

HIGH COURT OF DELHI**Date of Decision: April 23, 2024.****BENCH: HON'BLE MR. JUSTICE VIKAS MAHAJAN**

BAIL APPLN. 1907/2023

ABDUL QAIDER ...PETITIONER**Versus****NARCOTIC CONTROL BUREAU ...RESPONDENT****Legislation:**

Sections 8(c), 22 (C) , 29, 67 of the NDPS Act

Section 439 of the CrPC

Subject: Application for regular bail in connection with FIR registered under the NDPS Act for alleged involvement in trafficking of a commercial quantity of Tramadol tablets.**Headnotes:**

Grant of Bail – NDPS Act – Application under Section 439 CrPC for grant of regular bail in connection with FIR registered under Sections 8(c), 22(c), and 29 of NDPS Act – Held, bail granted based on the absence of clear evidence linking petitioner directly with the contraband and inconsistencies in the prosecution's case. [Paras 1, 27-28]

Role of Accused in Narcotics Trafficking – Analysis – Held, reasonable doubt regarding petitioner's direct involvement in narcotics trafficking due to discrepancies in prosecution's evidence and lack of offending material at initial parcel check – Co-accused granted bail on similar charges provides ground for parity. [Paras 10-11, 15, 26]

Investigation Procedures – Critique – Held, identification parade conducted inappropriately not as per legal standards, which could prejudice fairness towards the accused – Need for adherence to proper legal procedures emphasized. [Paras 25-26]

Decision – Bail Granted to Petitioner – Court grants regular bail subject to specific conditions including personal bond, surety, and restrictions on travel and communication – Observations made solely for the purpose of bail consideration and not indicative of overall merit in case. [Paras 28-30]

Referred Cases:

- Laxmipat Choraria v. State of Maharastra, 1967 Legal Eagles (SC) 351

Representing Advocates:

For the Petitioner: Mr Vikas Gautam

For the Respondent: Mr Utsav Singh Bains, SPP for NCB

JUDGMENT**VIKAS MAHAJAN, J.**

1. The present petition has been filed under Section 439 CrPC seeking grant of regular bail to the petitioner in FIR No. VIII/10/DZU/2022 under Sections 8(c)/22(c)/29 NDPS Act registered at P.S. NCB.

2. *Vide* order dated 31.05.2023, notice was issued in the bail application and the respondent/NCB was directed to file the status report. The respondent has filed a status report dated 07.10.2023, which forms part of the record.

FACTS

3. The case of the prosecution as borne out from the complaint filed by the NCB before the Learned Special Judge is that on 27.01.2022, a secret information was received that Consignment AWB No. D10770448 destined to Ludhiana, Punjab is lying at DTDC Express Limited, Khasra No 16/6, Telephone Exchange Road, Samalkha, New Delhi and that if the said consignment is intercepted, it may lead to recovery of Narcotics drugs or Psychotropic substance.

4. Thereafter, the said consignment was intercepted by the officials of NCB which was found to contain 03 cartons of Khaki colour. All the cartons were having one white colour paper slip pasted with transparent tape, carrying the details of receiver and sender as under: Receiver-Manish Kumar, Gulati chowk, Model Town, Ludhiana 14100I, Mobile no. 7087260635.
Sender - Gurpreet, Mobile no. 7302686906.

5. Upon opening the three boxes in the presence of independent witnesses, the same were found to contain NRx Tramadol Prolonged-

release Tablets IP, Tramanam-SR 100 Boxes, each box containing 20 strips and each strip having 10 Tablets. One Box contained 200 tablets. Each strip had the following description - NRx Tramadol Prolonged-release Tablets IP, Tramanam-SR 100, Mfg-11/2021, Exp Date-10/2023, MRP 219.00, manufactured by Akums Drugs & Pharmaceuticals Ltd., Plot No. 26A,27- 30, Sector-8A, I.I.E Sidcul, Haridwar-249403,Uttarakhand and the batch no. was found erased. The total number of tablets from all the three carton boxes was found to be 49,800 in numbers and weight of same was 18.577kgs.

6. During the course of investigation, it was learnt that the said consignment was booked at DTDC Channel Partner Code UF457 (Deoband), Uttar Pradesh on 13.01.2022 which is owned by Rajender Kumar Sethi. Accordingly, a notice under Section 67 of the NDPS Act was served upon Rajender Kumar Sethi to appear before the officers of the respondent on 01.09.2022, when he disclosed that the parcel was booked from his courier on 13.01.2022 by two persons who were aged about 28 years and 30 years respectively, one of whom revealed his name as Gurpreet. Upon enquiry by him, it was disclosed that the said package contains cosmetics and was to be sent to Ludhiana and on checking the said parcel, nothing offending was found in the parcel. Thereafter on 15.01.2022, Gurpreet approached him stating that the receiver of the parcel has since expired and he wanted the parcel back and for this purpose, Gurpreet called him on 22.01.2022, 24.01.2022, 25.01.2022 and 28.01.2022.

7. During enquiry the firm M/s Pure & Care Health Care Pvt Ltd, a unit of Akum Drugs & Pharmaceuticals Ltd., intimated that the firm manufactured 01 batch of the subject formulation which is having corresponding date of manufacture and expiry as that of the seized drug. The said batch bearing no. PADHS09 was sold in its entirety to Amazing Research Laboratories Ltd *vide* invoice dated 22.12.2021 and no part of the said batch was sold to anybody else by them. In turn M/s Amazing Research informed that the entire batch manufactured by Pure and Care was sold to M/s D.K.Medical Agencies and no part of it was sold to anybody else and the payment for the same was made through RTGS by A. Qadir (the petitioner herein) on 29.12.2021 and 30.12.2021.

8. Accordingly, a notice under Section 67 of the NDPS Act was served upon the petitioner to appear before the officers of the respondent on 31.08.2022, when the petitioner disclosed that he is the owner of M/s

D.K.Medical Agencies, Dist. Haridwar, Uttarakhand and was purchasing medicines and selling it in whole sale to Hospitals, Clinics etc. He further disclosed that 4990 Boxes (Total 9,98,000 Tablets) of Tramadol Prolonged release tablets were purchased by him through his firm for which he tendered the relevant documents i.e. Licence/Tax invoice etc of his firm. It was further revealed by him that he had sold 249 boxes (each box having 20 strips) to his friend Shahnawaj (co-accused) @ 220 per Box and received payment in cash, however, Shahnawaj did not possess any valid drug license. He deposed that he had also accompanied co-accused to the DTDC courier office to dispatch the said 249 boxes to one person namely, Manish.

9. On the above statement, the petitioner herein was arrested on 31.08.2022. Thereafter, Rajender Kumar Sethi identified the petitioner and co-accused Shahnawaj who were present in the NCB office to be the same persons who had booked the parcel in question and made endorsement on their photo.

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Mr. Vikas Gautam, the learned counsel for the petitioner submits that Mr. Rajender Kumar Sethi has admitted in his statement recorded under Section 67 of the NDPS Act that the parcel was booked from his courier (DTDC Channel partner) and was also checked by him and that he did not find any offending article. He submits that this inconsistency in the case of the NCB, makes the recovery of contraband doubtful and thus the same shall enure to the benefit of the petitioner.

11. Further, referring to the above statement of Mr. Sethi, he submits that it has been disclosed by Mr. Rajinder Kumar Sethi that the petitioner did not book the parcel but had only accompanied the person namely, Gurpreet who had booked the parcel. He thus, contends that it is not the case of the prosecution that it was the petitioner who had booked the offending article.

12. He contends that it is the case of the NCB that the petitioner was identified by Mr. Rajinder Kumar Sethi, when the petitioner was present in the NCB office. This approach according to the learned counsel is flawed as Mr. Rajinder Kumar Sethi was shown to the petitioner. To buttress his submission, he relies upon the judgment of the Supreme Court in ***Laxmipat Choraria v. State of Maharashtra, 1967 Legal Eagles (SC) 351.***

13. He further submits that the NCB has failed to establish a connection between the seized tramadol and the firm of the petitioner, in as

much as, the batch number was erased on the contraband.

14. He submits that the petitioner is the owner of the firm M/s D.K. Medical Agency and holds a valid license granted by the drugs controller Haridwar to purchase, possess and sell medicinal drugs specified in the schedule to Drugs and Cosmetic Act except Schedule X drugs thus, the petitioner was purchasing Tramadol which is a schedule H drug validly as per the license issued to him.

15. He also submits that the petitioner be enlarged on bail, in as much as, co-accused Shahnawaj has been granted regular bail by the learned Special Judge on the same set of allegations, *vide* order dated 16.08.2023. He submits that since as per prosecution's own case, the role of the petitioner is comparable to that of the co-accused, he is entitled to bail on the ground of parity.

SUBMISSIONS ON BEHALF OF THE NCB

16. The grant of bail is opposed by Mr. Utsav Bains, SPP for the respondent/NCB, who argued on the lines of the status report. Learned counsel for the respondent/NCB submits that the offence is of serious nature and the quantity of the contraband recovered is commercial, therefore, the petitioner has to satisfy the twin conditions mentioned in Section 37 of the NDPS Act before being released on bail.

17. It is contended by Mr. Bains that though the batch numbers on the contraband was erased but the name of the manufacturer was present. It was then confirmed that only 01 batch with the said manufacture date and expiry date was manufactured and the same was entirely sold to Amazing Research Laboratories Ltd, who then sold the entire batch to M/s D.K. Medical Agency.

18. He submits that the petitioner through his firm M/s. D.K. Medical Agency has been purchasing tramadol tablets and injections from M/s Amazing Research Laboratories, Kundli, Sonipat since May, 2021 but during investigation the petitioner failed to provide adequate details of the same as to whom these were further sold. He further submits that though the petitioner submitted some bills in respect of sale of tramadol tablets to various persons but upon verification the said bills were found to be forged and fabricated. He further contends that upon physical verification, none of the persons/firms or medical stores named on the bills were found to exist. It is, therefore, urged that the bail application of petitioner be dismissed. **ANALYSIS**

19. I have heard the learned counsel for the petitioner, as well as, the learned SPP for the respondent/NCB and have perused the record.

20. The gravamen of allegations against the petitioner is that he being the proprietor of M/s D.K. Medical Agencies procured tramadol in bulk from M/s Amazing Research, who in turn had procured the same from M/s Pure & Care Health Care Pvt Ltd., the manufacturer of the contraband/tablets. Thereafter, part of the purchased tramadol tablets were sent through courier by the petitioner and the co-accused, when the same were intercepted by the officials of the respondent, 49,800 tablets weighing 18.577 kgs were recovered. To be noted that 250 grams of tramadol has been specified to be the commercial quantity.¹

21. The incriminating circumstance pressed into service against the petitioner is the statement of Rajender Kumar Sethi recorded under Section 67 of the NDPS Act. The petitioner was arrested on the basis of the said statement and identification by Rajender Kumar Sethi. A perusal of the statement of Rajender Kumar Sethi, which forms a part of the prosecution's complaint reveals that before booking the parcel he had checked the contents of the parcel and no offending material was found by him.

22. Further, it remains unexplained as to how the contraband appeared in the parcel and this circumstance casts a doubt on the case of the prosecution, especially when the recovery has not been video-graphed. This circumstance goes to the root of the recovery and is a factor that enures to the benefit of the petitioner.

23. There also seems to be some merit in the contention of the learned counsel for the petitioner that the petitioner was validly purchasing the tramadol tablets as he owns a valid license to sell, stock or exhibit or offer for sale or distribute by wholesale drugs specified in Schedules C & C(1) excluding those specified in Schedule X. The licence No. BW-27/HDR/AUG/2017 issued by the Drug Licensing Authority (Sales), Garhwal Division (Uttarakhand) having validity from 16.08.2017 to 15.08.2022 in favour of the petitioner has been annexed as Annexure-B to the present Bail Application, which has not been disputed by the respondent/NCB.

¹Notification S.O. 1760 (E.) dated 26.04.2018 issued by the Revenue Department.

24. The contention of the learned SPP for the respondent that during

investigation of the present case the petitioner has provided forged and fabricated bills of sale of NRx tablets cannot be appreciated at this stage as the said exercise will be undertaken by the learned Special Judge since the same would require meticulous and detailed examination of the evidence. This Court while adjudicating the bail application of the petitioner cannot undertake such an exercise and has to only consider the broad probability in ascertaining whether there are reasonable grounds for believing that the accused is not guilty of the said offence.

25. Another aspect of the present case which cannot be overlooked is the manner in which the identification of the petitioner was conducted. It is the prosecution's own case that the petitioner, as well as, his co-accused were presented before Rajender Kumar Sethi in the office of the respondent/NCB and he was asked to identify the said persons. This approach of the NCB is against the settled principles as the Test Identification Parade is to be conducted in the presence of the Magistrate or other independent witnesses when the accused is in judicial custody and not in the office of the investigating agency. Further, no provision of law has been pointed and there appears to be none which empowers conducting of identification of accused persons in the police station or in the office of the investigating agency.

26. It is also not in dispute that co-accused Shahnawaj has been granted regular bail by the learned ASJ/Special Judge, NDPS/N.Delhi Patiala *vide* order dated 16.08.2016, therefore, the petitioner is also entitled to the benefit of parity as the case of prosecution is that the present petitioner and co-accused Shahnawaj had together gone to book the parcel with the DTDC channel partner i.e. Rajender Kumar Sethi.

27. Accordingly, in view of the aforesaid discussion, this court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of the offence alleged. Further, it is not the case of the respondent/NCB that the petitioner was involved earlier also in any offence under the NDPS Act or has any criminal record, therefore, petitioner is not likely to commit any offence while on bail.

28. In view of the above, this Court is of the opinion that the petitioner has made out a case for grant of regular bail. Accordingly, the petitioner is admitted to regular bail, subject to his furnishing personal bond in the sum of Rs. 50,000/- and a surety bond of the like amount subject to the satisfaction of the learned Special Judge and further subject to the

following conditions:

- a. The petitioner will not leave the country without prior permission of the concerned Trial Court and shall furnish his passport / travel documents, if any, at the time of furnishing his bail bond.
 - b. The petitioner shall provide his mobile phone number to the Investigating Officer (IO) concerned at the time of release, which shall be kept in working condition at all times, the petitioner shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail.
 - c. The petitioner shall provide his residential address to the Investigating Officer (IO) concerned, during the period of bail. The IO shall provide his number to the learned counsel for the petitioner for being shared with the petitioner.
 - d. The petitioner shall mark his attendance with the SHO/IO concerned every second and fourth Saturday between 11:00 AM to 12 noon through video call and if video call is not possible, he may send SMS *apropos* his whereabouts thus, keeping them informed of his whereabouts.
 - e. The petitioner shall remain present before the Trial Court on the dates fixed for the hearing of the case.
 - f. The petitioner shall not indulge in any criminal activity during the bail period.
29. The petition stands disposed of.
30. It is made clear that the observations made herein are only for the purpose of considering the bail application and the same shall not be deemed to be an expression of opinion on the merits of the case.
31. Order *dasti* under the signatures of the Court Master.
32. Order be uploaded on the website of this Court.

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