

HIGH COURT OF DELHI

CORAM: HON'BLE MR. JUSTICE AMIT BANSAL

Date : 1st December, 2023

BAIL APPLN. 2657/2021 & CRL.M.A. 9111/2022 (early hearing)

SOMDUTT SINGH @ SHIVAM Petitioner

versus

NCB Respondent
BAIL APPLN. 1268/2022

KASHMIR ALIAS MAUSAM Petitioner

versus

NCB OF DELHI Respondent

Legislation:

Sections 8, 22(c), 23, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

Subject:

Grant of bail in a case involving the seizure of large quantities of psychotropic substances under the NDPS Act.

Headnotes:

Context of Bail Applications – Bail sought in Case No. VIII/13,13A/DZU/2020 under NDPS Act for possession of psychotropic substances – Applications of Kashmir @ Mausam and Somdutt Singh @ Shivam heard together due to common FIR. [Para 1]

Case History and Arrest Details – Kashmir @ Mausam in custody since October 30, 2020, and Somdutt Singh @ Shivam since April 15, 2021 – Arrests followed seizure of psychotropic substances from a courier service and an apartment. [Para 2]

Prosecution's Case – Seizure of Alprazolam, Lorazepam, Tramadol tablets from courier parcels – Recovery of additional tablets and incriminating materials from Kingsbury Apartment – Accused connected through mobile records and admissions under Section 67 of NDPS Act. [Paras 3.1-3.8]

Defence Submissions – Kashmir @ Mausam claimed to be an employee, not a partner in the alleged drug operation – Somdutt Singh denied involvement, no direct recovery from him – Emphasis on inadmissibility of co-accused statements under NDPS Act. [Paras 4-5]

Prosecution's Counterarguments – Commercial quantities of drugs recovered implicating both applicants – Rigours of Section 37 of NDPS Act highlighted due to commercial quantities involved – Emphasis on involvement in psychotropic substance business. [Para 6]

Court's Analysis and Decision – Differentiated roles of applicants assessed – Lack of direct evidence against Somdutt Singh noted – Reliance on Supreme Court judgment regarding inadmissibility of confession under NDPS Act – Principles of parity with co-accused considered. [Paras 7-12]

Bail Granted with Conditions – Bail granted to both applicants subject to several conditions, including personal bond, appearance before court, cooperation with investigation, and non-tampering with evidence. [Paras 13-14]

Disclaimer on Merits of Case – Observations made solely for bail consideration, not reflecting on the merits of the case. [Para 15]

Referred Cases:

Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1

Representing Advocates:

For Petitioners: Mr. Pritish Sabharwal with Mr. Sharad Pandey (Somdutt Singh), Mr. Rahul Sharma and Mr. Aman Gupta (Kashmir @ Mausam)

For Respondent: Mr. Subhash Bansal, Senior Standing Counsel with Mr. Raghav Bansal

JUDGMENT

1. By way of the present applications, the applicants seek grant of bail in Case No. VIII/13,13A/DZU/2020 under Sections 8/22(c)/23/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). Since these applications pertain to a common FIR and arguments in both the applications were heard together, they are being disposed of by a common judgment.
2. The complaint in the present case was filed on 27th April, 2021. The applicant Kashmir @ Mausam has been in custody since 30th October, 2020 and the applicant Somdutt Singh @ Shivam has been in custody since 15th April, 2021.
3. The case set up by the prosecution is as under:
 - 3.1 On the basis of secret information received by an officer of the Narcotics Control Bureau (hereinafter NCB), the team of NCB, Delhi reached Tirupati Courier Service Pvt. Ltd., Shop No.27 at Punjabi Bagh, New Delhi, on 12th February, 2020 and examined three suspected parcels with sender details as Jitendra Kumar, Delhi to Aurangabad, Surat and Bokaro respectively.

3.2 The aforesaid three parcels were opened in the presence of two independent witnesses and found containing a total of 5250 tablets of Alprazolam (1050 grams), 490 tablets of Lorazepam (98 grams) and 100 tablets of Tramadol (40 grams). The samples of these tablets were sent to the CRCL for chemical analysis and the same tested positive for Alprazolam, Lorazepam and Tramadol.

3.3 Upon investigation, the owner of Tirupati Courier Service, Mr. Bharat Shiyani, supplied the address of the person who had booked the aforesaid parcels, being Flat No.1102, Block H-3, Kingsbury, TDI Kundli, Sonipat, Haryana (hereinafter 'Kingsbury Apartment'), as well as his photograph.

3.4 On 15th February, 2020, a team of NCB, Delhi reached the aforesaid address, where the Apartment was found to be locked and on enquiry from nearby persons, it was revealed that the photograph was of one Kashmir @ Mausam, who was said to be involved in the business of medicines and resided in the said flat. The flat was unlocked by a key maker and upon inspection of the house 91,288 tablets in packing/strips and 136.278 kgs of loose tablets of various narcotics/psychotropic substances were recovered. Several documents, laptop and printer were also recovered and seized.

3.5 Subsequently, the applicant Kashmir @ Mausam was arrested on 30th October, 2020. He tendered his statement under Section 67 of the NDPS Act, wherein he admitted to having booked the aforesaid parcels seized from Tirupati Courier Services and also admitted to having kept various narcotic substances in the Kingsbury Apartment. He also disclosed the names of his associates Arun Kumar @ Varun, Rex Ajmeria @ Rajeev Rex and the applicant Somdutt Singh @ Shivam.

3.6 During the course of investigation, Rex Ajmeria @ Rajeev Rex was arrested on 12th April, 2021 and the applicant Somdutt Singh @ Shivam, who was already in custody in another case was arrested in the present case on 15th April, 2021. Arun Kumar @ Varun was arrested on 18th April, 2021.

3.7 All the accused persons were found to be connected through mobile phones and CDRs obtained during investigations have been filed along with complaint.

3.8 On 22nd April, 2021, an employee named Preeti, who was working as a data operator with Arun Kumar @ Varun, gave her statement under Section 67 of the NDPS Act and supported the case of the prosecution.

4. Counsel appearing on behalf of the applicant **Kashmir @ Mausam** has made the following submissions:

- I. The applicant was not a partner with the main accused persons and was not a beneficiary in the alleged drug cartel. He was only an employee of the main accused persons and his job was only to pack and book the parcels which were given by the main accused persons. In this regard, reliance is placed on the statement of Preeti.
 - II. On paper, the Kingsbury Apartment was shown as rented in the name of the applicant. However, in reality, the main accused persons had rented the apartment in the name of the applicant. The applicant was also not found at the said apartment when it was raided by the NCB officials.
 - III. The investigation in the present case has been completed and the charge sheet has already been filed. Therefore, the applicant is not required to be kept in custody.
5. Counsel appearing on behalf of the applicant **Somdutt Singh @ Shivam** has made the following submissions:
- I. The entire recovery in the present case is attributable to Kashmir @ Mausam and there has been no recovery from the applicant Somdutt. He has been arrested merely on the disclosure statement of the coaccused Kashmir @ Mausam and Rex Ajmeria @ Rajeev Rex, which is impermissible in law. In this regard, reliance is placed on the judgment of the Supreme Court in **Tofan Singh v. State of Tamil Nadu**, (2021) 4 SCC 1.
 - II. Kashmir @ Mausam had named three persons in his disclosure statement under Section 67 of the NDPS Act, Arun Kumar @ Varun, Rex Ajmeria @ Rajeev Rex and the applicant Somdutt. Both the other co-accused persons have been granted bail except for the applicant Somdutt.
 - III. The investigation in the present case has been completed and the charge sheet has already been filed. Therefore, the applicant is not required to be kept in custody.
6. Per contra, learned Senior Standing Counsel for the NCB has made the following submissions:
- I. Commercial quantities of psychotropic substances have been recovered from the parcels booked by the applicant Kashmir @ Mausam as well as from the apartment of the applicant Kashmir @ Mausam.
 - II. The applicant Somdutt has been involved in conspiracy of trafficking of commercial quantity of psychotropic substances. He has also been arrested in another case being Crime No. VIII/25/DZU/2019 wherein also, commercial quantities of psychotropic substances were recovered at his instance.

- III. Since recoveries of commercial quantities of psychotropic substances have been made at the instance of the applicants, rigours of Section 37 of the NDPS Act would be applicable.
- IV. The statement of witness Preeti shows that both the applicants were engaged in the business of psychotropic substances.
- V. Trial in the present matter is yet to commence and key witnesses are yet to be examined.
7. I have heard the counsels for the parties and perused the material on record.
8. Insofar as the applicant **Kashmir @ Mausam** is concerned, a reading of the statement tendered by Preeti under Section 67 of the NDPS Act seems to suggest that the applicant Kashmir was only an employee of the main accused persons, whose role was limited to packing the medicines and delivering them to the Post Office/Courier Office.
9. On a prima facie view, the evidence seems to suggest that the Kingsbury Apartment from where recoveries were made was taken on rent in the name of the applicant Kashmir at the instance of the co-accused persons and they were paying rent for the same. Further, the applicant Kashmir was not found present at the apartment at the time of recovery of the psychotropic substances. Therefore, at this stage, it cannot be conclusively said that recoveries were made from the possession of the applicant and this would have to be established during trial.
10. Insofar as the applicant **Somdutt Singh** is concerned, the only basis of implicating him are the statements tendered by the co-accused persons under Section 67 of the NDPS Act. In **Tofan Singh** (supra), it was held by the Supreme Court that the confessional statements given under Section 67 of the NDPS Act are inadmissible. No recoveries have been made from the applicant Somdutt Singh or at his instance.
11. In view of the aforesaid discussion, the rigours of Section 37 of the NDPS Act would not apply in the case of both the present applicants.
12. It is also a matter of record that the other co-accused persons Arun Kumar @ Varun and Rex Ajmeria @ Rajeev Rex have already been granted bail. Therefore, on the principles of parity as well, the present applicants would be entitled to grant of bail.
13. Charges in the present case have been framed vide order on charge dated 16th December, 2021. As per the Nominal Roll on record, the applicants Kashmir and Somdutt have been in custody for over three years and two and a half years respectively. Further, the conduct of the applicants in jail has been

- satisfactory for the last one year and the applicant Kashmir is not involved in any other case.
14. Considering the aforesaid facts and circumstances, the applicants are entitled to the grant of bail. Accordingly, the applications are allowed and the applicants shall be released on bail, if not required in custody in any other case, on furnishing a personal bond in the sum of Rs. 50,000/- with two sureties of the like amount subject to the satisfaction of the Trial Court and further subject to the following conditions:
- i. The applicants shall not leave the country without the prior permission of the Court.
 - ii. The applicants shall appear before the Trial Court as and when the matter is taken up for hearing.
 - iii. The applicants shall join investigation as and when called by the Investigating Officer (IO) concerned.
 - iv. The applicants shall provide their latest/fresh 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 numbers without prior intimation to the IO concerned.
 - v. The applicants shall provide their permanent addresses to the Trial Court. The applicants shall intimate the Court by way of an affidavit and to the IO regarding any change in their residential address.
 - vi. The applicants 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.
15. Needless to state that any observations made herein are purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on the merits of the case.
16. The present applications stand disposed of in above terms.

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