rab. Imran tendered his voluntary statement under Section 67 of the NDPS Act on 27.04.2022 and disclosed the *modus operandi* of their drug trafficking activity and was arrested on 27.04.2022. Razi Haider Zaidi tendered his statement on 08.05.2022 and disclosed about Deepak Khurana (Applicant) and stated that 50 kg heroin was supplied to him on the direction of Shahid. He further disclosed that Rs.50 lacs of the sale proceeds of the drug were transferred by Azeem to Shahid through *havala*. On 31.05.2022, Applicant tendered his voluntary statement under Section 67 of the NDPS Act and disclosed that he along with Shahid were inmates in Amritsar Jail from 2015 to 2018 in an NDPS case and also disclosed about Mahindra XUV bearing Regn. No. UK-09B-9866 belonging to Shahid, which was being driven by his brother Ajim Ahmad. After being released from Jail, Shahid contacted him and offered to join his drug business. Shahid introduced his contacts namely Razi Haider, Avtar Singh @ Sunny, Mohd. Imran for the purpose of drug business and he met them in Muzaffarnagar and once at Chandigarh for sale and purchase of heroin. He disclosed that he purchased heroin from them and paid money. In his statement, he referred to various dates and places on which transactions took place between him and the other co-accused and also stated that he travelled in his Fortuner car



during all these visits and also identified the places where he stayed as well as the co-accused through their photographs. Applicant was arrested on 31.05.2022 and he disclosed further details of his relationship with Shahid, his visits to Muzaffarnagar and Chandigarh for sale of heroin on 25.04.2022, when he procured 25 kg heroin from Razi and Avtar and on 23.04.2022 when he purchased 4 kg heroin from Razi and paid Rs.13 lacs. He also disclosed his bank details and the details of his vehicle and mobile phones used in the drug business. It is stated that during investigations, reply was received from Rohana Toll Plaza, Muzaffarnagar that as per record, the Fortuner belonging to the Applicant frequently travelled from the said toll plaza. The total seizure in the present case is 1 kg heroin on 26.04.2022 and 34.25 kg heroin on 26.04.2022. Applicant is a part of an international cartel involved in drug trafficking and the bail is strongly opposed.

5. Learned counsel for the Applicant states that Applicant is in judicial custody since 31.05.2022, which is over 17 months and prolonged incarceration is a sufficient ground for release of the Applicant on bail. Applicant is innocent and has been falsely implicated. The only incriminating evidence against the Applicant are the disclosure statements of the co-accused or the alleged confessional statements under Section 67 of the NDPS Act, none of which are admissible in evidence as held by the Supreme Court in *Tofan Singh v. State of Tamil Nadu*, (2021) 4 SCC 1.

6. It is argued that case of the Applicant is not hit by the rigours of Section 37 of the NDPS Act as the arrest memo is under Sections 8(c)/21(c) and 29 of the NDPS Act and this position of law is settled by the High Court of Himachal Pradesh in *Parma Ram v. State of Himachal Pradesh*, 2022 SCC OnLine HP 173. Delay in trial is an important circumstance for grant



of bail even in NDPS cases involving commercial quantity as held by the Supreme Court in *Jitender Jain v. NCB and Another, 2022 SCC OnLine SC 2021* and *Rabi Prakash v. State of Odisha, 2023 SCC OnLine SC 1109*. Investigation stands completed and Charge Sheet stands filed and no purpose will be achieved in continuing with the custody of the Applicant. It is not the case of the Respondent that the Applicant is a flight risk. Applicant is a permanent resident of Punjab and has deep roots in the society. He is the sole bread earner of the family, who is suffering on account of Applicant's incarceration.

7. Learned Senior Standing Counsel appearing on behalf of the Respondent, *per contra*, states that the allegations against the Applicant are serious and the bail should be declined. Huge quantity of heroin has been recovered and being a commercial quantity, there is an embargo under Section 37 of the NDPS Act till the Applicant satisfies the Court that the twin conditions postulated in the said provision are made out. There is sufficient and cogent material on record incriminating the Applicant in the form of recovery of huge quantity of heroin from the godown, bank details showing transactions, record of the toll plaza showing entry and exit of the vehicle owned and used by the Applicant etc. including the CCTV footage retrieved from the said toll plaza, showing presence of the vehicle 16 times between March, 2022 to April, 2022. Applicant is a part of an international syndicate involved in drug trafficking, a menace to the society and one of the accused is absconding. Applicant is involved in three other cases: (i) FIR No. 187 dated 21.09.2007 under Section 302 IPC; (ii) FIR No. 65 dated 15.07.2018 under Sections 21, 22, 61 and 85 of NDPS Act; and (iii) FIR No. 102 dated 17.10.2020 under Sections 24, 61 and 85 of NDPS



Act and as can be seen 02 out of the 03 cases are under the NDPS Act. The material on record is sufficient to convict the Applicant and cannot lead to a satisfaction being arrived at by this Court that there are reasonable grounds for believing that Applicant is not guilty of the offences. His involvement in NDPS cases in the past shows that he is likely to commit the offence, if released on bail and therefore, the Applicant has not crossed the threshold of meeting the conditions of Section 37 of the NDPS Act, which are a *sine qua non* for grant of bail.

8. I have heard learned counsel for Applicant and the learned Senior Standing Counsel for NCB and examined their rival contentions.

9. In the present case, as per the status report, 1 kg heroin was recovered from the vehicle MG Hector and 35.250 kg heroin was recovered subsequently from the godown at Muzaffarnagar. There are disclosure and voluntary statements on record of all the co-accused including the voluntary statement of the Applicant. Documentary material is available in the form of CCTV footage, response from the toll plaza and bank details evidencing monetary transactions between the co-accused. As the quantity involved is a commercial quantity, rigours of Section 37 of the NDPS Act would apply. The Scheme of Section 37 of the NDPS Act shows that exercise of power to grant bail is subject to not only limitations under Section 439 Cr.P.C. but also limitations of Section 37 which commences with a non-obstante clause. In ***Sukhdev Singh v. Union Territory, Chandigarh, 1986 SCC OnLine P&H 236***, Punjab and Haryana High Court held that plain language of Section 37(1)(b) shows that the Section is couched in a negative form i.e. the Court must begin with a negative perception towards bail but can proceed to grant if the twin conditions are satisfied, the first that prosecution must be



given an opportunity to oppose the application and the second that there are reasonable grounds to believe that Applicant is not guilty of such offence and is not likely to commit any offence when on bail. In ***State of Kerala and Others v. Rajesh and Others, 2020 SCC OnLine SC 81***, Supreme Court held that the provisions of Section 37 of the NDPS Act are mandatory and no leniency should be shown in heinous offences pertaining to trade in narcotics and psychotropic substances. [Ref.: ***Union of India v. Ram Samujh and Another, (1999) 9 SCC 429***; ***Collector of Customs, New Delhi v. Ahmadalieva Nodira, (2004) 3 SCC 549***; ***Union of India v. Rattan Mallik alias Habul, (2009) 2 SCC 624***; and ***Union of India v. Prateek Shukla, (2021) 5 SCC 430***].

10. The material on record at this stage is sufficient for this Court to hold that in view of the rigours of Section 37 of the NDPS Act, Applicant is not entitled to bail. There appears to be a larger conspiracy and the Applicant has played a crucial role in the same. Being a commercial quantity, the bar under Section 37 of the NDPS Act applies, as the Court is of the *prima facie* view that Applicant is guilty of the offence under the NDPS Act. Involvement of the Applicant in two other cases under the NDPS Act shows his propensity to commit crime and there is likelihood that if released on bail the Applicant may commit the same crime again. As far as the contention that no recovery has been effected is concerned, the same has no force as this cannot absolve the Applicant from the scrutiny required under Section 37(1)(b)(ii) of the NDPS Act, as observed in the judgments referred to and relied upon by the counsel for the Respondent, as above. In the present case, while it cannot be said that there is a delay in trial, however, even otherwise in the facts of this case, bail cannot be granted on this ground alone.



11. For all the aforesaid reasons, this Court is of the opinion that at this stage Applicant cannot be released on bail. The application is accordingly dismissed.

JYOTI SINGH, J

MARCH 21, 2024

B.S. Rohella/shivam