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

+ **BAIL APPLN. 80/2024**

SHANKAR SINGH RAWAT

..... Petitioner

Through: Mr. Aditya Aggarwal, Mr. Naveen
Panwar & Ms. Kajol Garg,
Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Utsav Singh Bains, SPP for the
NCB with Mr. Rana Debnath,
Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

22.05.2024

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1. The present application under section 439 of the Cr.P.C. seeks regular bail in case No. VIII/21/DZU/2022 under Sections 8(c)/22(c)/23(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short, 'NDPS Act') registered at NCB.

2. The case of the prosecution is as under:

(i) On 28.02.2022, on the basis of information, 1.107 kgs METHAQUALONE was recovered from parcel bearing no 4573137424 at DHL Exp. Pvt. Ltd, 71/3, Rama Road, Near Kirti Nagar, New Delhi. The recovered contraband was seized under the provisions of NDPS Act. The sample report of CRCL, New Delhi, dated 25.07.2022 was positive for Ketamine Hydrochloride.

(ii) That on 05.04.2022, a letter was sent to the Nodal Officer (Law Enforcement), Nextra Broad band Phase for providing the details of IP



address. Pursuant to the same, reply was received from the concerned department on 12.08.2022 and wherein it was learnt that the parcel was tracked from the IP log of wholesaler Overseas Logistics Private Limited, Mahipalpur, New Delhi.

(iii) On 16.08.2022, a letter was sent to the Manager (Operations), Overseas Logistics Pvt. Ltd. to provide the details of the said consignment. In response to the letter, it was stated that the said shipment was received by him from Speedex WorldWide Express Tilak Nagar Road, Bhilwara.

(iv) Thereafter on 17.08.2022, enquiry from Speedex Worldwide Express revealed that shipment was received by him from one, Mr. Rajkumar Agarwal.

(v) On 22.08.2022, enquiry from Mr. Rajkumar Agarwal revealed that the said shipment was received from one, Mr. Sehdev Sarwan from DTDC Courier.

(vi) On 22.08.2022, the aforesaid Mr. Sehdev Sarwan, in his statement under Section 67 of the NDPS Act had informed that the said parcel was given to him by Govinda and Devendra.

(vii) On 23.08.2022, notice under Section 67 of the NDPS Act was given to Govindna Narayan, who gave his statement, wherein he stated to have given the name of Devender Singh Rajpurohit.

(viii) That further on 23.08.2022, statement of Devender Singh Rajpurohit was recorded and he disclosed in his statement that he along with Govinda Narayan had collected the said parcel from the present accused / applicant, namely, Shankar Singh Rawat and the same was given to Sehdev Sarwan DTDC for booking at DHL, Ajmer.

(ix) Thereafter on 23.08.2022, statement of present applicant is recorded in



which he disclosed that he had given the said consignment to Govinda Narayan and Devendra Singh Rajpurohit for booking to Yakir Dabas in Israel through DTDC.

3. Learned counsel for the applicant submits that latter has been falsely implicated in the present case solely based on the disclosure statements of the co-accused persons namely, Devender Singh Rajpurohit and Govinda Naryan, which stands in contradiction to the law laid down by the Hon'ble Apex Court in **Tofan Singh v. State of Tamil Nadu, (2013) 16 SCC 31**, and a catena of judgements. It is further submitted that there is no recovery effected from the present applicant. It is further submitted that the seizure in the present case was done on 28.02.2022 and the present applicant was arrested on 29.08.2022. It is submitted that the chats relied upon by the prosecution are not related to the recovery in question in the present case. Learned counsel for the applicant submits that the applicant has been in judicial custody since 29.08.2022 and the trial before the Learned Trial Court is at the stage of pronouncement of order on charge and therefore, trial is not likely to complete in near future.

4. *Per contra*, learned SPP for the NCB submits that immediately after the seizure, the present applicant alongwith other co-accused persons had destroyed their mobile phones and after their arrest, the data recovered from the mobile phones of the present applicant as well as from the other co-accused persons shows several chats regarding sending of parcels to Israel. It is submitted that during the extraction of mobile data, several images have been found on the mobile phone of the accused as well as the other co-accused persons showing that they were frequently sending messages to one-another about encrypted chats. It is further submitted that from the



mobile chats, it is reflected that the present applicant had received money through crypto-currency from Israel and parcel being sent to Israel by him. It is also submitted that there were chats about parcel and also transfer of Rs. 18,000/- to co-accused Govinda Narayan. It is further submitted that a handwritten note had been extracted from the applicant's mobile phone, which records certain calculations. It is submitted that the aforesaid calculations relate to the sending of contraband by the applicant and his associates.

5. Heard the parties and perused the record.

6. Admittedly, there is no recovery of contraband from the present applicant. The recovery in the present case was effected on 28.02.2022. The chain leading to the present applicant is through the statement of the aforesaid co-accused persons, under Section 67 of the NDPS Act. So far as the alleged incriminating material in form of the said chats, relied upon by the prosecution is concerned, it is pertinent to note that the same are not prior to the date of recovery or of the said date. It is a matter of record that the said chats do not connect the applicant with the recovered contraband. The probative value of the said chats shall be decided during the course of the trial. For the purpose of considering the bail application, the same cannot be sufficient material to establish a link between the applicant and the recovery of the contraband in the present case. The other material extracted from the mobile of the present applicant also *prima facie* does not reflect any connection with the contraband recovered in the present case. It was noted that the transfer of money as alleged by the prosecution is also not of the time when the contraband was recovered in the present case either before or at the date of recovery of the contraband.

7. The statements recorded under Section 67 of the NDPS Act has been



held to be inadmissible by the Hon'ble Supreme Court in ***Tofan Singh (supra)***. In view of the above, rigours of Section 37 of the NDPS Act will not apply in the present case. As per Nominal Roll received from the concerned Jail Superintendent, the present applicant has been in judicial custody from 29.08.2022. The trial is at the stage of charge.

8. In totality of the facts and circumstances, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 1,00,000/- with two sureties of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

9. The application is allowed and disposed of accordingly.

10. Pending applications, if any, also stand disposed of.

11. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present bail application.



12. Copy of the order be sent to the concerned Jail Superintendent for necessary information and compliance.
13. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 22, 2024/bsr

Click here to check corrigendum, if any