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

\+ BAIL APPLN. 3903/2024

PARVEEN KUMAR SOLANKI .....Petitioner

Through: Mr. Vikram Hegde, Mr. Chitwan Sharma, Mr. Harsh Jain, Advocates

versus

DIRECTORATE OF REVENUE INTELLIGENCE .....Respondent

Through: Mr. Satish Aggarwala, Senior Standing Counsel with Mr. Gagan Vaswani, Advocate and SI Govind Bhardwaj

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **14.01.2025**

1. The present application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Section 439 of the Code of Criminal Procedure, 1973) seeking grant of regular bail in respect of case no. SC/518/2022 under sections 8(C), 21, 23, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.[1] It is important to note that by order dated 5th April, 2024, the Special Judge, dropped the charge for the offence under Section 27A of the NDPS against the Applicant. However, the Respondent Department has filed a Revision Petition (Crl. Revision Petition No. 2/2024) challenging this order.

2. In compliance of order dated 22nd November, 2024, the status report

[1] "the NDPS"

filed by the prosecution sets out their case as follows:

2.1 On 9th May, 2022, officers from Directorate of Revenue Intelligence[2] intercepted an import consignment, covered under a Bill of Entry filed by Key Shipping Pvt. Ltd., at the Cargo Terminal, IGI Airport, New Delhi. The consignment, shipped by Frontline Freighters Uganda Ltd., was declared to contain luggage trolley bags. Upon examination, 330 bags were found, of which 126 contained off-white powder packed in transparent packets concealed in the hollow pipes of the trolley bag handles. A total of 54.074 kgs of the substance was recovered, which tested positive for heroin. The Applicant is a director of Key Shipping Pvt. Ltd.

2.2. The investigation revealed a conspiracy between Praveen Solanki (the Applicant), Baljinder Ram @ Kala, Balbir (Baljinder Ram's brother), Jassa, Laddi, Mahalpur, and Parminder Singh @ Pindi to smuggle contraband from Uganda into India. Balbir, a resident of Uganda, would send the contraband concealed in trolley bags, imported by the Applicant's company, Key Shipping Pvt. Ltd. The Applicant would clear the consignment through customs and transport it by road to Sahniwal, Punjab, where it was to be received by Ramanjeet Singh and Navjot Singh, who would then deliver it to Jassa Singh and Laddi. However, the consignment was intercepted by DRI officers at the Cargo Terminal in New Delhi.

2.3. A raid was conducted at the premises of co-accused Baljinder Ram @ Kala in Village Kharka, Tehsil Guhla, District Kaithal, Haryana, resulting in the recovery of 5.9 kgs of heroin and Rs. 32,83,000/- in cash.

2.4 Recoveries of 818 grams of heroin and Rs. 15,34,300/- in cash were also made from the business premises of Ramanjeet Singh and Navjot

Singh. The accused disclosed that the seized contraband had also been smuggled using the same method, concealed in wooden statues transported by the Applicant, Praveen Kumar Solanki.

2.5 The investigation further revealed that the Applicant was in regular communication with the other accused persons, both by phone and via WhatsApp. A search of the Applicant's residential and business premises resulted in the recovery of a laptop. Forensic examination of the laptop revealed that the Applicant had prepared invoices from the Ugandan supplier and used them for Customs clearance of the consignments. Payment details linked to the other accused were also found on the device. Bank records showed multiple transactions involving the Applicant, with amounts deposited by third parties, including Parminder Singh @ Pindi. The Applicant also received cash payments from other co-accused, as corroborated by their statements.

2.6 Based on this evidence, a complaint was filed alleging that the Applicant had committed offences under Sections 8(c), 21, 23, 27A, and 29 of the NDPS Act. In the aforenoted background, the Applicant was arrested on 11th May, 2022.

<u>ARGUMENTS ADVANCED BY THE PARTIES</u>

3. In this background, the Applicant urges that he has been falsely implicated and advances the following:

3.1 The Applicant, a director of Key Shipping Pvt. Ltd., is a freight forwarder engaged in facilitating the import of goods at the request of clients. His role is limited to logistical tasks such as paying customs duties, complying with statutory requirements (e.g., phytosanitary certifications),

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[2] "DRI"

and delivering consignments to the buyer. The Applicant submits that he neither examines the goods for contraband nor is legally obligated to do so, given the nature of his business. He asserts that he is being accused merely because the contraband was concealed within goods imported by others through his company.

3.2. The Applicant asserts that as a freight forwarder, he is neither obligated nor equipped to inspect the contents of the goods for contraband. Consequently, he contends that there is no reasonable basis to infer that he had knowledge of the contraband concealed within the imported goods.

3.3 The Applicant highlights that no contraband was recovered during the search of his residential or business premises. This fact, he contends, negates any direct link between him and the contraband seized by the authorities.

3.4 There is no material on record which imputes knowledge of the contraband to the Applicant. There is no allegation that the Applicant herein received more money from the other accused persons than what his lawful services warranted. None of the conversations of the Applicant with other accused persons, which are appended with the complaint, indicates that they had conversed about any contraband. Even the statements of the Applicant or other accused persons under Section 67 of the NDPS Act, don't suggest that the Applicant was aware of what was being transported concealed within the goods.

3.5. The presumption under Section 35 of the NDPS Act arises only when the circumstances prevail demonstrating *prima facie* that the Applicant had knowledge of the contraband.

3.6. The Applicant has already spent almost two and a half years in judicial custody and the trial is unlikely to be completed in a reasonable time frame. In the case of ***Mohd. Muslim v. State (NCT of Delhi***),[3] it was held by the Supreme Court that a delay in trial leading to prolonged incarceration of accused, without any sign of trial ending anytime soon violates right to speedy trial of the accused under Article 21 of the Constitution of India. In light of the right to speedy trial, the Applicant is entitled to bail.

3.7. In a case similar to the facts of the present case, the Delhi Court, in ***Vipin Mittal v. National Investigation Agency***,[4] granted bail to the Petitioner therein.

4. *Per contra*, the APP for the State strongly opposes the Applicant's request for bail. He submits that the Applicant is the importer and not the freight forwarder as being claimed by the Applicant. The Applicant is the importer of goods since he had filed bill of entry in the name of his company. The consignment from which the drug was recovered was in the name of the Applicant's company. Additionally, the statements of witnesses, whatsapp chats and call detail records and other material in the complaint indicate that the Petitioner was fully aware and deeply involved in the commission of the offence. Furthermore, the fact that the suspected contraband was not recovered from the Applicant's premises does not automatically entitle him to bail, as a comprehensive view of the case must be considered.

5. The Court has considered the aforenoted contentions. The primary contention of the Applicant is that he was not in conscious possession of the contraband and that he was merely a freight forwarder. However, it must be noted that once possession is established, the person who claims that it was

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[3] 2023 SCC OnLine SC 352
[4] 2023 SCC OnLine Del 3270

not conscious possession has to establish it, as how he came to be in possession is within his special knowledge.[5] Section 35 and Section 54 of the NDPS Act gives a statutory recognition to this position. There is no doubt that the goods which were imported were in the name of the Applicant's company. This establishes the Applicant's possession of the contraband, as the import documents directly link him to the seized goods. The Applicant's contention that he acted solely on behalf of other accused persons and had no knowledge of the concealed contraband remains unsupported by any documentary evidence or material on record. Furthermore, Section 35 of the NDPS Act reads as follows:

> "*Section 35: Presumption of culpable mental state.*
> *(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
> *Explanation.-- In this section "culpable mental state" includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.*
> *(2) For the purpose of this section, a fact is said to be proved only when the court believes it to* ***exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability****."*
>
> *[Emphasis added]*

Section 35 explicitly provides that the presumption of culpable mental state encompasses intention, motive, knowledge, or belief, and that the burden of proof lies on the accused to rebut this presumption. In this case, the Applicant's failure to produce evidence linking the goods to any specific third party, or to show that his role was limited to logistical facilitation, leaves this presumption unchallenged. The Bill of Entry under which the seized goods were imported was in the name of the Applicant's company.

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[5] Madan Lal V. State of H.P. 2003 SCC (Cri) 1664

6. The Applicant contends that the goods were imported on behalf of other accused individuals; however, he has failed to produce any documentation or evidence to substantiate this claim. While the Applicant has sought to cast doubt on the prosecution's case, he has not provided sufficient material to demonstrate, beyond a reasonable doubt, that he lacked conscious possession of the contraband.

7. The Court notes the sheer quantity of heroin seized, amounting to 54.074 kilograms, which adds gravity to the allegations. The prosecution has presented material evidence, including records of financial transactions, both cash and bank transfers—linking the Applicant to the co-accused, as well as Call Detail Records (CDRs) and WhatsApp communications suggesting coordination between the Applicant and the other accused. Moreover, it is alleged that on prior occasions, the Applicant facilitated the import of goods that were subsequently delivered to the same individuals from whose premises contraband has been recovered. These facts, taken cumulatively, establish a *prima facie* case against the Applicant and create a nexus between him and the alleged conspiracy. At this stage, the Applicant has failed to provide a plausible explanation or material evidence to rebut these allegations.

8. Under Section 37 of the NDPS Act, the twin conditions for granting bail in cases involving commercial quantities of narcotic substances are: (i) the Court must be satisfied that there are reasonable grounds to believe the accused is not guilty of the alleged offence, and (ii) the accused is not likely to commit any offence while on bail. Based on the evidence presented, the Applicant has not met these stringent conditions, and therefore, the statutory rigours of Section 37 remain applicable.

9. In relation to the Applicant's reliance on the decision in ***Vipin Mittal***, it must be emphasized that bail orders are not binding precedents. Each case must be evaluated on its own merits. In that case, factors such as the petitioner's health condition and the established reputation of his company were considered in the decision. These specific circumstances do not apply here. Consequently, the case law relied upon by the Applicant does not aid him.

10. In light of the above findings, this Court concludes that the Applicant has not succeeded in rebutting the presumptions under the NDPS Act or satisfying the conditions for bail under Section 37. The allegations, the quantum of contraband, and the evidence linking the Applicant to the conspiracy collectively weigh against granting bail.

11. Disposed of along with pending applications, if any.

SANJEEV NARULA, J

JANUARY 14, 2025
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