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

Reserved on: 28th August, 2024
% ***Pronounced on: 01st Ocotber,2024***

\+ **<u>BAIL APPLN. 3789/2023</u>**

PANKAJ @ PANKAJ VAID @ AMIT @ SANJU BABA
S/o Shri Surinder Pal,
R/o 1853, Gali Chapper Wali,
Bazar Loharan Wala, Laxmansar Chowk,
Amritsar, Punjab ..... Petitioner

Through: Mr. Amit Chadha, Mr. Manish Sharma, Mr. Atin Chadha & Ms. Munisha Chadha, Advocates.

versus

STATE (NCT OF DELHI)
Through SHO,
PS Crime Branch, New Delhi ..... Respondent

Through: Ms. Richa Dhawan, APP for State.
S.I. Rohit, PS Crime Branch, Delhi.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>J U D G M E N T</u>

<u>NEENA BANSAL KRISHNA, J.</u>

1. The present Petition under Section 439 of the Code of Criminal Procedure, 1973 has been filed on behalf of the petitioner Pankaj seeking grant of regular bail in FIR No. 151/2022 registered under Sections 21/27A/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 *(hereinafter referred to as* "NDPS Act, 1985"*)* at Police Station Crime

Branch, South West, Delhi.

2. According to the prosecution on 22.07.2022, a Crime Team was led by Inspector Jasbir Singh who along with raiding team on the pointing out of the secret informer, apprehended Shammi Kumar @ Sunny Kumar and while he was waiting for auto/taxi on the roadside. On the search of his bag, 500 grams of Heroin and Rs. 22,00,000/- cash was recovered. He was served with the Notice under Section 50 of NDPS Act, 1985.

3. The co-accused Shammi Kumar @ Sunny Kumar disclosed that he had worked at Printing press and had come into contact with the petitioner herein who owned SP Tour and Travels and SP Jewellers in Amritsar and had offered the job to him in his travel business. After a year, Shammi Kumar @ Sunny Kumar started selling blankets in Amritsar, Punjab. The petitioner herein later informed the accused-Shammi Kumar @ Sunny Kumar about the job in Delhi, promising him a salary of Rs. 40,000/-, which was accepted by the accused-Shammi Kumar @ Sunny Kumar and he began working with the petitioner.

4. The co-accused Shammi Kumar @ Sunny Kumar provided the names and contact details of others involved in the drug syndicate. He revealed that Rs. 22,00,000/- recovered from him, had been provided by the petitioner. He also disclosed that 10.5 kgs of DRM could be recovered from the rented property i.e., Flat No. A 595, Second Floor, Gali No. 15, Mahavir Enclave Part-II, Delhi, but nothing was recovered. The documents which got recovered from co-accused-Rajat's house revealed that Rajat Gupta was handling the drug business and the petitioner was financing the co-accused Rajat for illegal contraband activity.

5. The co-accused Shammi Kumar @ Sunny Kumar further revealed that

he had come into contact with Rajat Gupta and Ashish Verma, while working at the Printing Press. The accused-Rajat Gupta was arrested without any written Notice and drugs that were found during the raid at Rajat's house, were tested with field testing kit, however, nothing suspect was found.

6. The petitioner has claimed that only the evidence against him is the disclosure statement of the co-accused persons. The statement of Bank Account of the petitioner which has been obtained does not have any illegal transitions and the transactions so reflected in the statement are only the business transactions.

7. It is submitted that during the personal search of the petitioner, only his Driving Licence and Rs. 12,000/-, aside from Notice under Section 50 of NDPS Act, 1985, were recovered. There is no recovery of any kind of contraband from him. The bar under NDPS Act, 1985 is therefore, not applicable to the petitioner.

8. The petitioner has placed reliance on the decisions in *Himanshu Singh vs. State*, MANU/DE/0672/2023 and *Chand Mehra vs. State*, MANU/DE/0784/2023, to claim that in similar circumstances, the bail had been granted to the accused persons.

9. There are 19 prosecution witnesses and the trial would take long to complete. Therefore, keeping the petitioner in custody for indefinite period is not necessary when his presence can be secured otherwise. The petitioner is in jail for more than eighteen months despite there being no recovery effected from him. The petitioner has asserted that he has been falsely implicated in the present case on the basis of false and manipulated disclosure statement of the co-accused persons.

10. The Chargesheet has already been filed in the present matter before the learned Trial Court. The petitioner submits that he undertakes to abide by any conditions that may be imposed on him while granting regular bail.

11. Therefore, he seeks that the regular bail may be granted.

12. **The Status Report** has been filed on behalf of the State, wherein it is submitted that accused-Shammi Kumar @ Sunny Kumar during his remand had disclosed that some goods used for procuring Heroin is lying at his Flat No. A-595, 2nd Floor, Gali No. 15, Mahavir Enclave Part-II, Delhi. Consequently, the raid was conducted at the said flat and at the instance of co accused Shammi Kumar @ Sunny Kumar, 10.5 kgs of heroine in three polythene bags reported to be used for procuring the contraband, was seized by the police after due compliance of Section 55 of NDPS Act, 1985.

13. It is submitted that during the investigations, the police went to Amritsar, Punjab at the instance of co-accused Shammi Kumar @ Sunny Kumar, where he pointed out the house of accused-Rajat Gupta and further disclosed that he was involved with the petitioner along with his brother, Ashish. The co- accused Rajat Gupta was apprehended from the house who during interrogation disclosed that he had closed his connection with main accused-petitioner and was carrying various documents and articles relating to the main accused-petitioner.

14. It is further submitted that accused Pankaj is wanted by Jammu and Kashmir Police in a case of UAPA registered at Police Station R.S. Pura *vide* FIR no. 208/2020 and has been declared as Proclaimed Offender in that case.

15. The accused-petitioner has also been arrested in the present case but during investigations he disclosed that he got directions from Afghanistan

and was receiving contraband in different shapes/modes from those persons, which shows that he is involved in international Drug syndicate. The house has been purchased by the accused-petitioner but the same is in the name of his relative Vishal Puri.

16. The petitioner had also disclosed about one Mahender Singh @ MH, who was later arrested from Punjab and 1820 grams of Heroin was recovered from his possession.

17. The present petition has been opposed on the ground that the offence committed by the petitioner is serious in nature and an International Drug syndicate is involved. The recovery made is of commercial quantity and hence, Section 37 of NDPS Act, 1985 is applicable.

18. The Aadhar Card of the accused-petitioner was recovered from the personal search of co-accused Shammi Kumar @ Sunny Kumar. Also, multiple documents of accused-petitioner were recovered from the possession of accused-Rajat Gupta.

19. It is submitted that the accused-petitioner had already been arrested by National Investigation Agency in 3,000 kgs of Heroin from Mundra Port, Gujarat.

20. The statement under Section 161 of the Code of Criminal Procedure, 1973 *(hereinafter referred to as* "Cr.P.C., 1973"*)* of Vishal Puri, relative of the accused-petitioner has also been recorded.

21. Therefore, the present petition seeking regular bail is opposed.

22. *Learned counsel on behalf of the petitioner* has argued that there is no compliance of mandatory and statutory provisions of Section 41(2), Proviso Section 42(2), Proviso NDPS Act and Section 52A of NDPS Act, 1985 read with Section 100 of Cr.P.C., 1973.

23. It is further argued that the petitioner is not named in the FIR and no recovery of any contraband has been effected from the petitioner. The only material available with the prosecution against the petitioner is the disclosure statement of co-accused Shammi Kumar @ Sunny Kumar and co accused Rajat Gupta. The said disclosure statements did not lead to any new fact nor any recovery was effected from the co-accused persons which could connect them or attribute any direct or indirect role to the petitioner. The only material to connect the petitioner with the co-accused-Rajat Gupta are the documents which are Tax Invoices, Pan Card, Bank Passbooks, Cheque Books, Pollution Certificate, Visa Card, Master Card, Agreement for Sale, Loan Payment Receipts and signed Cheques. These documents in no manner either establish a case under NDPS Act, 1985 or show complicity of the petitioner in this or any other crime.

24. It is also argued on behalf of the petitioner that the other material to connect with the present crime are two financial dealings of Rs. 50,000/- and Rs. 1,00,000/- both dated 18.08.2021 in the account of the petitioner from the co accused, Rajat Gupta. Rs. 50,000/- was in respect of sale of scooty, for which the requisite documents i.e., affidavit of sale, transfer of ownership and report of transfer of ownership are annexed with the application.

25. The other amount of Rs.1,00,000 was deposited by the father of Rajat Gupta through Rajat Gupta as they had borrowed this amount from the petitioner. These transactions in no manner establish or even *prima facie* connect the petitioner with the alleged crime under NDPS Act, 1985.

26. It is further argued on behalf of the petitioner that Rajat Gupta was working as an Accountant which has been verified by the Investigating

Officer during the hearing of his Bail Application before the learned Trial Court. Rajat Gupta, being the Accountant, was looking into the account works of the petitioner which explains the recovery of the documents pertaining to the financial dealings of the accused/petitioner which in no manner establishes or connects the petitioner to any crime; much less under NDPS Act, 1985.

27. Ld. Counsel for the petitioner has further argued that since there is no recovery from the petitioner, the bar under Section 37 of the NDPS Act, 1985 is not attracted. The only available evidence is the disclosure statement which is not admissible in evidence.

28. According to the Status Report, the petitioner had been arrested by National Investigations Agency in Mudra Port, Gujarat matter, however, the National Investigation Agency has already filed the Chargesheet against the petitioner under Sections 21/29 of NDPS Act, 1985 and Section 120B of the Indian Penal Code, 1860, but no Chargesheet under UAPA has been filed against him. Even in Mudra Port, Gujarat matter, the only evidence against him was in the nature of disclosure statement and no recovery was effected from him.

29. It is also submitted that the Charges are yet to be framed in the present case. The accused-petitioner is in judicial custody from 31.07.2022 and trial would take a considerable time to get completed.

30. Moreover, the co-accused persons, namely, Shamsher and Ramesh @ Lala Seth have already been admitted to regular bail by the learned Trial Court.

31. Therefore, it is argued that the petitioner is entitled to bail.

32. Ld. APP has vehemently argued that there is enough evidence to

establish that the petitioner is the main accused who is running the International Drug Syndicate as he is also the accused in the case under Sections 21/29 of NDPS Act, 1985 and Section 120B of the Indian Penal Code, 1860, Mudra Port registered by NIA. The Bail Application is thus, opposed.

33. **Submissions heard.**

34. While there are serious allegations of the petitioner being the main accused in running an international drug syndicate, but unfortunately, during the investigations, no incriminating evidence by way of recovery of contraband or documents could be effected from the accused-petitioner.

35. According to the Police, there is a syndicate being managed by the petitioner and there are various co-accused persons who have made the disclosure statements, disclosing the entire *modus operandi* of the drug syndicate, but unfortunately, the aforesaid disclosure statements with no further recovery, are inadmissible in law. While the Police collected the bank account details of the petitioner to ascertain alleged *hawala* transactions if undertaken by him, but no suspicious entry could be traced.

36. In *Bharat Chaudhary and Ors. vs. Union of India and Ors*, MANU/SC/1240/2021, the Apex Court observed that in the absence of any psychotropic substance found in the conscious possession of the accused, mere reliance on the statements made by the co-accused persons under Section 67 of NDPS Act, 1985 would be too tenuous a ground to deny the bail to the accused.

37. A three-Judge Bench of the Apex Court in *Tofan Singh vs. State of Tamil Nadu*, 2020 SCC OnLine SC 882, similarly observed that the statements of co-accused persons against the petitioner being the only

evidence, entitles him to grant of bail.

38. The Co-ordinate Bench of this Court in *Phundreimayum Yas Khan vs. State (NCT of Delhi)*, 2023 SCC Online Del 135 has held that when there is no material to link the applicant with the recovery of commercial quantity from the co-accused, the rigors of Section 37 of NDPS Act, 1985 would not apply. Moreover, the disclosure statements of co-accused are *per se* not admissible without there being any corroboration. Furthermore, the absence of any financial dealings, recovery of narcotic substance or psychotropic substances from the applicant or from his premises or at his behest, the mobile calls between the applicant and the co-accused simplicitor cannot be a ground to deny the bail. Similar observations have been made in *Amit Ranjan vs. Narcotic Control Bureau, Delhi*, 2022 SCC OnLine Del 1532.

39. In the present case, while an endeavour has been made to claim that there was a drug Syndicate being run by the accused-petitioner, but there is no evidence to link or establish the running of this international syndicate that has been placed on record or established.

40. The petitioner is in judicial custody from 31.07.2022 and the trial is likely to take a long time. As observed in *Rabi Prakash vs. The State of Odisha*, MANU/SCOR/83201/2023, the Apex Court observed that prolonged incarceration generally militates against the most precious Fundamental Right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must overreach the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985.

41. A plea has also been taken that there was a delay in taking samples under Section 52(A) of the NDPS Act, 1985. However, this aspect has been settled by the Apex Court in the case of *Union of India vs. Mohanlal & Anr.*,

(2016) 3 SCC 379, wherein it was observed that the scheme of the Act in general and Section 52(a) of the NDPS Act, 1985 in particular does not provide for any timeframe in the matter of making an Application for drawing of samples and certification. While there is no room for prescribing or reading a timeframe into the provision, an application for sampling and certification ought to be made without undue delay.

42. Therefore, the delay of 6 days in drawing the sample as alleged by the petitioner may not enure to his benefit at the stage of consideration of bail Application and is a subject matter of trial, to consider if any prejudice has been caused to the petitioner on account of delay in moving the application and taking the samples.

43. Likewise, the contention that there was a variation in the weight of the samples taken before the Magistrate and thus received in FSL is again subject to various explanations and thus, is a subject matter of trial.

44. The prosecution has vehemently relied on the previous involvement of the petitioner in the National Investigation Agency case pertaining to recovery of 3,000 kgs of Heroin from Mundra Port, Gujarat. However, as stated by the petitioner himself that he is facing trial in the said case and merely because he is an accused in one case earlier, may not be a reason to decline him the regular bail in the present case in the light of the evidence collected against the Petitioner.

45. In the present case, no material link of the petitioner with the recovery of the contraband or of his being the main accused person managing and running the international drug syndicate has been placed on record.

46. Considering the aforesaid circumstances, the petitioner is admitted to bail in FIR No. 151/2022 under Sections 21/27A/29 of NDPS Act, 1985 at

Police Station Crime Branch, Delhi, subject to furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount; to the satisfaction of the learned Special Judge/Trial Court with the following conditions:

a. The petitioner shall appear before the Court as and when the matter is taken up for hearing.

b. The petitioner shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.

c. The petitioner shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of an affidavit.

d. The petitioner shall surrender his passport with the learned Special Court;

e. The petitioner shall report to the Investigating Officer/SHO on every third Monday between 10:00 to 11:00 AM;

f. The petitioner shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

g. The petitioner shall not leave the country, without permission of this Court.

h. The petitioner shall not make any attempt to tamper with the evidence or influence the witnesses.

47. Accordingly, the present petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCOBTER 01, 2024
S.Sharma