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

+ **BAIL APPLN. 1999/2024, CRL.M.A. 17805-17806/2024**

NISHANT KUMAR

.....Petitioner

Through: Mr. Meghan, Advocate.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, SSC with Mr.
Shelly Dixit and Ms. Tracy Sebastian,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

07.04.2025

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1. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in NCB Case no. VIII/13/DZU/2023 SC No. 361/2023 under Sections 8, 21, 22, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, P.S: NCB.³

2. In brief, the case of the prosecution is as follows:

2.1. On 3rd April 2023, acting on secret information, officers of NCB intercepted a parcel bearing AWB No. 3806155253 at DHL Express Pvt. Ltd., Rama Road, Najafgarh Industrial Area, New Delhi. The parcel was addressed to one Jessica Andrew at an address in Westminster, Australia.

¹ "BNSS"

² "Cr.P.C."

³ "NDPS"



Prior to the search, the NCB officials invited bystanders to join as independent witnesses; one individual, Virendra Singh, consented and was present throughout the search and seizure.

2.2. Upon opening the parcel, the following items were recovered: one purple-coloured saree, one brown ladies' handbag, one black ladies' handbag, one pair of golden ladies' footwear, one cream-coloured handbag, and one pair of ladies' shoes. The shoes and footwear were examined, but no suspicious material was found. The cream-coloured handbag was found to be empty; however, its bottom appeared unusually heavy. Upon cutting open the bottom portion, a brown cardboard box containing nine cylindrical rolls wrapped in brown tape was discovered. One of the rolls was opened using a cutter and was found to contain a white crystalline powder. A sample was tested using DD kit and the same was found to be positive for amphetamine. Since the substance from all nine rolls, was similar in colour and texture, it was kept in a zip-lock polythene bag, weighing 352 grams (including the bag), and was marked as 'A'.

2.3. Two other handbags were found to contain similar cylindrical rolls, also testing positive for amphetamine. The contents were marked as Samples 'B' and 'C' and weighed 325 grams and 339 grams respectively, including the packaging. The total recovered quantity of amphetamine from the parcel was approximately 1.016 kilograms.

2.4. A Panchnama was prepared on site, and the recovery was recorded in the presence of independent witnesses. The supporting documents accompanying the parcel were also seized.

2.5. The invoice attached to the parcel listed the consignor as Nishant Kumar, the Applicant. A notice under Section 67 of the NDPS Act was



issued to him. In his statement, Nishant Kumar admitted to having dispatched the parcel containing amphetamine and admitted his involvement in the offence along with his associates. Based on his confession and recovery of contraband, he was arrested on 7th April 2023 after being informed of the grounds of arrest.

2.6. The Applicant further disclosed that his handler, identified as Richard (a Nigerian national), had informed him that another parcel bearing AWB No. EE197523155TH, arriving from Thailand, addressed to Satvik Verma, was coming.

2.7. At the time of his arrest, one VIVO mobile phone was recovered from Nishant Kumar. Examination of the device revealed WhatsApp messages exchanged with Richard concerning the seized parcel, as well as several other suspected consignments, indicating the Applicant's continuing involvement in a wider network of narcotics distribution.

2.8. On 8th April 2023, based on this information, another parcel addressed to Satvik Verma was intercepted and examined in the presence of an independent witness. Upon inspection, it was found to contain cocaine of commercial quantity. The total recovered quantity was 355 grams – 177 grams and 178 grams in two separate packages. Subsequent CRCL analysis identified the substance as heroin, confirming recovery of another commercial quantity.

3. Counsel for the Applicant urges the following grounds for seeking bail:

3.1 The Applicant has been falsely implicated, and no contraband was recovered from his person. His involvement is premised solely on the fact that he was the consignor of one parcel intercepted on 3rd April 2023. It is



submitted that there is no material on record establishing conscious possession or any conspiratorial link with the co-accused.

3.2 The Applicant maintains that he had no knowledge of the contents of the parcel. He was acting under instructions from a handler identified as ‘Richard,’ and was unaware that the parcel contained a prohibited substance. Merely booking a parcel, does not amount to an offence under the NDPS Act in the absence of conscious possession. Conscious possession is *sine qua non* for an offence under the NDPS Act. Reliance is placed on the decision of this court in ***Dihya Abalihi V NCB***,⁴ where bail was granted in similar circumstances.

3.3 The second recovery, made on 8th April 2023 from a parcel addressed to one Satvik Verma, is entirely unconnected with the Applicant. The Applicant neither booked nor received the parcel, and there is no material to show any nexus with Satvik Verma, who has not been named as an accused. It is further argued that the recovery was not voluntary but effected on the instructions of NCB officials and is therefore vitiated by coercion.

3.4 The second parcel was within the knowledge of the prosecuting agency, prior to the alleged confession as evidenced by a compliance report under Section 57 NDPS Act dated 6th April 2023. Consequently, the second recovery cannot be treated as a discovery under Section 27 of the Evidence Act or attributed to the Applicant.

3.5 The trial court itself opined that the first recovery that the first recovery is doubtful. In such a scenario, the Applicant ought to be extended the benefit of that finding.

3.6 The chats extracted from the Applicant’s phone are not incriminating



in any manner. On the contrary, they reflect that the Applicant was unaware of the contents of the parcels and was merely acting on instructions due to economic hardship. Chats dated 3rd February, 2023, further support the Applicant's innocence, as they demonstrate that he was engaged solely for booking parcels without being informed of their contents. These chats also indicate that the handler was assigning the Applicant tasks.

3.7. The chats further reveal that the Applicant was actively seeking work and had no knowledge or conscious possession of the parcels. Specifically, chats dated 13th February, 2023, reveal the Applicant asking whether he could use his own address to receive parcels. He also mentions that he is undertaking these jobs due to health-related reasons. The Applicant seen requesting work from the handler, which reinforces the fact that he was operating under the handler's instructions without any awareness of the nature of the contents. Chats dated 4th April, 2023, after the seizure of the first parcel, further confirm this position. In a conversation between "Rich" (the handler) and "unforgettable" i.e., the Applicant, the Applicant is seen asking whether anyone had hidden drugs in the parcel. At 6:56 PM, he explicitly states that he is unaware of the parcel's contents. Again, at 11:00 PM and 11:27 PM on the same date, the Applicant is seen reconfirming the contents of the parcel with the handler. There is, therefore, nothing incriminating in these chats. On the contrary, they establish that the Applicant had no knowledge or conscious possession of the illicit contents and, thus, deserves to be exonerated.

3.8 The recovery made on 3rd April, 2023, includes contraband found in a cream-coloured ladies handbag, from which nine separate cylindrical rolls

⁴ Order dated 9th October, 2024 in Bail Appln No. 1648.



were recovered. However, all these rolls were mixed together prior to the drawl of a sample before the Magistrate, and only a single composite sample was drawn and sent for testing. Same was the case with the black-coloured ladies handbag from which eight distinct cylindrical rolls were recovered and the brown-coloured ladies handbag containing nine cylindrical rolls. This manner of mixing multiple packets and drawing a single composite sample, rather than drawing separate samples from each individual packet, clearly contravenes the mandatory procedure and guidelines for sampling. As a result, the entire sampling process stands vitiated. Reliance in this regard is made to the judgment in *Gurpreet Singh v. State of NCT of Delhi*,⁵ as well as the provisions laid down under the NDPS Rules, 2022, which emphasize the importance of separate sampling to ensure fairness and accuracy in narcotics investigations.

3.9 The proceedings under Section 52A were also delayed. The last recovery in the case was on 8th April 2023, but the application under Section 52A was moved only on 18th April 2023, and the actual proceedings took place on 1st August 2023, nearly four months later. This contravenes the NDPS Rules, 2022, which require timely action, and supports the Applicant's plea for bail.

3.10. The Applicant has been named in another FIR (NCB VIII/14/DZU/2023), wherein a parcel was booked using his mother's identity. It is argued that had the Applicant been knowingly involved in narcotics trafficking, he would not have used his own family's identification, thereby supporting his lack of criminal intent.

⁵ Decision dated 5th February, 2024 in Bail Application No. 857/2023



4. Opposing the bail application, Mr. Arun Khatri, Senior Standing Counsel for the Respondent, submits that the case involves the recovery of a commercial quantity of a narcotic substance and therefore attracts the stringent bar under Section 37 of the NDPS Act. The Applicant has clearly failed to satisfy either of the twin statutory conditions. Mr. Khatri points out that in his voluntary statement recorded under Section 67 of the NDPS Act, the Applicant admitted to booking the parcel from which the amphetamine was recovered. He also admitted his role in trafficking contraband in coordination with his alleged handler and other associates. This statement, coupled with the recovery and subsequent digital evidence, forms a credible *prima facie* case of involvement.

5. It is further submitted that the forensic analysis of the Applicant's seized mobile phone revealed WhatsApp chats between the Applicant and a person identified as "Richard," discussing multiple consignments, including the parcel from which the first recovery was made. These exchanges, it is argued, negate the Applicant's claim of ignorance and establish knowledge of the contraband and active participation in trafficking. Mr. Khatri also draws the Court's attention to a second recovery made on 8th April 2023 from a parcel arriving from Thailand and addressed to one Satvik Verma. The location and tracking number of the parcel, it is submitted, were disclosed by the Applicant himself during investigation. Based on this information, a further recovery of commercial quantity of heroin was made. The link between the two recoveries, and the Applicant's role therein, is said to be corroborated by both documentary and electronic evidence. Mr. Khatri further argues that charges have not yet been framed, and several key witnesses are yet to be examined. The Applicant has also been arrested in a



separate case [NCB Cr. No. VIII/14/DZU/2023] where 966 grams of Methamphetamine were allegedly trafficked. Considering this background, and the seriousness of the allegations, no case is made out for grant of bail at this stage.

6. The Court has carefully considered the submissions advanced on behalf of the Applicant but finds no ground to grant bail. The total quantity of contraband recovered in the present case [1.016 kilograms of amphetamine and 355 grams of heroin] falls squarely within the definition of commercial quantity under the NDPS Act. Consequently, the rigours of Section 37 of the Act are undoubtedly attracted. In order to be released on bail, the Applicant must satisfy the twin conditions under Section 37(1)(b) i.e first, that there are reasonable grounds for believing that he is not guilty of the offence, and second, that he is not likely to commit any offence while on bail.

7. The Applicant has sought to distance himself from the offence by asserting that he merely acted as a consignor and was unaware of the contents of the parcel. However, this submission is not borne out by the material on record. The Applicant used his own identity to ship a parcel internationally, containing a commercial quantity of a prohibited substance, to an overseas address with which he has no established connection. The Applicant is neither an employee of the courier company, nor engaged in the manufacture or trade of the goods recovered. In such circumstances, his role in facilitating international shipment, absent any legitimate business justification, gives rise to a strong presumption of knowledge and intent. This *prima facie* suggests knowledge of the presence and nature of the contraband and control over its disposition. Further, the WhatsApp chats,



relied upon by him to support his innocence, reveal continuous communication with a foreign handler, and repeated engagement with the shipment process. These are not consistent with the conduct of a person acting in ignorance or good faith. It is well-settled that conscious possession need not always involve physical custody. Courts have held that a person may be deemed to be in possession if he has knowledge and control over the contraband, even if indirectly.⁶ The Applicant booked the parcel in his own name and cannot simply deny possession by shifting the burden on an alleged handler. The chats further disclose his familiarity with the second consignment, allegedly addressed to one Satvik Verma, whom the Applicant himself described as his “Best friend.” In the Court’s view, this sufficiently rebuts the claim that the Applicant had no link to the second recovery.

8. As regards the argument concerning the alleged delay in initiating proceedings under Section 52A, the Court is of the view that such procedural irregularities, assuming them to be true, do not, by themselves, vitiate the recovery or the prosecution’s case at this stage.⁷ Whether there was substantial non-compliance with the sampling protocol, or whether the procedure adopted was in breach of the NDPS Rules or Standing Orders, is a matter that must be examined during trial. At the stage of bail, such questions of procedural lapse cannot be determinative unless they fundamentally affect the legality of seizure or cast serious doubt on the integrity of the evidence, which, in the present case, they do not.

9. The Court has also considered the Applicant’s contention that the sampling process was flawed, particularly with reference to the first

⁶ *Mohan Lal Vs State of Rajasthan* AIR 2015 SCC 2098

⁷ *Arvind Yadav In JC through his Pairokar Vs. Govt of NCT of Delhi through Standing counsel*, AIR



recovery, where multiple cylindrical rolls were allegedly mixed before drawing a composite sample. However, even assuming such a procedural irregularity occurred, the same would not, in the Court's view, by itself vitiate the recovery or render the prosecution's case untenable at the stage of bail. The effect of any deviation from the NDPS Rules or Standing Orders is a matter for appreciation during trial, upon full evidentiary scrutiny.

10. The courts have consistently held that unless such irregularities go to the root of the recovery or indicate deliberate tampering or prejudice, they cannot defeat custody at the pre-trial stage, particularly when commercial quantity is involved.⁸ In the absence of any substantial material irregularity that directly undermines the legality of the seizure, the defect in sampling argument does not, at this stage, be a ground to override the bar under Section 37 of the NDPS Act.

11. In view of the foregoing discussion and having regard to the nature and quantity of contraband recovered, the role attributed to the Applicant, and the material available on record at this stage, the Court is not satisfied that the twin conditions under Section 37(1)(b) of the NDPS Act stand fulfilled. The Applicant has failed to demonstrate any reasonable ground to believe that he is not guilty of the alleged offence, nor is the Court persuaded that he is not likely to commit any offence if released on bail.

12. Accordingly, the present application is dismissed. Pending applications, if any, also stand disposed of.

13. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence

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⁸ *Arvind Yadav In JC through his Pairokar (supra)*



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

SANJEEV NARULA, J

APRIL 7, 2025

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