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

Date of decision: 14.01.2025

+ **BAIL APPLN. 4268/2024**

VIKRAMJIT SINGH

.....Petitioner

Through: Mr. N. Hariharan, Sr. Adv. with Mr. Abhir Datt, Mr. Shahbaz Singh, Ms. Punya Rekha Angara, Ms. Vasundhara N., Mr. Aman Akhtar, Ms. Sana Singh, Mr. Vinayak Gautam, Advs.
Mr. Aditya Soni, Mr. Rajat Gautam, Mr. Divyan Shrivastav, Advs.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Arun Khatri, Sr. SC with Mr. Sahil Khurana, Ms. Shelly Dixit, Ms. Anoushka Bhalla, Mr. Pranavjeet Singh, Ms. Tracy Sebastian, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition seeking bail in NCB Case No. VIII/01/DZU/2024 registered under Sections 8, 9A, 22(c), 23(c), 25, 27A, 28, 29 and 30 of Narcotic Drugs and Psychotropic Substances Act, 1985 ("**NDPS Act**") PS NCB-DZU.
2. The allegations against the petitioner are that 12.16 Kgs of Methamphetamine was recovered from the house of one Mr. Gaurav Singh Chouhan on 22.01.2024 in a blue/firozi bag which has been transported by



the petitioner to Delhi on 20.01.2024 and delivered to Mr. Gaurav Singh Chouhan by one Mr. Gurcharan Singh @ Sweety and Gurpreet Singh @ Jojo at Ranibagh, New Delhi. It is further alleged that the aforesaid bag was delivered at the instructions of the petitioner.

3. Mr Hariharan, learned senior counsel for the petitioner submits that the petitioner has no connection with any of the co-accused persons or any of the contraband allegedly recovered in the present case. The petitioner has been falsely implicated in the present matter only on the basis of confessions of the co-accused without any independent corroborating evidence. The said confessions are inadmissible in evidence and cannot be relied upon. Reliance is placed on catena of judgments of the Hon'ble Supreme Court to urge that the confessions are hit by section 25 of Indian Evidence Act, 1872 ("*IEA*").

4. He further submits that the respondent did not get accused No. 3 i.e. Mr Gaurav Singh Chouhan identified by Gurcharan Singh @ Sweety and Gurpreet Singh @ Jojo pursuant to his arrest.

5. It is the case of the respondent that the petitioner was allegedly working at the behest of accused No. 9 i.e. Mr Manpreet Singh. However, the respondent failed to establish any link between the two. Further, Mr. Manpreet Singh in his statement specifically denies of having any knowledge of the alleged delivery on 20.01.2024.

6. Learned senior counsel for the petitioner further submits that Mr. Gaurav Singh Chouhan in his disclosure statement has allegedly stated that the 12.16 kgs of Methamphetamine recovered from his residence was delivered to him on 20.01.2024 in a "black coloured bag" by two boys near Laxmi Kitchen. The said disclosure statement cannot be relied upon as the



same was recorded on 23.01.2024 i.e. subsequent to the recovery of the contraband from his residence on 22.01.2024. Further, Gurpreet Singh @ Jojo and Gurcharan Singh @ Sweety states that they were unaware of the contents of the bag. Hence the respondent failed to meet the requirements of section 27 of Evidence Act. Reliance is placed on ***Pulukuri Kottayya v. King Emperor, 1946 SCC OnLine PC 47*** and ***Amin Chand v. State, 1986 SCC OnLine Del 344***.

7. Learned senior counsel for the petitioner submits that the statements of Mr. Gaurav Singh Chouhan are not admissible under Section 27 of IEA. The recovery of about 12 kgs of Methamphetamine had already taken place prior to the statements of Mr Gaurav Singh, hence, the said statement has have not led to the discovery of any 'fact' for it to be admissible under section 27 of IEA. The contents of the statements in relation to the past use of the said recovery and how it travelled to Gaurav Singh, are inadmissible in evidence, for being mental facts, not being covered under Section 27 IEA. In this regard, reliance is placed on ***Jasbir Singh vs. Narcotics Control Bureau, (2023) SCC OnLine Del 134***.

8. Lastly, he submits that the charges have yet not been framed in the matter and there are a total of 216 documents and 39 witnesses in the 2500 pages chargesheet which will have to be examined. The trial will take a long time to reach its conclusion therefore grave prejudice will be caused if the petitioner is kept in custody for such prolonged period.

9. *Per contra*, learned standing counsel for the respondent has drawn my attention to several statements recorded under section 67 of NPDS Act of the witnesses and co accused to substantiate the case against the petitioner and to submit that the petitioner's complicity in commission of the offence.



10. Learned counsel further relied upon the statement of Jojo and Sweety (alleged bodyguards of the petitioner) recorded under Section 164 of Cr.P.C. wherein they have categorically stated that the consignment was delivered at the instance of the petitioner.

11. Further, relying on para 12 of the status report, it is submitted that Manpreet Singh provided the contraband to the petitioner who further supplied the contraband to Mr. Gaurav Singh at Ranibagh on 20.01.2024 which was recovered from the house of Mr. Gaurav Singh on 22.01.2024.

12. It is further stated by the learned counsel that the petitioner did not join investigation and did not participate in the same and hence the petitioner was arrested.

13. Apart from the statements recorded under section 67 of NDPS Act, learned counsel submits that the corroborative evidence also includes:-

A. CCTV footage dated 20.01.2024 where the Petitioner's carcade is clearly visible.

B. The registration details of car bearing no. PB65AR2223.

C. Mobile location of the petitioner on 20.01.2024 between 7.00 PM to 10.00 PM.

14. He has relied upon the judgments of ***NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1***, ***Vijaya Singh v. State of Uttarakhand, 2024 SCC OnLine SC 3510***, ***Union of India v. Mohd. Nawaz Khan, (2021) 10 SCC 100*** and ***Narcotics Control Bureau v. Mohit Aggarwal, (2022) 18 SCC 374***.

15. I have heard learned counsel for the parties and perused the material available on record.

16. It is settled law that statements recorded under section 67 of NDPS Act are not admissible in evidence and conviction cannot be based on the



statements recorded under section 67 of NDPS Act. Reference be made to ***Tofan Singh v. State of Punjab, (2021) 4 SCC 1.***

17. In the present case, it is pertinent to note that the recovery of 12.16 Kgs of Methamphetamine was affected from the residence of Mr. Gaurav Singh Chauhan on 22.01.2024. Further, the disclosure statement of Mr. Gaurav Singh Chauhan was recorded on 23.01.2024. Relevant portion of the disclosure statement extracted below:-

प्र06—आपके घर से दि० 22.01.24 को जब्त हुई 12.16 Kg अफिटा माइन Durgs किसने और कब सपलाई की थी।

उ०—मेरे दोस्त आशीष सतीजा के साथ हुई बातचीत के आधार पर मैं दि० 20/01/24 को रोड No. 43 गुरु हरि किशन मार्ग रानी बाग इस्थित लक्ष्मी किचन के सामने टिक्टैट के उस तरफ पहुंचा जहां लगभग शाम के 7:30—8:00 बजे फनी बेकर 5 Star — के पास फनी बेकर के सामने इस्था नीम के पेड़ के पास खड़ी White Colour की दो Scorpio SUV में से दो लड़कों ने एक Black Colour Bag दिया जिस में कुल 18 Packet थे जिनका वजन लगभग 12. Kg होगा। जिन को मैंने आगे जा कर एक अन्य Bag में Transfer कर घर ले आया था जहां घर आ कर मैंने उनको आशीष के बताये अनुसार तीन नीली रंग की थैली में भर लिया था। जिन को आपस में mix किया गया था। एवम बाद में उस थैली में रखा गया था।



18. On perusal, the said disclosure statement does not state that it was the petitioner who supplied the alleged recovered contraband to Mr. Gaurav Singh Chauhan.

19. This Court in *Phundreimayum Yas Khan v. State (NCT of Delhi)*, **2023 SCC OnLine Del 135** has observed that the disclosure statement of the co-accused is per se not admissible without there being any corroboration. Relevant para is extracted below:-

“24. The case of the prosecution, in so far as the applicant is concerned, is circumstantial, i.e. based solely on disclosure statement of the co-accused Sayed Javed Hussain which is per se not admissible without there being any corroboration. The prosecution has not been able to establish any connection between the subject offence and the location/CDRs of the accused persons, where the applicant is alleged to be present at the time when the contraband was collected by Sayed Javed Hussain. Merely because the applicant had been having frequent calls with the co-accused, would not be sufficient to hold that applicant is guilty of the subject offence.”

20. Further, I find some force in the argument of the learned senior counsel for the petitioner that when the disclosure statement is recorded, based on that information, there is a discovery/recovery of a object/fact from the knowledge of the accused. The disclosure statement made by the accused should led to a discovery of a fact to be admissible under section 27 of IEA. In the present case, the recovery of 12.16 Kgs of Methamphetamine was affected from the residence of Mr. Gaurav Singh Chauhan on



22.01.2024 and the disclosure statement was recorded on the next day i.e. 23.01.2024. It is pertinent to refer to the judgment of **Pulukuri Kotayya** (*supra*) and the relevant portion reads as under:-

“.....In their Lordships' view it is fallacious to treat the “fact discovered” within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A.”, these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

21. Another judgment relied upon is **Jasbir Singh** (*supra*) and the relevant paras are extracted below which read as under:

“63. As statements recorded under Section 67 NDPS Act are inadmissible being hit by Section 25 IEA, the only way to make any part of such statements admissible, is by way of Section 27 IEA which creates an exception and allows only



such part of a confessional statement, being information leading to discovery of some fact not previously in the knowledge of the police officer. In the present case, none of the statements of the Applicant lead to any discovery of a 'fact', and hence, the statutory bar to their admissibility and reliability is attracted.

.....

67. With regards to applicability of Section 27 IEA, the fact so discovered is admissible when accompanied by the recovery of a material object and does not include purely mental or psychological facts. It is relevant to note the observations of this Hon'ble Court in State v. Navjot Sandhu @ Afsan Guru CrI. A. No. 80/2003 wherein this Hon'ble Court, after placing reliance on Pulukuri Kottaya and Ors v. The King-Emperor 1946 SCC OnLine PC 49, and several other judgments of the Hon'ble Supreme Court and other courts, summarized the law governing Section 27 IEA as follows:

“396. We, therefore, hold that in order that Section 27 may be brought in aid, the prosecution must establish:—

- 1. That consequent to the information given by the accused, it led to the discovery of some fact stated by him.*
- 2. The fact discovered must be one which was not within the knowledge of the police and the knowledge*



of the fact was for the first time derived from the information given by the accused.

3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.

4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.

5. Only such portion of the information as is distinctly connected with the said discovery is admissible.

6. The discovery of the fact must relate to the commission of some offence.”

68. Therefore, for any part of the alleged disclosures of the Applicant to be admissible, it was necessary that such disclosure led the Respondent to recovery of any contraband, or any other ‘fact’ related to the alleged offences. Given that none of the disclosures of the Applicant, except (at best for the recovery of a contraband involving quantity lesser than small quantity) led to the discovery of any object, or a “new fact” thereby, such disclosures under section 67 NDPS Act are held inadmissible in evidence.”

22. From the facts noted above, *prima facie*, I am of the view that the disclosure statement cannot be used against the petitioner as the petitioner is



not named therein and the disclosure statement refers to an incident which had already taken place and recovery affected already, hence, not admissible in the eyes of law.

23. As per the status report, there is no link telephonically or otherwise between Mr. Gaurav Singh Chauhan and the petitioner. The respondent for the reasons best known to them have not arrested Gurcharan Singh @ Sweety and Gurpreet Singh @ Jojo who have allegedly supplied the alleged contraband to Mr. Gaurav Singh Chauhan.

24. Learned senior counsel for the petitioner has relied upon the judgment of ***Binoy Jacob v. CBI, 1993 SCC OnLine Del 53*** and more particularly on para 8 which reads as under:

“8. There is no doubt that the investigating agency in its discretion has to decide as to which accused is to be arrested and at what stage. The Court, can, however, ask the Investigating Agency in appropriate cases as to what is the reason for not arresting the main accused. In case no satisfactory answer is given, the Court can take into consideration this factor, amongst others, while considering the bail application of the co-accused. In the country governed by rule of law the discretion of the investigating agency does not mean whim, fancy or wholly arbitrary exercise of discretion. The facts disclosed in the First Information Report show that the main accused is V. Krishnamurthy who is stated to have obtained huge pecuniary advantage acting in conspiracy with his two sons and Binoy Jacob. V. Krishnamurthy and his son K.



Chandra, according to prosecution, were interrogated only on 2nd December 1992 and at no time thereafter. Jayakar has not been interrogated. Jayakar is stated to be abroad. The prosecution in exercise of its discretion has not arrested V. Krishnamurthy and his son K. Chandra. It is, of course upto them to arrest or not to arrest. The explanation given by prosecution is that as V. Krishnamurthy has been enlarged on interim bail on medical grounds in another case and that is the reason for not arresting him. About K. Chandra, the C.B.I. says that as he has been enlarged on bail in another case and has been restrained from going abroad and that is why he has not been arrested in this case. It may be noticed that order for release of Chandra was passed much before the date of F.I.R. in question. It is not disputed by C.B.I. that the passport of Binoy Jacob is also with it. The question is not about arrest or non-arrest of Krishnamurthy or his sons but, prima facie, one does get an impression that the C.B.I., a prime investigating agency of the country, is treating Binoy Jacob differently. As noticed above as per F.I.R., in International Engineering and M/s. Ergodyne's account two sons of V. Krishnamurthy were having shareholding interests but it does not talk of Binoy Jacob having interest in the said two companies.”

25. A perusal of the aforesaid judgment clearly shows that it is the prerogative of the investigation agency to arrest/not to arrest an accused. However, the investigating agency has to explain the reasons for not



arresting the main accused and must provide a satisfactory explanation for the same. In the present case, the stand of the respondent that they were of the view that Gurcharan Singh and Gurpreet Singh were merely employees of the petitioner, and could not have been involved in the narcotic trail does not inspire my confidence.

26. In a case where the said two persons have delivered the consignment and were seen on CCTV delivering the consignment, it cannot be left to the arbitrary discretion of the investigating agency to arrive at a conclusion that they were not the main accused but were only made to do the offence complained of. The respondent out of their own free will, rather than arresting Gurcharan Singh and Gurpreet Singh, have made them witnesses and recorded their statement under Section 164 of Cr.P.C.

27. Admittedly, the said two persons were the security guards of the petitioner and were travelling with **petitioner**. The fact whether they dealt with the consignment on instructions of the petitioner or on their own can only be established during trial.

28. Lastly, there is no denial of the fact that the petitioner was in Ranibagh on 20.01.2024 for business meeting and hence his mobile location and car is neither in dispute nor contested by the respondent. The statement of Mr. Shiva Suri has also been recorded which corroborates to the fact who states that the petitioner came for a business meeting with Mr. Shiva Suri.

29. The judgments of ***Zahoor Ahmad Shah Watali (supra)*** and ***Vijaya Singh (supra)*** are with regard to the evidentiary value of the statement made under Section 164 CrPC. In the present case, I have already opined that no satisfactory reason has been given as to why Gurcharan Singh and Gurpreet Singh have not been arrested. The statements of the said persons recorded



under section 164 of CrPC does not inspire my confidence for the reasons noted above.

30. Lastly and more importantly, the decision of a Coordinate Bench in ***Manpreet Singh Gill v. Narcotics Control Bureau, BAIL APPL. 2202/2024***, wherein Manpreet Singh Gill who is also named in the same Complaint filed by the respondent and assigned similar role has already been granted bail. The relevant paras of ***Manpreet Singh Gill (supra)*** are reproduced hereinunder:-

“20. It is a settled law that disclosure statement of a co-accused is of no evidentiary value in the absence of any corroborative piece of evidence.

21. The prosecution has contended that the car of the applicant, being visible in the CCTV at the time disclosed by the co-accused, and the CDR location of the applicant corroborates the disclosure statement of the co-accused that the applicant had supplied the contraband.

22. It is alleged that the co-accused had disclosed that the delivery of the contraband was taken by him on 13.01.2024 between 7:30 a.m. to 8:30 a.m. and the person who supplied the contraband came in a Toyota Corolla car, whose number started with HR..... and he did not remember the full number.

23. The prosecution claims that though the full number of the car was not disclosed by the co-accused, however, the same was the car driven by the applicant, whose number was HR 13L 3020 and the same was being seen at the



contemporary time in the CCTV footage at the same area where the co-accused disclosed to have taken delivery. It is claimed that the said car was taken on rent by the applicant from its owner.

24. Undisputedly, the CCTV footage does not show the exchange of contraband. It further does not show that the applicant had given any packet/contraband to the co-accused. The presence of the applicant at the alleged place where the co accused had taken delivery of the contraband, in the opinion of this Court, does not indicate that the applicant was the one who had delivered the contraband.

25. The prosecution also relies upon the telephonic activity between the applicant and the co-accused persons.

26. It is not denied that the conversation, if any, between the applicant and the co-accused is not recorded. Therefore, whether the co-accused was in contact with the applicant in regard to the alleged supply of contraband cannot be established. Merely being in touch with the accused persons can be a reason for investigation on suspicion, however, that does not establish that the said person was also involved with the accused in regard to the alleged criminal activity in the absence of further evidence.

27. This Court, in the case of Dalip Singh v. State (NCT of Delhi) : 2019 SCC OnLine Del 6494, had observed as under:

“11. On perusal of the record, it is prima facie seen



that there are two major missing links in the case of the prosecution. There is no link established by the prosecution between the petitioner with the alleged supplier Manoj. Further the entire case of the prosecution, in so far as petitioner is concerned is circumstantial i.e. based solely on disclosure statement of a co accused which is per se not admissible without there being any corroboration. Prosecution has not been able to establish any connection between the subject offence and the bank accounts, where the petitioner is alleged to have been depositing money or with the holders of those accounts. Merely because the petitioner has been having telephonic conversation with the co-accused, would not be sufficient to hold that petitioner is guilty of the subject offence. There is no recovery made from the petitioner.

12. I am of the view that requirement of Section 37 of the NDPS Act are satisfied. In so far as the petitioner is concerned, there are reasonable grounds to believe that petitioner is not guilty of the said offence.”

(emphasis supplied)

28. The prosecution, thus, has failed to provide substantial evidence linking the applicant to the recovered contraband or to demonstrate his active involvement in the alleged offence.

29. Admittedly no recovery has been affected from the



applicant and in such circumstances because the applicant was in touch with the co-accused the bar of Section 37 NDPS Act cannot be attracted. The Courts are not expected to accept every allegation made by the prosecution as a gospel truth.

30. A Coordinate Bench of this Court in Phundreimayum Yas Khan Vs. State (GNCT of Delhi) : 2023 SCC OnLine Del 135, held that when there is no material to link the applicant with the recovery of the commercial quantity from the co-accused persons, the rigors of Section 37 would not apply. It was further held that the disclosure statement of co-accused is per se not admissible without there being any corroboration.”

31. In view of the above discussion, I am of the view that there are no reasonable grounds to believe that the petitioner is guilty of the offence as alleged of. The petitioner has clean antecedents and has no prior involvement in any criminal activity. The petitioner is an Advocate by profession and was Additional Advocate General for the State of Punjab. I am of the view that the petitioner is not likely to commit any offence while on bail. The prosecutor has been given opportunity to oppose the bail and has been heard. Hence, the twin conditions given under section 37 of NDPS Act are satisfied.

32. The petitioner is in custody since 26.02.2024 and chargesheet has already been filed showing that the investigation is complete.

33. As regards the judgments of ***Mohd. Nawaz Khan (supra)*** and ***Mohit Aggarwal (supra)*** are concerned, the same are concerning the rigors of



Section 37 of NDPS Act which I have already dealt with hereinabove.

34. For the foregoing reasons, the petitioner herein is released on bail subject to the following terms and conditions:-

- a) The petitioner shall furnish a personal bond in the sum of Rs 20,000 (Rupees twenty thousand only) each with 1 surety in the like amount, to the satisfaction of the concerned trial court;
- b) The petitioner shall not leave the country without the permission of the concerned court and if the petitioner has a passport, he shall surrender the same to the concerned trial court;
- c) The petitioner shall furnish to the IO concerned the cell phone number on which the petitioner may be contacted at any time and shall ensure that the number is kept active and switched on at all times;
- d) The petitioner will furnish his permanent address to the concerned IO and in case he changes his address, he will inform the IO concerned;
- e) The petitioner shall not indulge in any act or omission that is unlawful, illegal or that would prejudice the proceedings in pending cases, if any;
- f) The petitioner shall appear in Court as and when required;
- g) The petitioner shall not communicate with, or come into contact with any of the prosecution witnesses, or tamper with the evidence of the case.

35. All the observations made herein above are only for the purpose of



deciding the bail application and will have no effect on the merits of the case pending.

36. A copy of this order be communicated to the concerned jail authorities for necessary compliance.

37. The petition is disposed of in the above terms.

JASMEET SINGH, J

JANUARY 14, 2025/DM

Click here to check corrigendum, if any