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

+ **BAIL APPLN. 4068/2023**

SAYED JAVED HUSSAIN

..... Petitioner

Through: Mr. Deepak Kumar Singh, Mr.
Najibur Rahman, Ms.Sadia Sultan
and Mr.R. Singh, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr.Subhash Bansal, Sr. Standing
Counsel for NCB.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

02.04.2024

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1. By way of present application filed under Section 439 read with Section 482 Cr.P.C, the petitioner/applicant seeks regular bail in Crime No.VIII/02/DZU of 2021 registered under Section 8/21C/22C & 29 of the NDPS Act, 1985 at PS NCB, DZU, R.K. Puram, New Delhi.

2. The brief facts, as discernible from the material placed on record, are that a secret information was received on 30.01.2021 at Delhi Zonal Unit, NCB that the applicant, who was travelling to Manipur, was carrying huge quantity of NRX Medicines. On being intercepted, his luggage was searched and 30 packets containing 36,000 tablets/capsules of Tramadol alongwith 20 bottles of Codeine Syrup were recovered. He disclosed that the same were obtained from the co-accused namely *Phundreimayun Yaz Khan*. During the investigation, the respondent obtained CAF of the mobile phones of both the accused persons, which revealed that not only were they in touch with each other but even their locations were found at the same place.



3. Learned counsel for the petitioner/applicant states that the applicant has been in custody since 30.01.2021 and that though recovery of 30 packets containing 36,000 tablets/capsules of Tramadol and 20 bottles of Codeine Syrup has been alleged, however no CCTV footage has been seized. It is stated that co-accused has been released on bail by this Court vide order dated 11.01.2023 passed in BAIL APPLN. 1383/2022. Lastly, it is submitted that the applicant is not involved in any other case and the trial is likely to take time to conclude.

4. The primary contention raised by the learned counsel for the petitioner is that as per the FSL report, the sample sent for analysis tested positive for Tramadol Hydrochloride alongwith Acetaminophen and Dicyclomine. He therefore, submits that the entire quantity cannot be taken as a psychotropic substance.

5. Learned Senior Standing Counsel for NCB has vehemently opposed the bail application. It is stated that the applicant was apprehended at Terminal-3 of the IGI Airport and the seized substance was recovered from the red colour trolley which he was carrying. The prosecution has cited 14 witnesses and the case is at the stage of prosecution evidence.

6. The applicant is charged for being in possession of commercial quantity of Tramadol. Thus, the bar of Section 37 of the NDPS Act is applicable. The alleged substance was seized on 30.01.2021 and the sample was sent to FSL on 03.02.2021. The Supreme Court in Hira Singh v. Union of India reported as **(2020) 20 SCC 272**, while answering a reference, held as under:-

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10. On merits whether any mixture of narcotic drugs or



psychotropic substances with one or more neutral substance(s) the quantity of neutral substance(s) is not to be taken into consideration or it is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, the Statement of Objects and Reasons of the NDPS Act is required to be considered. As per the Preamble of the NDPS Act, 1985, it is an Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operation relating to narcotic drugs and psychotropic substances. To provide for forfeiture of the property derived from or use in illicit traffic in Narcotic Drugs and Psychotropic Substance. The Statement of Objects and Reasons and the Preamble of the NDPS Act imply that the Act is required to act as a deterrent and the provisions must be stringent enough to ensure that the same act as deterrents.

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10.2 Therefore, considering the Statement of Objects and Reasons and the Preamble of the NDPS Act and the relevant provisions of the NDPS Act, it seems that it was never the intention of the legislature to exclude the quantity of neutral substance and to consider only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity. Right from clauses (vii-a) and (xxiii-a) of Section 2 of the NDPS Act, emphasis is on narcotic drug or psychotropic substance (Sections 21, 22, 23, 24, 27 and 43). Even in the Table attached to the Notification dated 19-10-2001, Column 2 is with respect to name of narcotic drug and psychotropic substance and Columns 5 and 6 are with respect to “small quantity and commercial quantity”. Note 2 of the Notification dated 19-10-2001 specifically provides that quantity shown against the respective drugs listed in the Table also apply to the preparations of the drug and the preparations of substances of Note 1. As per Note 1, the small quantity and commercial quantity given against the respective drugs listed in the Table apply to isomers ..., whenever existence of such substance is possible. Therefore, for the determination of “small quantity or



the commercial quantity” with respect to narcotic drugs and psychotropic substance mentioned in Column 2 the quantity mentioned in Clauses 5 and 6 are required to be taken into consideration. However, in the case of mixture of the narcotic drugs/psychotropic drugs mentioned in Column 2 and any mixture or preparation that of with or without the neutral material of any of the drugs mentioned in Table, lesser of the small quantity between the quantities given against the respective narcotic drugs or psychotropic substances forming part of mixture and lesser of commercial quantity between the quantities given against the respective narcotic drugs or psychotropic substance forming part of the mixture is to be taken into consideration. As per example, mixture of 100 gm is seized and the mixture is consisting of two different narcotic drugs and psychotropic substance with neutral material, one drug is heroin and another is methadone, lesser of commercial quantity between the quantities given against the aforesaid two respective narcotic drugs and psychotropic substance is required to be considered. For the purpose of determination of the “small quantity or commercial quantity”, in case of Entry 239 the entire weight of the mixture/drug by whatever named called weight of neutral material is also required to be considered subject to what is stated hereinabove. If the view taken by this Court in E. Michael Raj is accepted, in that case, it would be adding something to the relevant provisions of the statute which is not there and/or it was never intended by the legislature.

10.3 ...Therefore, if it is accepted that it is only the actual content by weight of offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, in that case, the object and purpose of enactment of the NDPS Act would be frustrated. There may be few punishment for “commercial quantity”. Certainly that would not have been the intention of the legislature.

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10.5 ...Therefore, the interpretation of the relevant provisions of the statute canvassed on behalf of the accused and the intervener



that quantity of neutral substance(s) is not to be taken into consideration and it is only actual content of the weight of the offending drug, which is relevant for the purpose of determining whether it would constitute “small quantity or commercial quantity”, cannot be accepted.

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7. In view of the discussion hereinabove, the contention of the applicant that the entire seized quantity is not to be considered, is meritless. The applicant has not been able to satisfy that he is not involved in the present case and that the ingredients of the offence are not made out.

8. Accordingly, I find no merit in the bail application and the same is accordingly dismissed.

MANOJ KUMAR OHRI, J

APRIL 2, 2024/rd