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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4042/2024**

ANIL KUMAR

.....Petitioner

Through: Mr. Sandesh Kamlesh Jha, Mr. Shashank, Mr. Aditya Sharma, Ms. Keerti Sani, Mr. Amit Jaiswal, Mr. Ravi Mishra, Mr. Jayesh Mishra and Mr. Ayush Goel, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION, ECONOMIC OFFENCE-II,

.....Respondent

Through: Mr. Ravi Sharma, SPP (CBI) with Mr. Swapnil Choudhary, Mr. Ishann Bhardwaj, Mr. Sagar and Ms. Madhulika Rai Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **06.03.2025**

1. The present application under Section 483 of the Bharatiya Nagrik Suraksha Sanhita, 2023¹ (formerly Section 439 of the Code of Criminal Procedure, 1973²) seeks regular bail in FIR no. RC2202023E0017 under Section 8 read with Sections 22, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985³, registered at P.S. CBI EO-II, New Delhi.

2. Briefly stated, the case of the prosecution is as follows:

2.1 On 04th July, 2023, the National Crime Bureau, New Delhi⁴ received a

¹ "BNSS"

² "CrPC"

³ "NDPS"

⁴ "NCB"



reference from the Interpol Drug Unit concerning three parcels that had arrived in India from Belgium and were suspected to contain prohibited drugs. The details of the recipients of these parcels are as follows: – (i) Arjun Gupta at Mumbai, (ii) Anil Kumar (Applicant herein) at Baraut Tehsil, Prayagraj and (iii) Rohit Yadav at Gokul Dhaba, Prayagraj. The Interpol reference informed NCB that 2 out of the 3 parcels were detained by Customs and the third was at a collection point awaiting further action. Upon receiving this intelligence, NCB contacted the Customs Department to ascertain the status of the parcels, who confirmed that two of the parcels were in custody.

2.2 Acting on this information, the two suspected parcels detained by Customs were seized by the CBI at the Foreign Post Office, Kotla Road, New Delhi. In the presence of two independent witnesses from the Customs Department, the parcels were opened at the Foreign Post Office. Upon inspection, the parcels were found to contain pills of various colours, which, when tested using an NDPS Detection Kit, tested positive for MDMA. Consequently, on 06th July, 2023, 2 CBI cases bearing RC 2202023E0016 and RC 2202023E0017 were registered in CBI EO-II, New Delhi under Section 8 read with Sections 22, 23, and 29 of the NDPS Act, against the persons named as ‘receivers’ on the parcels, i.e., Rohit Yadav and unknown others and Anil Kumar and unknown others.

2.3 The FIR which forms the subject matter of the present application, i.e., RC 2202023E0017 relates to the parcel, which was addressed to the Applicant, and was found containing 1852 grams of MDMA.

2.4 Subsequently, CBI formulated a plan to apprehend the suspects in the case. In order to secure the original psychotropic substance and to avoid any



untoward incident during the controlled delivery process, two dummy parcels were prepared, in lieu of the 2 original parcels seized. The dummy parcels were forwarded through the Foreign Post Office to the designated addresses in order to lead the receiver to believe that they were the original parcels containing psychotropic substances, thereby enabling the arrest and apprehension of the receiver, while taking possession of the incriminating parcels. A team comprising CBI officials and independent witnesses from the Customs Department was formed and dispatched to the relevant Post Office in Baraut, Prayagraj. The CBI team also briefed the officials at the Post Office about the operation, including the identification and apprehension process for the suspected receivers.

2.5 During investigation on 11th July, 2023, the main accused person - Mohit Jaiswal, both in-person as well as telephonically enquired about the parcels addressed to 'Rohit Yadav' and 'Anil Kumar' (the Applicant herein) from the Postman at the Baraut Post Office. Later the same day, Mohit Jaiswal arrived at the Post Office with his face partially concealed using a white cloth (gamcha) and attempted to take delivery of the parcels, however, on sensing the presence of the CBI team, he ran away and absconded. Pertinently, the Postman informed the CBI that he also received a call from the mobile phone number of the Applicant herein – Anil Kumar, enquiring about the parcel under his name; however eventually the main accused - Mohit Jaiswal came to take the delivery. Furthermore, both Mohit Jaiswal and the present Applicant were not available at their homes and evaded to join the investigation in spite of notices under Section 160 of CrPC being issued to them.

2.6 During the course of investigation, Mohit Jaiswal was arrested by CBI



on 13th July, 2023 and he disclosed that he made an effort to collect the incriminating parcels on the instructions of his brother-in-law – Vinod Kumar Jaiswal. Thereafter, a chargesheet was filed in relation to the main accused Mohit Jaiswal and further investigation against the Applicant and co-accused Vinod Kumar Jaiswal was kept open as they were absconding at the time.

2.7 With respect to the specific role attributed to the Applicant, the investigation has revealed that the Applicant, Anil Kumar, is the driver of the primary accused, Mohit Jaiswal. One of the parcels containing the psychotropic substance was specifically addressed to the Applicant. On 11th July, 2023, the Postman at the Baraut Post Office was called from the mobile phone of the Applicant, wherein the caller inquired about the parcel in the Applicant's name, informing him that he would come to take delivery. However, instead of the Applicant, it was Mohit Jaiswal who ultimately arrived at the Post Office to collect the parcels. On the same day, the Applicant also made phone calls from his mobile number to co-accused Vinod Kumar Jaiswal, establishing a link between them in relation to the alleged offence.

2.8 After the arrest of Mohit Jaiswal, the Applicant remained untraceable and absconded. As a result, the Trial Court issued proceedings under Section 83 of the CrPC against him. It was only on 5th August, 2024, that the Applicant voluntarily surrendered before the Trial Court, after which he was arrested by the CBI in connection with FIR No. 220202320017. Subsequently, a supplementary chargesheet was filed against the Applicant and co-accused Vinod Jaiswal under Sections 22, 23, and 29 read with Section 8 of the NDPS Act.



2.9 The offences committed by the Applicant are serious in nature and he is part of an international drug syndicate. There is substantial oral, documentary and circumstantial evidence against the Applicant to prove his culpability. Moreover, the quantity recovered from the parcel which was addressed to him is 1852 grams of MDMA which is much beyond the commercial quantity threshold of 10 grams, thereby attracting the rigours of Section 37 of the NDPS Act.

3. Conversely, counsel for the Applicant urges the following grounds for seeking bail:

3.1 The Applicant is only a driver of the main accused - Mohit Jaiswal and there is a principal-agent relationship between them. The Applicant had no connection or knowledge of the contents of the parcel which was allegedly addressed in his name and he has been falsely implicated in the present case.

3.2 The prosecution's case fails to establish the essential element of 'conscious possession' under the NDPS Act. The sole basis for implicating the Applicant is the statement of the Postman, who claimed that he received a call from the Applicant's mobile number inquiring about the parcel. During course of investigation the Applicant in his disclosure statement dated 6th August, 2024, explained that on 11th July, 2023 (the day of the delivery of the parcels), his employer, Mohit Jaiswal, asked him for his mobile phone to make an inquiry about the parcel. As an employee, the Applicant complied and handed over his phone. Mohit Jaiswal then used the phone to contact someone, but the Applicant could not overhear the conversation. Subsequently, Mohit Jaiswal also called the co-accused, Vinod Jaiswal, from the Applicant's phone and discussed matters related to the



parcel. After these calls, Mohit Jaiswal retained the Applicant's phone and directed him to continue his cab passenger duties, instructing him to collect his phone later in the evening. The Applicant then retrieved his phone at around 8:30 PM from Mohit Jaiswal's shop.

3.3 In his disclosure statement, the Applicant states that he never booked any parcel in his name. In fact, he states that he had taken a loan from Mohit Jaiswal, and as security, he handed over his voter ID and Aadhaar card. As such, he suspects that his personal details were misused by Mohit Jaiswal to book the parcel without his knowledge. Further, no contraband has been recovered from the Applicant's possession, and it was Mohit Jaiswal, and not the Applicant, who attempted to collect the parcels from the Post Office.

3.4 The Applicant comes from a financially disadvantaged background and has no passport or international connections. His decision to evade CBI was not an independent act but was made on the instructions of Mohit Jaiswal's family, who feared that the Ertiga car driven by the Applicant might be seized in the case.

3.5 The Applicant is the sole breadwinner of his family and has remained in custody since his arrest on 5th August, 2024. The investigation has been concluded, and a chargesheet has already been filed. Given that further custodial detention would serve no purpose, the Applicant seeks bail on the ground that prolonged incarceration would cause undue hardship to him and his dependents.

4. Mr. Ravi Sharma, SPP for the State, strongly opposes the present bail application. He contends that the Applicant cannot evade liability by claiming lack of possession, as the parcel was booked in his name. Furthermore, the statement of the Postman clearly establishes that he



received a call from the Applicant's mobile number, inquiring about the parcel. He relies on the Supreme Court decision in ***Mohan Lal v. State of Rajasthan***⁵, wherein the Court held that “a person who, though not in actual possession, has both the power and intent to exercise dominion or control over a thing, either directly or through another person, is deemed to be in constructive possession of the said thing”.⁶ In the present case, the Applicant was fully aware of the parcel booked under his name and knowingly facilitated its receipt by allowing the main accused, Mohit Jaiswal, to collect it. This, according to the prosecution, demonstrates his culpability under the NDPS Act. Further, in *Mohan Lal*, the Supreme Court has highlighted that Section 18 read with Section 35 of the NDPS Act raises a presumption as to knowledge and culpable mental state from the possession of illicit articles. The Court emphasized that for ‘possession’ under the NDPS Act, the crucial elements are *animus* (mental intent) and *conscious knowledge*. If an accused has knowledge of the existence of the contraband at a specific location and at a relevant time, and also has the intention to exercise control over it, then such possession is legally established.

5. Mr. Sharma argues that since the Applicant was aware that a parcel under his name, containing contraband, was being received by Mohit Jaiswal, he was in *constructive possession* of the parcel. He contends that there is sufficient material on record to implicate the Applicant, particularly considering that the recovered contraband falls within the category of *commercial quantity* under the NDPS Act. Consequently, the stringent

⁵ (2015) 6 SCC 222

⁶ *Supra*, paragraph 12



conditions of Section 37 of the NDPS Act apply, which mandate that bail can only be granted if the Court is satisfied that (i) the accused is not guilty of the offence, and (ii) he is not likely to commit any offence while on bail. In support of his submission, he places reliance on ***Narcotics Control Bureau v. Mohit Aggarwal***.⁷

6. Mr. Sharma further contends that the Applicant's assertion of having retrieved his mobile phone from Mohit Jaiswal at 08:30 PM is entirely false. He submits that following the CBI raid at the Baraut Post Office, Mohit Jaiswal absconded and was neither found at his residence nor at his shop. Thus, the Applicant's claim is untenable and appears to be a fabricated attempt to distance himself from the incriminating evidence. Lastly, Mr. Sharma argues that since the Applicant had previously absconded from the CBI and had only surrendered after the Trial Court initiated proceedings against him under Section 82 of CrPC, he is a flight risk who may evade the trail if enlarged on bail.

7. The Court has considered the contentions of the parties. At the outset, it must be mentioned that this Court has rejected the bail application [BAIL APPLN. 3730/2023] of the co-accused - Mohit Jaiswal, by way of order dated 28th January, 2025. In that case, although Mohit Jaiswal had also pleaded lack of *conscious possession*, the Court was not persuaded by his defence, as he was the one who personally went to the Post Office, made inquiries about the parcels, and attempted to collect them. It was at that stage, when he was making an inquiry about the parcels from the Postman when the CBI team sensing his presence, attempted to apprehend him and he fled from the spot. Thus, Mohit Jaiswal's active participation in enquiring

⁷ 2022 SCC OnLine SC 891



about the parcels before going to collect them, coupled with his conduct at the Post Office, demonstrated his intent to take possession of the contraband. It also suggested that he is the one who consciously facilitated the receipt of the parcel. The Court, therefore, held that he was in *conscious possession* of the illicit substance under the NDPS Act.

8. However, the case of the Applicant, is materially distinguishable from that of the co-accused. Whether there was conscious possession has to be determined with reference to the factual backdrop. Unlike Mohit Jaiswal, no contraband has been recovered from the Applicant, nor is there any evidence to suggest that he visited the Post Office or made any attempt to take possession of the parcel. The Applicant was merely employed as a driver by Mohit Jaiswal. While the parcel was booked in his name, mere registration of a parcel in an individual's name, without corroborative evidence of knowledge and control over its contents, does not *ipso facto* establish 'possession' under the NDPS Act. The Supreme Court has consistently held that 'conscious possession' requires both knowledge of the contraband and the ability to exercise control over it⁸. In the present case, the Applicant asserts that he had provided his Aadhar card and other personal details to his employer, Mohit Jaiswal, who may have misused them to book the parcel. Given the nature of the relationship between the Applicant and Mohit Jaiswal, and the absence of any overt act suggesting knowledge or control over the contraband, the *prima facie* ingredients of 'possession' – as required under Section 8 read with Sections 22, 23, and 29 of the NDPS Act, in the opinion of the Court, do not appear to be satisfied against the Applicant at this stage.



9. Furthermore, apart from the parcel being booked in his name, the CBI relies on a call allegedly made from the Applicant's mobile phone to the Postman, inquiring about the subject parcels containing illegal substances. However, it is pertinent to note that no transcripts or call recordings have been placed on record to substantiate this claim. Additionally, the Postman, in his disclosure statement, merely stated that he received a call from a number where the caller, posing as Anil Kumar, inquired about the parcel under his name, claiming ownership and stating that he would come to collect it. In the *prima facie* opinion of this Court, at this stage, it has not been conclusively established whether the caller was indeed the Applicant or whether someone else used his phone to impersonate him for the purpose of making inquiries about the parcels. Given this uncertainty, the Applicant is entitled to the benefit of doubt at this juncture.

10. The concept of 'possession' under the NDPS Act, as elucidated by the Supreme Court in *Mohan Lal v. State of Rajasthan*, requires not only physical custody of the contraband but also the presence of *animus*, i.e., knowledge and intention to exercise control or dominion over the substance. The prosecution must establish that the accused had personal knowledge of the existence of the contraband and an intent to retain control over it. In the present case, apart from the fact that the parcel was booked in the Applicant's name and that a call was allegedly made from his mobile number inquiring about it, there is no evidence demonstrating that the Applicant had knowledge of the parcel's contents or any intention to exercise dominion over it. In light of these circumstances, and applying the test laid down in *Mohan Lal*, the foundational requirement of 'conscious

⁸ *Rakesh Kumar Raghuvarshi v. State of Madhya Pradesh*, 2025 SCC OnLine SC 122



possession' is not established. Consequently, the presumption under Section 35 of the NDPS Act is not attracted, and the rigours of Section 37, which require satisfaction that the accused was in possession of a commercial quantity of contraband, would get diluted. Thus, on a *prima facie* assessment of the above facts and circumstances, this Court is of the considered opinion that there are reasonable grounds to believe that the Petitioner's guilt may not be proved. Further, since the Petitioner has no criminal antecedents, the Court is satisfied that he is not likely to commit any offence while on bail.

11. The Applicant has been in judicial custody since 5th August, 2024. The supplementary chargesheet *qua* him has already been filed by the CBI after he surrendered before the Trial Court and joined the investigation. As for the CBI's concern that the Applicant may abscond if released on bail, this Court is of the view that such apprehensions can be effectively addressed by imposing stringent conditions to ensure his continued presence during trial and to prevent any misuse of liberty.

12. In light of the above, the Court is inclined to enlarge the Applicant on the bail on furnishing a personal bond for a sum of ₹50,000/- with one surety of the like amount, subject to the satisfaction of the Trial Court/Duty Metropolitan Magistrate/Jail Superintendent and on the following conditions:

- a. The Applicant shall cooperate in any further investigation as and when directed by the concerned Investigating Officer⁹;
- b. The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;



- c. The Applicant shall under no circumstance leave the country without the prior permission of the Trial Court;
 - d. The Applicant shall appear before the Trial Court as and when directed;
 - e. The Applicant shall provide the address where he would be residing after his release and shall not change the address without informing the concerned IO/ SHO;
 - f. The Applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
 - g. The Applicant shall report to the concerned IO on the second and fourth Friday of every month to mark his presence, at 4:00 PM, and will not be kept waiting for more than an hour.
13. In the event of there being any FIR/DD entry/complaint lodged against the Applicant, it would be open to the State to seek redressal by filing an application seeking cancellation of bail.
14. 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 the outcome of the trial or be taken as an expression of opinion on the merits of the case.
15. The bail application is allowed in the afore-mentioned terms.

SANJEEV NARULA, J

MARCH 6, 2025/as

⁹ “IO”