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

+ BAIL APPLN. 224/2023

ASLAM NOORUDHEEN

.....Petitioner

Through: Mr. Aditya Aggarwal, Ms. Kajal Garg, Mr. Naveen Panwar and Mr. Manas Agarwal, Advocates.

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Through: Mr. Shashwat Bansal and Ms. Renu Bansal, Advocates *via* video-conferencing.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

01.10.2024

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By way of the present petition filed under section 439 of the Code of Criminal Procedure, 1973 read with section 36-A(3) of Narcotic Drugs and Psychotropic Substances Act 1985 ('NDPS Act'), the petitioner seeks regular bail in case No. VIII/77/DZU/2021 registered under sections 8(c)/20(b)/21(b)/22(c)/23/25/29 of NDPS Act based on a criminal complaint dated 04.06.2022 filed by the Narcotics Control Bureau ('NCB') before the Special Judge (NDPS), Patiala House District Courts, New Delhi.

2. Notice on this petition was issued on 23.01.2023; pursuant to which status report dated 16.03.2023 has been filed on behalf of the NCB.
3. Nominal Roll dated 12.08.2024 has also been requisitioned from the concerned Jail Superintendent.



4. The court has heard Mr. Aditya Aggarwal, learned counsel appearing for the petitioner; as well as Mr. Shashwat Bansal, learned counsel appearing on behalf of the NCB at length.
5. Mr. Aggarwal submits, that briefly, the complainant says that on 07.12.2021, the NCB received information that a parcel bearing AWB No. Z69153474 containing contraband had been consigned by one Harikrishnan P.S. from Rangpuri, Delhi to the petitioner at an address in Chavakkad, Kerala.
6. It is submitted that the NCB's case is that this parcel was intercepted by them and it was found to contain about 480 grams of *charas* (which is an 'intermediate' quantity) and about 60 grams of *methamphetamine* (which is a 'commercial' quantity, with the threshold of commercial quantity being 50 grams); and that thereafter, another 140 grams of *methamphetamine* was also recovered from the residence of co-accused Harikrishnan.
7. The complaint further narrates, that the consignment had been booked by one Nafih Nazar, who is stated to be the king-pin of the entire drug-trafficking operation, since in their statements recorded in the course of investigation, all accused persons including the petitioner, have named Nafih Nazar; and have disclosed a certain cell-phone number, which according to the CAF of that number is registered in the name of Nafih Nazar. The complaint also narrates that all accused persons have been in contact with Nafih Nazar; and are therefore party to the conspiracy of sending and receiving contraband through parcels and of trafficking drugs in contravention of the provisions of the NDPS Act.



8. Mr. Aggarwal argues, that there is no allegation or material on record to say that the petitioner went to collect the consignment stated to have been marked to him as consignee, which the NCB says contained contraband; and the NCB is attempting to connect the petitioner with the case only on the basis of certain CDRs, which the NCB contends, show that the petitioner has been in contact with Nafih Nazar.
9. Learned counsel contends, that the NCB also alleges that the petitioner's bank accounts show that he has had certain financial transactions with Nafih Nazar, which financial transactions are connected with the alleged trafficking of contraband. Mr. Aggarwal however points-out, that *vide* order dated 17.03.2023 made in the present proceedings, a Predecessor Bench had given liberty to the NCB to produce the details of the money received by the petitioner from Nafih Nazar, which however the NCB has not done till date.
10. Mr. Aggarwal submits, that most importantly, the record would show, that the NCB has failed to arrest or even to seriously pursue Nafih Nazar. In this behalf, attention is drawn to para 95 of the complaint filed by the NCB before the learned Special Judge, which reads as follows :

“95. That since the investigation against qua the suspect Nafih Nazar is kept open it is further prayed that the petitioner may be allowed to file supplementary documents/complaint as and when available.”

11. Relying upon nominal roll dated 12.08.2023, Mr. Aggarwal submits, that the petitioner was arrested on 10.12.2021, and therefore, as of date, he has been in custody for about 02 years and 10 months; that



the petitioner has no criminal antecedents nor has he been implicated in any other criminal case; and that his jail conduct has also been ‘satisfactory’.

12. Learned counsel has drawn attention to the decision of the Co-ordinate Bench of this court in *Sunil Kumar vs. Directorate of Revenue Intelligence*,¹ to submit that in a similarly placed matter, the court has taken the view that if there is no material on record to show that a person was *aware of the contents* of a consignment even if addressed to him, there would be reasonable grounds to believe that such person is *not guilty* of an offence under the NDPS Act. The relevant portion of *Sunil Kumar* (supra) reads as follows :

“42. The evidence produced by the prosecution, at this stage, in the form of disclosure statements and the recovered documents, *prima facie*, indicate that the applicant was helping the co-accused Cletus in the import of consignments. **They, however, at this stage, do not indicate that the applicant was aware of the contents of the consignments.** The prosecution has sought to impute knowledge of the presence of contraband on the applicant by contending that the amount paid for each consignment was quite high and would only be paid if the helper had the knowledge of the presence of the contraband.

“43. From the statements of the co-accused persons, the *bona fide* of the applicant in helping the co-accused Cletus and him not being aware of the presence of the contraband in the consignments, cannot be ruled out. The applicant has clean antecedents. Thus, in the opinion of this Court, **there are reasonable grounds to believe that the applicant is not guilty of the offence.** Whether the applicant had any knowledge that the imported consignments contained any contraband would be subject matter of

¹ 2024:DHC:5182



the trial and will be seen after the evidence is led. However, at this stage, the benefit has to be given to the applicant.”

(emphasis supplied)

13. Learned counsel also draws attention to the decision of another Co-ordinate Bench in order dated 09.10.2024 passed in BAIL APPL. No. 1648/2023 titled *Dihya Abalihi vs. NCB*, to submit that in that case the consignor of a parcel was implicated and it was shown that the consignor was *responsible for booking* the parcel from which contraband was alleged to have been recovered, yet the Co-ordinate Bench has taken the view that since nothing had come on record to demonstrate that the *consignor had any knowledge of the contents* of the parcel, *conscious possession* of the contraband or knowledge regarding the contents of the parcel, could not be attributed to the consignor; and the Co-ordinate Bench has thereby admitted the accused to bail. The relevant portion of *Dihya Abalihi* (supra) reads thus :

“6. The case of the prosecution qua the present applicant is that she was responsible for booking the parcel from which the contraband was recovered. A perusal of the complaint itself reflects that nothing has come on record to demonstrate that the applicant had any knowledge of the contents of the parcel in question. Further, in the statements of the applicant as well as of Aditya Kaushik of M/s. Shubhi International recorded under Section 67 of the NDPS Act, it is only stated that the applicant had booked the parcel. It is not stated that she had any knowledge of the contents of the parcel.

“7. In view of the aforesaid, conscious possession of the contraband or the knowledge regarding the contents of the parcel cannot be attributed to the applicant at this stage.”

(emphasis supplied)



14. Mr. Aggarwal also places reliance on another decision of a Coordinate Bench in *Lhingneihat Lhouvum vs. NCB & Anr.*,² to submit, that in the said case the accused was the consignee of two parcels and *had even gone to take delivery of the first consignment*; but still the court has taken the view that since there is no material on record to show that the person had knowledge of the contents of the consignment which were booked to her name, in light of the decision of the Supreme Court in *Mohd. Muslim alias Hussain vs. State (NCT of Delhi)*,³ the accused was entitled to be admitted to bail.
15. In the present case, Mr. Aggarwal argues, that other than the fact that a consignment allegedly addressed to the petitioner and allegedly containing contraband has been recovered, there is no evidence linking the petitioner with the alleged offence. Learned counsel submits, that it goes without saying that in view of the judgment of the Supreme Court in *Tofan Singh vs. State of Tamil Nadu*,⁴ a disclosure statement of the petitioner recorded under section 67 of the NDPS Act is inadmissible in evidence and cannot be the basis of presuming that the petitioner is guilty of the offence.
16. Finally, Mr. Aggarwal urges the court to consider that of the 24 prosecution witnesses, as of date, only 02 have deposed in court; and the trial is unlikely to conclude anytime soon.
17. On a query as to how the petitioner explains his financial transactions with Nafih Nazar, Mr. Aggarwal responds to submit, that the

² 2023:DHC:5135

³ SCC OnLine SC 352

⁴ (2021) 4 SCC 1



petitioner runs a food-cart in Kerala and the said Nafih Nazar is also in the food business; and that it is in connection with the food business that the petitioner has had certain financial transaction with Nafih Nazar and those transactions have nothing to do with any offence alleged in the complaint.

18. On the other hand, opposing the grant of bail, Mr. Bansal submits, that all accused persons in the present case are connected with the offence since they have been in touch with Nafih Nazar; and most importantly, the consignment that was intercepted at the courier company was addressed to the petitioner, and the petitioner was therefore evidently connected with the offence.
19. Mr. Bansal further argues, that the fact that the petitioner has had financial transactions with Nafih Nazar also shows his connection with the trafficking of contraband. Learned counsel submits, that the CDRs collected in the course of investigation show several calls between the petitioner and Nafih Nazar, and it would be for the petitioner to explain the reason for those calls.
20. Upon a conspectus of the submissions made, and going by the material on record, what weighs with the court at this stage are the following considerations :
 - 20.1. It appears that the concrete pieces of 'evidence' that the NCB is citing against the petitioner are : *first*, that a parcel allegedly containing contraband was addressed to the petitioner as 'consignee' and was intercepted at the courier service. *Second*, that the relevant CDRs show that the petitioner has been in telephonic contact with Nafih Nazar and that the latter is the



king-pin of a drug trafficking operation. *Third*, that the petitioner's bank accounts show that he has had certain financial transactions with Nafih Nazar.

20.2. In regard to the aforesaid 'evidence' cited by the NCB, as things presently stand, there is nothing to show that the petitioner had collected or attempted to collect the consignment from the courier company; and admittedly the consignment was intercepted at the courier company before anyone could collect it. Furthermore, the petitioner has offered an explanation for his telephonic conversations and financial transactions with Nafih Nazar, to say that he has had business dealing with the said person in connection with his food-cart business. What is significant is that Nafih Nazar, who the NCB claims is the king-pin of the operation, has not even been named as an accused in the complaint; and the reference to him in para 95 of the complaint only says that he is a 'suspect', and that investigation *qua* Nafih Nazar is kept open; with the NCB seeking permission to file supplementary documents and a complaint against the said person, as and when available. The NCB has sought to explain that Nafih Nazar is not traceable since his address is not available with them. Be that as it may, the fact is that the said Nafih Nazar, who appears is claimed to be the 'hub' of the alleged trafficking operation, is yet to be traced by the NCB;

20.3. Furthermore, the NCB has so far not been able to show any connection between the petitioner (as consignee) and



Harikrishna (the consignor) of the package seized; and the NCB's case is that the petitioner is connected with Harikrishna, *again through* Nafih Nazar, when no Nafih Nazar appears to be in the picture, even at this late stage of the proceedings.

20.4. Lastly, it is the admitted position that only 02 out of the 24 prosecution witnesses have so far been examined; and in the meantime, the petitioner has been in custody for about 02 years and 10 months as an under-trial, with no criminal antecedents and with a jail conduct that is 'satisfactory'.

21. In the view of the above considerations, this court is persuaded to admit the petitioner – ***Aslam Noorudheen s/o Noorudheen*** – to regular bail pending trial, subject to the following conditions :

21.1. The petitioner shall furnish a personal bond in the sum of Rs.25,000/- (Rupees Twenty-five Thousand Only) with 02 sureties in the like amount, at least one of which shall be from a family member, to the satisfaction of the learned Trial Court;

21.2. The petitioner shall furnish to the Investigating Officer ('I.O.') a cellphone 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;

21.3. If the petitioner has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;

21.4. The petitioner shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of case.



The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

- 21.5. In case of any change in his residential address/contact details, the petitioner shall promptly inform the I.O. in writing.
22. Since the petitioner is facing trial and would be appearing before the learned Trial Court from time-to-time, no reporting requirement has been imposed as a condition of bail.
23. Nothing in this order shall be construed as an expression of opinion on the merits of the pending matter.
24. The petition stands disposed-of.
25. Pending applications, if any, are also disposed-of.
26. A copy of this order be sent to the concerned Jail Superintendent *forthwith* for information and compliance.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 1, 2024/ak