



2024:DHC:1212



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

% *Date of Decision: 7th February, 2024*

+ **BAIL APPLN. 3953/2023**

MANSHER

..... Petitioner

versus

THE STATE OF N.C.T. OF DELHI
THROUGH ITS STATION HOUSE
OFFICER POLICE STATION
CRIME BRANCH DELHI

..... Respondent

+ **BAIL APPLN. 4366/2023**

LOKESH DHINGRA

..... Petitioner

versus

THE STATE OF N.C.T. OF DELHI
THROUGH ITS STATION HOUSE
OFFICER POLICE STATION
CRIME BRANCH NEW DELHI

..... Respondent

Present: Mr. Vikram Singh Jakhar, Advocate for the
Petitioners.

Mr. Sanjeev SI, Rajbir Singh, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

**CRL.M.A. 2511/2024 (exemption from filing the certified copies
/ fair typed and clear copies of the dim annexures and for not
leaving proper margins) in BAIL APPLN. 3953/2023**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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BAIL APPLN. 3953/2023 & CRL.M.A. 2510/2024 (additional documents) & BAIL APPLN. 4366/2023

3. The present applications are filed by the applicants under Section 438 of the Code of Criminal Procedure, 1973, seeking grant of pre-arrest bail in FIR No. 248/2023, dated 18.10.2023, for offences under Sections 20/23/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**'), registered at Police Station Crime Branch.

4. The brief facts of the present case are as follows:

- a. On 18.10.2023, a secret information was received by the concerned Crime Branch that the applicants and another co-accused person, namely Mukul *alias* Vivek, were engaged in illegal import of Marijuana (American Ganja) and other drugs from the United States of America through dark web. It was informed that the applicants used to place the orders for contrabands through dark web on different addresses, in the name of the co-accused Mukul and others. It was further informed that the co-accused Mukul used to collect the contrabands from the post offices by showing fake IDs and supply the same to the customers of the accused persons in Delhi, Gurgaon and Noida at high profits. Lastly, the informer apprised the officers that one such parcel had arrived at the R.K.Puram Post Office, and the co-accused Mukul was trying to collect the same.
- b. On the basis of the secret information, a raid was conducted



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at the R.K.Puram Post Office, at around 10:55AM, to intercept co-accused Mukul from collecting the parcel. Bystanders were requested to join the raid, however, they refused on account of lack of time.

- c. It is alleged that the postmaster told the raiding party that the concerned parcel was in the name of one Mukul, and it couldn't be delivered as no person with the said name was residing at the stipulated address.
- d. After obtaining the relevant permission from higher authorities to check the parcel before sending it back to the senior officers, the said parcel was opened and 1593 grams of Marijuana was found in it. The contraband was seized.
- e. Subsequent to the recovery, FIR No. 248/2023 was lodged at the instance of ASI Mahesh Kumar.
- f. It is alleged that all the accused persons were evading investigation due to which non bailable warrants were issued against them on 31.10.2023.
- g. During investigation, two more parcels were seized and 3147 grams of Marijuana was recovered from them.
- h. Co-accused Mukul was arrested on 09.11.2023 from Immigration, Mumbai Airport. He disclosed in his statements on 09.11.2023 and 18.11.2023 that the syndicate is run by the applicant Lokesh Dhingra in association with his partner, that is, the applicant Mansher, and payments for the sale of contraband is taken in cash or cryptocurrency.
- i. On 07.11.2023, Regular Look Out Circular was opened



against the applicant Lokesh Dhingra. A Look Out Circular could not be issued against the applicant Mansher due to the request lacking adequate parameters.

j. Proceedings were initiated against the applicants under Section 82 of the CrPC on 04.12.2023.

5. The anticipatory bail application of the applicants, that is Mansher and Lokesh, were rejected by the learned Additional Sessions Judge, Special Judge, NDPS, New Delhi by orders dated 21.11.2023 and 11.12.2023 respectively.

CONTENTIONS OF THE APPLICANTS

6. The learned senior counsel for the applicants submits that the initiation of the proceedings against the applicants was premature and the applicants have been falsely roped in the present case merely on the basis of the disclosure statement of the co-accused Mukul. He submits that the applicants have no link with the said co-accused person.

7. He submits that it is the case of the prosecution that the alleged parcel was received in the name of co-accused Mukul, and there is no evidence on record to establish that the applicants were dealing with the co-accused person or placing orders through dark web.

8. He further submits that there is no communication or financial transaction between the applicants with any person working in the alleged syndicate in the United States of America.

9. He submits that the applicants were not apprehended at the



spot and no recovery has been effectuated at their instance.

10. He submits that in the said circumstances, the disclosure statement of the co-accused, by itself, cannot be read as evidence against the applicants, as per the Indian Evidence Act, as the same has not been corroborated with any recovery. In this regard, he places reliance on the judgment of this Hon'ble Court, in the case of ***Md. Irshad v. State NCT of Delhi : 2022:DHC:1723***, where the Court observed as under:

“13. In the present case, it is important to note that except the confessional statement of the arrested accused, Md. Akleem, there is no other evidence. The gist of the judgments relied upon by the Applicant state as under:

- a) It has been held in **Surinder Kumar Khanna** (Supra) that confessional statement cannot be the only substantive evidence and it is only to assist the court.*
- b) In **Kishan Singh** (Supra), it is observed that to make out a case against the applicant/petitioner the prosecutor must ‘adduce some independent, corroborative or affirmative legal evidence’.*
- c) In **Abdul Mohammed Shaikh** (Supra), it was concluded that confessional statement can be used as corroborative statement when there are other evidences available.*

14. Keeping the above judgements in mind, there is no other independent, corroborative or affirmative legal evidence against the Applicant except the confessional statement of the arrested accused, Md. Akleem. Additionally, the applicant does not have any past antecedents. This court has no reason to believe, prima facie, that the accused is part of a larger conspiracy.

15. This court is also of the view that for the reasons stated above there are reasonable grounds that the



accused is not guilty of the offence as alleged. Further, I am also of the view that the applicant is not likely to commit an offence under the Act while on bail. Additionally, the APP has been given an opportunity to oppose the application for bail. 16. This court, therefore, in view of hereinabove, is inclined to grant anticipatory bail to the Applicant herein, subject to the following conditions”

11. The learned senior counsel further submits that the CDR of the applicants when they allegedly were together near the concerned post office is of a time when the same was not open for operation and thus contradicts the prosecution’s allegation that they went to the post office to collect some parcel.

12. He submits that the police officials are trying to falsely implicate the applicants to extort money from them as is evident from the multiple financial transactions between the applicant Mansher and one of the police personnel who was present at the time of raid at the house of applicant Mansher.

13. He further submits that the Look Out Circular was issued even before the arrest of co-accused Mukul when there was no material present against the applicant Lokesh Dhingra.

CONTENTIONS OF THE RESPONDENT

14. The learned Additional Standing Counsel submits that applicant Lokesh Dhingra was previously arrested by the Narcotics Control Bureau in Crime Number VIII/23/DZU/2020 under Sections 8/20/23 of the NDPS Act, in relation with recovery of 879 grams of Marijuana that had been imported in a similar fashion. The applicant Lokesh Dhingra was granted bail due to the



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small quantity of the recovered contraband.

15. He further submits that the applicants operated in a sophisticated manner and refrained from communicating with each other over cellular calls. However, the analysis of their internet data (IPDR) indicates that they used to meet almost everyday and interacted with each other over Facetime calls, WhatsApp calls, and other internet calling, including encrypted calls through 'Sessions App', which is an app used to mask the IP addresses.

16. He submits that the applicants used separate mobile phones to communicate with each other and their IPDR analysis revealed that they met co-accused Mukul on multiple occasions.

17. He submits that during the course of the investigation it has been revealed that the scale of operation of the accused persons is enormous, and they have received 27 parcels weighing 46,340 grams of Marijuana, worth almost ₹17-18 crores, in a span of ninety days alone.

18. He stresses that custodial interrogation of the applicants is imperative to uncover the operations of the entire syndicate and to trace the entire financial trail of the sale proceeds of the contraband imported by the syndicate.

19. He submits that it is settled law, as noted by the Hon'ble Apex Court in ***Prem Shankar Prasad v. State of Bihar : (2022) 14 SCC 516***, that proceedings under Section 82 of the CrPC ought not be ignored while granting anticipatory bail.

20. He further submits that the contention of the applicants that

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they are entitled to anticipatory bail as the only evidence against them, at this stage, is the disclosure statement of the co-accused Mukul and no recovery has been effectuated from them is erroneous.

ANALYSIS

21. It is noted that the co-accused Mukul has been arrested and he has made specific allegations against the applicants in his disclosure statements. He has also disclosed about more parcels of contrabands being imported and delivered to the clients of the accused persons through porters.

22. It is pointed out by the State that the number mentioned on the seized parcel was found to be using the Internet Protocol (IP) of the Wi-Fi installed in the house of co-accused Mukul. During the remand, co-accused Mukul, also disclosed another number being used by the applicant Mansher. The said number is stated to have been run in parallel locations with the admitted number of applicant Mansher. The CDR and IPDR of these numbers were analysed, which revealed that the location of this number was in parallel with the applicant Lokesh Dhingra's number. The analysis of internet calling of these two numbers of applicant Mansher revealed that location of the said numbers was parallel with the admitted number of the applicant Lokesh Dhingra.

23. The internet usage of these numbers of the applicants further revealed that they were used to communicate by way of private internet calls, through Telegram, Facetime, Voxel,

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Session, etc. The co-accused Mukul also disclosed that he had previously delivered a drug parcel *via* Porter App to applicant Lokesh Dhingra at the road near Inderpuri. The data retrieved from the Porter App used by the co-accused Mukul corroborates that the parcel was picked to be delivered at Inderpuri.

24. It is further pointed out that when the co-accused Mukul failed to receive the parcel on 14.10.2023, he shared the said news with the applicant Lokesh Dhingra through a telegram voice call, which is stated to have been corroborated from the data retrieved from the phone of the co-accused Mukul.

25. Further disclosure has been made by co-accused Mukul about meeting the applicants on 17.10.2023. Apart from their communication over internet Apps, the common location of the applicants and co-accused Mukul is stated to have been corroborated from the data retrieved.

26. The co-accused Mukul has also mentioned that multiple parcels with huge quantity of Marijuana were received on earlier occasions also through post.

27. It is submitted by the learned senior counsel for the applicants that the data retrieved from the phone of the co-accused Mukul does not implicate the applicants in any manner. He has also vehemently contended that the disclosure statement of the co-accused Mukul is not admissible in evidence.

28. It is relevant to note that the statement of the co-accused is to be tested at the time of trial. No reason has also been pleaded as to why the co-accused Mukul would try to falsely implicate the

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applicants. At this stage, it does not appear to be a case, as contended by the learned senior counsel for the applicants, that the State is seeking custodial interrogation of the applicants without any material. The disclosure statements of the co-accused Mukul have been corroborated to some extent.

29. It is true that the Hon'ble Apex Court, in the case of ***Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1***, held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence. However, it is relevant to observe that the Court is considering applications under Section 438 of the CrPC for pre-arrest bail. The applicants will be entitled to the benefit of the said judgment, in the opinion of this Court, after the investigation is completed and the chargesheet is filed.

30. The Apex Court in the case of ***State of Haryana v. Samarth Kumar : 2022 SCC OnLine SC 2087***, has held as under:

“4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1.

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8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is



not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.”

(emphasis supplied)

31. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of anticipatory bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation has been carried out by the investigating agency.

32. It is trite law that the power to grant a pre-arrest bail under Section 438 of the CrPC is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner. The Hon’ble Apex Court, advertent to its previous precedents, has discussed the parameters to be considered while considering pre-arrest bail applications, in the case of ***State of A.P. v. Bimal Krishna Kundu : (1997) 8 SCC 104***, has held as under:

“8. A three-Judge Bench of this Court has stated in Pokar Ram v. State of Rajasthan [(1985) 2 SCC 597 : 1985 SCC (Cri) 297 : AIR 1985 SC 969] : (SCC p. 600, para 5)

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.”

9. Similar observations have been made by us in a recent judgment in State v. Anil Sharma [(1997) 7 SCC



187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651] :
(SCC pp. 189-90, para 8)

“The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest.”

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12. We are strongly of the opinion that this is not a case for exercising the discretion under Section 438 in favour of granting anticipatory bail to the respondents. It is disquieting that implications of arming the respondents, when they are pitted against this sort of allegations involving well-orchestrated conspiracy, with a pre-arrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if the respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence. Having apprised himself of the nature and seriousness of the criminal conspiracy and the adverse impact of it on “the career of millions of students”, learned Single Judge should not have persuaded himself to exercise the discretion which Parliament had very thoughtfully conferred on the Sessions Judges and the High Courts through Section 438 of the Code, by favouring the respondents with such a pre-arrest bail order.”

33. It is settled law that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the CrPC. The Hon’ble Apex, in the case of ***State v. Anil Sharma : (1997) 7 SCC 187***, has also underlined the importance of custodial



interrogation as under:

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

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8. The above observations are more germane while considering an application for post-arrest bail. The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate the learned Single Judge ought not to have side-stepped the apprehension expressed by the CBI (that the respondent would influence the witnesses) as one which can be made against all accused persons in all cases. The apprehension was quite reasonable when considering the high position which the respondent held and in the nature of accusation relating to a period during which he held such office.”



34. Considering the status report filed by the State, it cannot be held, at this stage, that the investigation is being carried out with the intention to injure or humiliate the applicants. The nature and the gravity of the allegations are serious. Specific allegations have also been made that the applicants have been indulging into similar offences on earlier occasions.

35. The menace of drug trafficking has the potential of affecting a large number of gullible people. Looking at the manner which is alleged by the State to have been employed by the applicants, the task of the investigating agency is arduous. Various means of technological advancements seem to have been employed that has made the task tougher for the investigating agency. In such a scenario, in the opinion of this Court, some play in the joints has to be provided to the State. It cannot be expected that in such circumstances, the investigating agency would be through with the investigation at such a nascent stage. The same would require the custodial interrogation of the accused persons.

36. Even though, it is alleged that the applicants have been falsely implicated by certain police officials who had accompanied the raiding party, the same, at this stage, is not a relevant fact for deciding the present applications. However, since specific allegations have been made against police officials, the respondent is directed to enquire the said aspect.

37. It is further indicated that the applicants, on being intercepted, ran away endangering the life of the police officials.

38. Another aspect to be considered is that the process under



Section 82 of the CrPC has already been initiated against the applicants. The Hon'ble Apex Court in ***Prem Shankar Prasad v. State of Bihar*** (*supra*) has specifically observed as under:

“10.2. Despite the above observations on merits and despite the fact that it was brought to the notice of the High Court that Respondent 2-accused is absconding and even the proceedings under Sections 82/83CrPC have been initiated as far back as on 10-1-2019, the High Court has just ignored the aforesaid relevant aspects and has granted anticipatory bail to Respondent 2-accused by observing that the nature of accusation is arising out of a business transaction. The specific allegations of cheating, etc. which came to be considered by the learned Additional Sessions Judge has not at all been considered by the High Court. Even the High Court has just ignored the factum of initiation of proceedings under Sections 82/83CrPC by simply observing that “be that as it may”. The aforesaid relevant aspect on grant of anticipatory bail ought not to have been ignored by the High Court and ought to have been considered by the High Court very seriously and not casually.

10.3 In State of M.P. v. Pradeep Sharma [State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171 : (2014) 1 SCC (Cri) 768], it is observed and held by this Court that if anyone is declared as an absconder/proclaimed offender in terms of Section 82CrPC, he is not entitled to relief of anticipatory bail...

11. Thus the High Court has committed an error in granting anticipatory bail to Respondent 2-accused ignoring the proceedings under Sections 82/83CrPC.”

(emphasis supplied)

39. The present case involves recovery of a commercial quantity of contraband. The allegations against the present applicants are that they are the kingpins of the syndicate. The



contrabands are alleged to have been imported from the other countries through dark web and distributed amongst the public in this country.

40. The scale of operation, at this stage, seems to be humongous. The same requires thorough investigation which ought not to be curtailed by passing an order under Section 438 of the CrPC. The investigating agency, at this stage, should be given full leverage to discern as to how the parcels with the contrabands were imported and cleared from the customs authorities and were thereafter distributed amongst the public.

41. Dismantling such a complex *modus operandi*, which is alleged to have been used by the applicants and the other accused persons, by its very nature, requires thorough investigation and custodial interrogation.

42. In view of the above, in the present circumstances, this Court is of the opinion that custodial interrogation of the applicants ought not to be denied to the investigating authority.

43. Considering the above, the nature of the offence, the antecedent of applicant Lokesh Dhingra and the fact that the applicants have not joined and cooperated in the investigation which led to the initiation of proceedings under Section 82 of the CrPC against them, this Court is of the opinion, that no ground for grant of anticipatory bail to the applicants is made out.

44. The present applications are accordingly dismissed.

45. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and



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should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

46. A copy of the order be placed in both the matters.

AMIT MAHAJAN, J

FEBRUARY 7, 2024

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