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

+ **BAIL APPLN. 3767/2024**

TANK SNEHAL KANUBHAI

.....Applicant

Through: Mr. Neeraj Shekhar, Mr. R.B.
Choudhary, Ms. Kshama Sharma and
Ms. Priya Chakravarty, Advocates.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Prashant Pathak, Advocate for
Mr. Utsav Singh Bains, SPP for NCB.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

22.01.2025

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1. The present petition under Section 483 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹, seeks regular bail in Criminal Complaint No. 454/2023, which is currently pending consideration before the Special Judge, NDPS, Patiala House Court. The said Complaint Case has been filed in connection with FIR bearing Crime No. VIII/07/DZU/2023, under Sections 8, 22, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985², as well as Rule 58 of the Narcotic Drugs and Psychotropic Substances Rules, 1985³, registered with Narcotics Control Bureau⁴.

2. Briefly, the case of the NCB is as follows:

¹ "BNSS"

² "NDPS Act"

³ "NDPS Rules"

⁴ "NCB"



2.1 On 09th March, 2023, NCB officers received intelligence information regarding suspected trafficking of huge quantities of narcotics drugs and psychotropic substance through 13 parcels, sent by the consigner - Redox Pharma to different countries, which at the time were lying at Aramex India Pvt. Ltd. Based on this information, the 13 parcels were intercepted at Aramex India Pvt. Ltd. and it was noted that the parcels were in white coloured polythene packaging and some papers were attached to the parcels. When the parcels were opened in the presence of independent witnesses, they were found to have intermediate quantities of Lorazepam, Zolpidem, Clonazepam and Diazepam tablets as well as commercial quantities of Alprazolam tablets. Along with papers containing the details of the consignment, Drug Licenses for whole sale of drugs – i.e., Forms 20B and 21B licenses were found which licenses were issued in the name of the Applicant, as the proprietor of Redox Pharma. However, even though the parcel was destined to foreign countries, no export license was attached with the same. Further, the NRx tablets are prohibited from exports without registration/license under the NDPS Act & Rules, 1985. Accordingly, the said contraband goods were seized *vide* Panchnama dated 09th March, 2023.

2.2. Thereafter, the police sent a letter to Aramex India, seeking details of the sender of the parcels seized along with all relevant documents. In response thereto, Aramex India disclosed that the sender was Redox Pharma and they provided the NCB with copies of the document submitted by the Applicant – including his pan card, Aadhar card, registration certificate, Importer-Exporter Code⁵, GST registration certificate etc. The NCB also sent letters to the Directorate General of Foreign Trade, Ministry of



Commerce & Industry⁶ and Food & Drugs Control Administration department in order to verify the licenses.

2.3. Subsequently, a notice under Section 67 dated 06th June, 2023 was issued to the Applicant, whereby he was asked to appear before the Investigating Officer at the NCB Office.

2.4. In his statement under Section 67 of the NDPS Act, allegedly the Applicant disclosed that he entered into criminal conspiracy for trafficking of the recovered psychotropic substances and that he was receiving demands for such substances from foreign customers through 'India Mart' online platform. To this effect, he disclosed that previously he has sent many parcels which he booked himself and in lieu of such parcels, the receiver used to send money in his account.

2.5. On verification of the IEC code provided by Aramex in relation to the parcels, it was found to be genuine and was issued by DGFT. But as per the reply of DGFT, no psychotropic substance can be exported through IEC unless the specific permissions/sanction has been obtained for the items falls under the prohibited list. Moreover, it was found that the licenses issued by the Food and Drug Control Administration were in order to sell, stock or exhibit for sale of drugs only within India, and such a license is not valid for exporting psychotropic substances outside India. As per the Rule 58 of NDPS Rules, an export license issued by the Central Bureau of Narcotics, is required for exporting the psychotropic substance from India to other foreign countries. Therefore, all the psychotropic substance were seized as per law since all the parcels were booked by Redox Pharma and were being

⁵ "IEC"

⁶ "DGFT"



exported to foreign countries without any valid license.

2.6. In terms of the calculation of the weight of psychotropic substances found in the form of tablets, the same was done as per the settled law laid down in the judgment of the Supreme Court in ***Hira Singh v. Union of India & Anr.***⁷, wherein it was held as follows:

“In case of seizure of mixture of Narcotics Drugs and psychotropic substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotics Drugs and Psychotropic substance.”

2.7. In light of the above, the Applicant should not be released on bail as there was recovery of commercial quantities of psychotropic substance in the present case which attracts the rigours of Section 37 of the NDPS Act. There is also a strong possibility that the Applicant may influence the witnesses, if he is allowed to be released on bail. Further, there is substantial evidence against the Applicant, such as his bank account statements which prove that the Applicant received money in lieu of the parcels. The statutory presumption of Section 35 and 54 of the NDPS Act are against the Applicant. Moreover, the Applicant has not shown any reasonable ground for believing that he is not guilty of such an offence and that he is not likely to commit any further offence while on bail.

2.8. The Applicant has committed a heinous crime which has wide ramifications in law. Illegal trade of drug trafficking is a menace to society as the illegal contraband substances are spoiling the young generation by converting them into drug addicts and as such, the Applicant should not be allowed to be released on bail.



3. On the other hand, in support of the present bail application, Mr. Neeraj Shekhar, counsel for the Applicant submits that the Applicant has unblemished antecedents of any previous criminal activity. He urges that the Applicant has done Masters in Pharmacy and is in the business of manufacturing and sale of medicines. As such, the Applicant started his proprietorship named Redox Pharma, and obtained valid Drug Licenses for the manufacture, purchase, stock and sale of all kinds of medicines except Schedule C, C(1) and X medicines. Counsel further submits that the Applicant is also in the business of import and export of medicines, for which he has secured an IEC by the DGFT, which is a license to export and import medicines. According to the Applicant, he had adhered to all the licencing requirement for conducting the business. He urges that when he received a notice from NCB, he duly appeared before the I.O. and fully cooperated in investigation.

3.1. As regards the allegation of NCB that the Applicant did not have the proper export licencing for the specific medicines which are alleged to be psychotropic substances, counsel for the Applicant submits that this issue is required to be determined at trial. At this stage, in light of the licenses which the Applicant had secured, it is clear that legal requirements for exports of drugs were met. The Applicant is not any drug peddler and neither has any dealings with any kind of unlawful activity. The Applicant has been manufacturing the said drugs under proper licenses.

3.2. Furthermore, he points out that apart from the drug – Alprazolam, all other medicines seized by NCB are intermediate quantities. The quantity of Alprazolam alleged to be commercial quantity is disputed. In the

⁷ AIR 2020 SC 3255



chargesheet, there is no mention as to the actual method adopted by NCB to weigh the seized drugs. While in the notice issued to the Applicant under Section 67 of the NDPS Act, the weight of the 1605 tablets of Alprazolam was mentioned as 158.54 grams, in contrast, the chargesheet mentions an enhanced weight of the drugs – 159.14 grams. Besides this discrepancy the determination of weight as calculated by the NCB is different from the standard weight of the seized drugs.

3.3. Lastly, counsel for the Applicant points out that the charges have been framed against the Applicant on 23rd November, 2024, only for offences punishable under Section 22(c) and 23(c) of NDPS Act. The other offences under Section 8 and 29 of the NDPS Act as well as Rule 58 of the NDPS Rules, under which the case was registered, have been dropped and the Applicant has not been charged under the aforementioned offences.

4. Mr. Prashant Pathak, Advocate appearing on behalf of Mr. Utsav Singh Bains, SPP for NCB, strongly opposes the bail application. He states that the facts of the case noted above clearly indicate that the Applicant was carrying out exports of psychotropic substances without proper licensing. The quantity of such substances recovered by NCB fall under the category of commercial quantity and therefore the Applicant must satisfy the twin conditions stipulated under Section 37 of the NDPS Act. Moreover, he urges that the Applicant is a habitual offender, as is clear from his bank statements which confirm the receipt of payment in relation to such exports previously made by the Applicant.

5. The Court has considered the aforementioned contentions of the parties. The Applicant has been in custody since 26th June, 2023 and charges against him have been framed on 23rd November, 2024. While the complaint case



initially invoked Sections 8, 22, 23, 29 of the NDPS Act, as well as Rule 58 of the NDPS Rules, the charges framed against the Applicant are limited to Sections 22(c) and 23(c) of the NDPS Act.

6. Further, the prosecution's case primarily hinges on the allegation that the Applicant attempted to export psychotropic substances without the requisite export license as mandated under Rule 58 of the NDPS Rules. The contraband substances seized in this case primarily consist of intermediate quantities of Lorazepam, Zolpidem, Clonazepam, and Diazepam, with the exception of Alprazolam, which allegedly falls under the category of commercial quantity. The Court notes that the Applicant has provided valid Drug Licenses issued by the Food and Drug Control Administration and an Importer-Exporter Code issued by the DGFT. These licenses *prima facie* suggest that the Applicant operates a legitimate pharmaceutical business involving the sale, stock, and wholesale distribution of medicines.

7. The primary question in the present case revolves around the Applicant's compliance with Rule 58 of the NDPS Rules, which requires a specific export license for psychotropic substances. While the Applicant has argued that he no knowledge of this specific licensing requirement, this is an issue that will require a detailed examination during trial. At this stage, the Court is required to conduct a *prima facie* assessment and not delve into the merits of the allegations. It is also relevant to note that there is no evidence on record to suggest that the Applicant was involved in the illicit trade of narcotic drugs beyond the allegations related to the technical non-compliance with Rule 58.

8. The Applicant has also raised concerns regarding the discrepancy in the weight of Alprazolam tablets seized by the NCB, as recorded in the



notice issued under Section 67 of the NDPS Act and in the chargesheet. While this discrepancy may not significantly undermine the prosecution's case, it does highlight a need for further scrutiny of the evidence at the trial stage. The Court is also cognizant of the Applicant's assertion that his bank account statements, cited by the prosecution as evidence of prior transactions, require corroboration to establish a direct link between the alleged proceeds of crime and the psychotropic substances seized.

9. The Court is mindful of the rigours imposed by Section 37 of the NDPS Act, which mandates that bail can only be granted if there are reasonable grounds to believe that the accused is not guilty of the offence and is unlikely to commit any offence while on bail. The twin conditions of Section 37 must be construed in light of the facts and circumstances of each case. In the present matter, the allegations against the Applicant do not indicate that he is a habitual offender or that he poses a risk to society. The Applicant's business operations appear to have been carried out under valid licenses, albeit with possible procedural lapses concerning export requirements. Thus, the Applicant has *prima facie* met with the rigours of Section 37 of the NDPS Act

10. Further, the Applicant has been in continuous incarceration since 26th June, 2023 and the trial is at the stage of prosecution evidence and as such, is likely to take some time. The case of the prosecution is primarily based on the documentary evidence and therefore, in the opinion of the Court, the possibility of the Applicant tampering with the evidence is minimal. Therefore, in the opinion of the Court, keeping the Applicant in further custody would not serve any purpose.

11. Considering the foregoing, the present bail application is allowed and



accordingly it is directed that the Applicant shall be released on regular bail on furnishing a personal bond in the sum of INR 50,000/- along with one surety of the like amount to the satisfaction of the concerned Trial Court/duty Metropolitan Magistrate, subject to the following conditions:

- (a). The Applicant will not leave the country without prior permission of the Court.
- (b). The Applicant shall provide his permanent address to the Trial Court. The Applicant shall intimate the Court and to the IO, by way of an affidavit, regarding any change in his residential address.
- (c). The Applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
- (d). The Applicant shall provide all mobile numbers to the concerned IO, which shall be kept in working condition at all times. The Applicant shall not switch off his phone or change his mobile number without prior intimation to the concerned IO.
- (e). The Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

12. Needless to state, any observations concerning the merits of the case are solely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of opinion on the merits of the case.

13. A copy of the order be sent to the Jail Superintendent for information and necessary compliance.

SANJEEV NARULA, J

JANUARY 22, 2025/nk