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

Date of decision: 17.02.2025

+ **BAIL APPLN. 4174/2024**

NURSHEID MANSURI @ VISHAL

.....Applicant

Through: Mr. Vivek Kumar Singh, Mr. Vishal Arun Mishra and Mr. Paramjeet Kataria, Advocates

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, SSC for NCB with Ms. Poonam Rani, Ms. Shelly Dixit and Ms. Anoushika, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. Present petition has been filed under Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) read with Section 36A (3) of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) seeking regular bail in Crime no. VIII/63/DZU/2022 & VIII/63A/DZU/2022 under sections 8(c), 22, 23, 27A & 29 of the NDPS Act.
2. The Applicant herein was arrested on 19.08.2022 and has been in judicial custody since 29.08.2022. The Applicant has been incarcerated as an under trial for approximately 2 years and 6 months.
3. It is the case of the prosecution in the status report¹ that based on secret information, a seizure of 174 grams of Amphetamine² was carried out

¹ Dated 16.12.2024

² Entry No. 15 of the Schedule under NDPS Act



on 18.08.2022 from a parcel bearing Airway Bill No. 31670430934 at Aramex India Pvt. Ltd. The sender of the parcel was listed as Anusaya Manohar, while the recipient's address was recorded as Black Gunder, No. 9, Donatello Drive, Landsdale Perthwa-6065, Australia.

4. It is stated that upon inquiry with the manager of Aramex India Pvt. Ltd., it was revealed that the parcel was initially received at AmritSeair Express Pvt. Ltd. Further, investigation disclosed that the parcel had been booked by Sanjay Kumar Panda, Proprietor of UTC Worldwide Express, Mahipalpur, Delhi.

5. It is stated that on 19.08.2022, officials of the Narcotics Control Bureau (NCB) enquired about the parcel from Sanjay Kumar Panda, who disclosed that the parcel had been booked at the instance of the Applicant/Nursheid herein.

6. It is stated that a notice under Section 67 of the NDPS Act was served on the Applicant/ Nursheid. In response, the Applicant voluntarily admitted his involvement in the trafficking of the 174 grams of Amphetamine seized on 18.08.2022. The Applicant disclosed that he had come into contact with one Rahish Nadiar Ali (co-accused) through his sister, Sahira Khatoon (co-accused), who is also engaged in drug trafficking. It is stated that the Applicant admitted that apart from the seized parcel (No. 3167043934), he had booked another parcel (No. 31670443696) on the instructions of co-accused Rahish. It is stated that during interrogation, the Applicant provided screenshots of WhatsApp conversations regarding the parcel(s) with co-accused Rahish. It is stated that Applicant admitted that he had been paid Rs. 5,000/- by co-accused Rahish for his involvement. It is stated that Applicant admitted that he was fully aware that the parcel's contents was 174 grams of



Amphetamine.

7. It is stated that based on the Applicant's disclosure, the second parcel (No. 31670443696) was located and searched at AmritSeair Express Pvt. Ltd., resulting in the recovery of further 283 grams of Amphetamine. Following this, notices under Section 67 of the NDPS Act were issued to the co-accused Rahish and co-accused Sahira Khatoon, both of whom voluntarily admitted their involvement in the drug trafficking operation.

8. It is stated that in the present case, in the compliance of Section 52A of NDPS Act, the process of sampling has been duly carried out and no objection/challenge to the aforesaid process has been raised.

Submissions of the Applicant

9. Learned Counsel for the Applicant submits that the Applicant has been falsely implicated in the present case. He states that no contraband was recovered from the direct possession of the Applicant. He states that the Applicant was not aware about the contents of the parcels booked by him with the courier service at the instructions of co-accused, Rahish.

10. He states that the Applicant is not well-educated and was merely acting on the instructions of the co-accused Rahish as a daily-wage employee. He relies on the WhatsApp chat screenshots placed on record to substantiate the claim that the Applicant had no knowledge of the contraband concealed within the parcels, which he was instructed to book. He states that main accused Rahish, who procured the contraband has not been enlarged on bail and thus granting bail to the Applicant who is working as an employee would not prejudice the case of the Prosecution. To support his contention, he relies upon the Order dated 30.01.2024 passed by the Supreme Court in the case of **Senior Intelligence Officer v. Sai Ram**

**Sivaratri**³.

11. He states that the parcels were seized on 18.08.2022 and 20.08.2022 respectively; however, the application under Section 52A of the NDPS Act, was filed by prosecution belatedly on 10.10.2020. He states that there is an unexplained delay of 50 days in compliance, whereas such an application is required to be filed within 72 hours. He states that there is a discrepancy between the chemical composition of the contraband as identified in the field-testing kit and the Forensic Science Laboratory (FSL) report. He states that the field-testing kit indicated that the substance was Amphetamine, however, the FSL report confirmed it to be Methamphetamine.

12. He states that there is no monetary transaction between the Applicant and the co-accused with respect to the contraband. He states that the Applicant was merely acting as a employee in delivering the parcel to the courier agency and he only received remuneration for the same.

13. He states that the Applicant has been in custody since 19.08.2022 as an undertrial prisoner, and to date, charges have not been framed. Given that there are 16 prosecution witnesses yet to be examined, the trial is likely to be prolonged. He states that delay in trial would result in undue prejudice to the Applicant's right to a speedy trial. He relies upon the Order(s) of Supreme Court in **Suman SK alias Samirul Islam v. State of West Bengal**⁴ and **Jitendra Jain v. NCB**⁵ wherein even though it was the case of recovery of a commercial quantity, the Court enlarged the accused on bail on the ground of delay in trial. He states that the Applicant has clean antecedents and no

³ Special Leave to Appeal (Crl.) No. 1171/2024

⁴ Order dated 01.03.2024 in Criminal Appeal No. 1291/2024

⁵ Order dated 16.12.2022 in Special Leave to Appeal (Crl.) No.8900/2022



priors.

14. He states that the Applicant is a resident of Nepal however, a coordinate bench in BAIL APPLN. 3416/2023 vide order dated 19.03.2024 has granted regular bail to a Nepali national and that was also a case under NDPS by imposing stringent conditions. He states that he has roots in India as his sisters reside in India. He states that Applicant will abide by the conditions imposed by the Court to secure his presence.

Response of the prosecution

15. In reply, Mr. Kathri, Additional Standing Counsel for the NCB states that recovery of the contraband in the present case is that of the commercial quantity and therefore, the rigors of section 37 of the NDPS Act are applicable in the present case.

16. He further submits that the Applicant, in his voluntary disclosure statement, admitted to his involvement in the drug trafficking operation along with other co-accused Rahish Nadiar Ali Shah and co-accused Sahira Khatoon. To substantiate this assertion, he relies on WhatsApp conversations between the Applicant and co-accused Rahish, as well as financial transactions made by co-accused Rahish to another co-accused Sahira Khatoon, who is the Applicant's sister. He states that these WhatsApp chats and financial transactions establishes a direct link between the Applicant and the trafficking of narcotics.

17. With respect to the discrepancy in the nomenclature of the contraband as identified by the field-testing kit and the Forensic Science Laboratory (FSL) report, he contends that contraband Amphetamine and Methamphetamine possess similar chemical compositions. Consequently, field testing kits may occasionally yield inaccurate findings, which are



subsequently confirmed through comprehensive laboratory testing conducted by the FSL.

18. He states that Section 52 A of the NDPS Act was duly complied, the sampling of the seized substances was carried out with the necessary judicial authorization and the sampling process was duly recorded under a judicial order passed by the learned Magistrate of 20.10.2022. He relies on the judgment of a coordinate bench in **Gauri Shankar Jaiswal v. NCB**⁶, to contend that any alleged prejudice arising from the sampling procedure can only be determined during trial before the learned Special Court, upon due consideration of the evidence and this by itself cannot be a ground for grant of bail.

19. He states that arguments on charge have been heard and the matter is listed on 27.02.2025 for framing formal charges. He states that in January, 2025 the order for charge could not be passed as the accused were unable to attend the hearing due to security arrangements of the Republic Day.

20. Lastly, he contends that the Applicant is a foreign national, specifically a citizen of Nepal, and has no established roots in India. Owing to this, the Applicant poses a flight risk. If released on bail, there is a significant likelihood that he may abscond by crossing the border into Nepal, necessitating a complex extradition procedure to secure his return. He also states that public witnesses enlisted at Sr. no. 15 and 16 of the charge-sheet who worked for the courier agency where the parcels were booked may be threatened or influenced by the Petitioner if released. He relies upon the judgment of a coordinate bench in BAIL APPLN. 1812/2021

⁶ 2023:DHC:3899



dated 16.08.2021 wherein bail was declined to an accused who was Nepali national under NDPS Act.

Analysis and finding

21. This Court has heard the submissions advanced by the learned counsel for the parties and perused the record.

22. The accusation in the present case is with regard to the recovery of commercial quantity of contraband therefore, the rigours of section 37 of NDPS Act are attracted thus, the Court can grant bail only when the twin conditions stipulated in the stipulated in Section 37(1)(b) of NDPS Act are satisfied in addition to the usual requirements for the grant of bail (i) the Court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; and (ii) That the person is not likely to commit any offence while on bail.

23. At the outset this Court notes that the recovery of the contraband dates back to 18.08.2022 and 20.08.2022 after which the Crime no. VIII/63/DZU/2022 & VIII/63A/DZU/2022 under sections 8(c), 22(c), 23(c), 27A & 29 of the NDPS Act was registered against the Applicant. The Applicant has been in the judicial custody since 29.08.2022 as an under trial. The chargesheet in the matter was filed in February, 2023 and till date formal order of framing of the charges has not been passed. The Applicant as on date has already undergone incarceration of 2 years 6 months approximately.

24. The Applicant has no criminal priors and his conduct in jail as per nominal roll is reported to be satisfactory. The main accused as per the prosecution is co-accused Rahish as the contraband belonged to the co-



accused and the Applicant's role was limited to booking the parcel with the courier agency.

25. The Supreme Court in the case of **Hussainara Khatoun v. Home Secy., State of Bihar**⁷ had declared that the right to speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of Article 21 of the Constitution remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just". These observations have been reiterated emphatically, time and again, in several judgments, such as **Kadra Pahadiya & Ors. v. State of Bihar**⁸ and **Abdul Rehman Antulay v. R.S. Nayak**⁹.

26. It is true that the quantity of contraband recovered in the parcels is commercial in nature and the issue whether the Applicant had knowledge of the contents of the parcels will be determined at trial. So also, the defense of the Applicant that he was merely working at the instructions of the co-accused Rahish and had no knowledge of the contents of the parcels will be examined at trial. Thus, due to the commercial quantity Section 37 of the NDPS Act would ordinarily be attracted in this case. However, in the absence of criminal antecedents and considering the fact that the Applicant has been in custody for the last 2 years and 6 months, this Court is satisfied that the conditions of Section 37 of the NDPS Act can be dispensed with, more so when the trial is yet to commence and in fact the formal charge has also not been framed. There are 16 witnesses enlisted in the final report and therefore the trial is likely to take considerable time. In this case admittedly

⁷ (1980) 1 SCC 81

⁸ (1981) 3 SCC 671

⁹ (1992) 1 SCC 225



the trial has not been delayed due to any act or omission of the Applicant herein (Re. **Dheeraj Kumar Shukla v. State of U.P.**¹⁰).

27. The submission advanced by the learned ASC states that the Applicant, being a citizen of Nepal, poses a flight risk carries some merit. However, the right to a speedy trial, as enshrined under Article 21 of the Constitution of India, employs the term "No person," thereby extending this fundamental right not only to Indian citizens but also to non-citizens. The mere fact that the Applicant is a foreign national, specifically a citizen of Nepal, cannot serve as the sole ground for denying him the benefit of bail. A coordinate bench of this Court in BAIL APPLN. 3416/2023 vide order dated 19.03.2024 has granted the relief of bail in a NDPS case to an applicant who was also a citizen of Nepal by imposing stringent conditions to secure its presence. Similar conditions can be imposed on the Applicant herein and the same are in any event acceptable to the Applicant.

28. In light of the above, this Court finds it to be a fit case for grant of bail to the Applicant. Consequently, the applicant is directed to be released on bail on furnishing a personal bond in the sum of Rs. 1,00,000/- with one sound surety of the like amount subject to the satisfaction of the Trial Court after verification of the Applicant's address at Delhi at which he will reside and further subject to the following conditions:

- i. Applicant will not leave NCT of Delhi without prior permission of the Court.
- ii. Applicant shall provide his address at Delhi to the Trial Court.

The Applicant shall intimate the Court by way of an affidavit

¹⁰ 2023 SCC OnLine SC 918.at para 3



and to the IO regarding any change in residential address. In addition, the address of the Applicant at Nepal will also be provided to the Trial Court which will be verified by the I.O.

- iii. Applicant shall appear before the Trial Court as and when the matter is taken up for hearing.
- iv. Applicant shall join investigation as and when called by the IO concerned.
- v. Applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the IO concerned.
- vi. Applicant will mark presence before the concerned I.O. every 1st and 4th Monday of the month at 05:00 P.M., and will be not kept waiting for more than an hour.
- vii. Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, the complainant/victim or any member of the complainant/victim's family or tamper with the evidence of the case.

29. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

30. Copy of the order be sent to the Jail Superintendent for information and necessary compliance.

31. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.



32. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
FEBRUARY 17, 2025/mt/AKT