

**IN THE COURT OF ASJ/SPECIAL JUDGE/NDPS
PATIALA HOUSE COURTS, NEW DELHI**

Presided by: Sudhir Kumar Sirohi, DHJS

**SUDHIR KUMAR SIROHI
Special Judge NDPS Act
Room No. 35, P. Building
Patiala House Courts,
New Delhi**

**SC No. 67/2023
NCB Vs. Anil Kumar**

15.04.2024

Present: Mr. P. C. Aggarwal, Ld. SPP for NCB.
Mr. Aditya Aggarwal, Ld. Counsel for applicant.
IO Mr. Paras Nath, NCB DZU.

Reply to the additional ground filed by the NCB.

Arguments on bail application of accused already heard.

Brief facts of the case are that on 23.08.2022, on the basis of secret information, NCB Delhi Zonal Unit has seized 14960 NRx Zolpidem Tablets (commercial quantity) from a parcel having AWB No. N25175294 at DTDC Express Ltd., Samalkha, New Delhi. The parcel in question was booked by accused Mohd. Raaz Ali on the directions of accused Quazi Mohd. Zuhaib through accused Anil Kumar on the fake IDs of Vinod Mishra. Upon enquiry from the courier company the whereabouts of accused Mohd. Raaz Ali and Anil Kumar were revealed and they were intercepted in Lucknow on 24.08.2022, further, accused Quazi Mohd. Zuhaib was also intercepted in Lucknow on 24.08.2022 and all the three accused persons were put under arrest being involved in the present crime. Copy of Aadhar Card and PAN Card of Vinod Mishra were found attached with the parcel, however on verification, same were found forged. During investigation of the case, accused Raaj Ali



and Md. Juhaib disclosed about another parcel which was booked by Anil Kumar and also seized 10800 Tramadol Tablets on 27.08.2022.

Ld. Counsel for accused argued that accused has been falsely implicated in this matter and is in custody since 24.08.2022. It is further submitted by Ld. Counsel for accused that case of prosecution is pure case of false implication and case property has been manipulated by NCB as from the first parcel, there is recovery of 1496 strips of zolpidem tablets containing 10 tablets in each strips totaling 14960 tablets and at the time of seizure the weight of each strips was 2.42 gram and weight of total tablets in panchnama is 3.635 grams while from second parcel there is recovery of 1080 strips of tramadol tablets, each strips containing 10 tablets totaling 10800 tablets and at the time of seizure the weight of each strips was two gram and total weight was 2.160 kg but when the case property was produced before Ld. MM for 52A NDPS Act proceedings the weight of each strips of zolpidem became 2.5 gram from 2.42 gram and the total weight came to 3.740 kg while the weight of each strips of tramadol increased from 2 gram to 2.8 gram and the total weight came 3.024kg, there is further difference as when the first sample was received in CRCL, the weight of each strip became 3.8 grams and the total weight came to 5.684 kg, while the weight of second sample of each strip became 3.7 grams (in CRCL) from 2.8 grams (under 52A NDPS Act proceedings) totaling 3.996 kg, therefore, in the first parcel, there is difference of 105 grams while in second parcel there is difference of 864 gram till the stage of 52A NDPS Act proceedings and there is further difference of 2.049 kg (in first sample) and 1.863 kg (second



sample) when samples were sent to CRCL, accordingly, case property has been manipulated by the NCB, therefore, accused has crossed the bar of Section 37 NDPS Act and may be admitted to bail.

Ld. Counsel for accused relied upon the judgment/orders titled as:

1. *Gaurav Chopra Vs. State of NCT of Delhi Bail Application no. 2715/23 dated 19.01.2024 passed by Hon'ble High Court of Delhi*
2. *Kadir Vs. State of Govt of NCT of Delhi Bail Application no. 553/2023 dated 20.04.2023 passed by Hon'ble High Court of Delhi.*
3. *Sanjay Prasad Vs. State (Govt of NCT) of Delhi CRL.A. 1074/2013 dated 08.12.2015 passed by passed by Hon'ble High Court of Delhi*
4. *Mohd. Ramzan Vs. State (NCT of Delhi) Bail Application No. 524/2005 dated 05.05.2005 passed by passed by Hon'ble High Court of Delhi.*

Ld. SPP for NCB on the another hand argued that there is marginal difference of .07 gram only in 10 tablets of zolpidam while the difference is of .08 gram in each strips of tramadol tablet, therefore, the same is not material and 52 A NDPS Act proceedings has been duly conducted. It is further argued by Ld. SPP for NCB that there is recovery of commercial quantity of contraband, therefore, bail may not be granted to accused.

Submissions of all the parties heard.

As per case of NCB, both the parcels were booked by accused Anil Kumar/applicant. In the panchnama dated 23.08.2022 i.e. prepared at the time of first recovery it is mentioned that the total weight of 1496 strips of zolpidem tablets



was 3.635 kg (each strip weight 2.42 grams) but in the proceedings u/s 52A NDPS Act before Ld. MM, the weight came to be 3.740 kg (each strip weight 2.5 grams) and at that time when the samples were received in CFSL, the weight of each strip became 3.8 grams, there is difference of 105gram (3.740 kg – 3.635 kg) while in the panchnama dated 27.08.2022, the total weight of tramadol tablets was 2.16 kg (each strip weight 2 gram) but in proceedings u/s 52A NDPS Act before the Ld. MM, weight came to be 3.024 kg (each strip weight 2.8 gram) while each strip weight came to 3.7 gram when the sample was received in CRCL, there is difference of 864 gram (3.024- 2.160kg).

In the order of *Kadir (supra)* it was held that:-

“8. The judgment of Mohd. Ramzan (supra) is squarely applicable to the facts of the present case. The Coordinate Bench in Mohd. Ramzan (supra) has relied upon the judgment of the Hon'ble Supreme Court in Rajesh Jagdamba Avasthi v. State of Goa reported in 2005 (1) Apex Criminal Judgment 240 and has held that the discrepancy in the weight of the samples seized under Section 52 A of NDPS Act and the report of the FSL erodes the credibility of the recovery proceedings.

9. I am of the view that the discrepancy in the weight of the sample goes to the root of the matter and questions the actual seizure itself. The prosecution has not been able



to explain this discrepancy at this stage. It erodes the credibility of the recovery proceedings.

10. Since the recovery of the quantity of the contraband itself has become doubtful, the applicability of Section 37 of the NDPS Act at this stage cannot be insisted upon. The applicant has no other criminal antecedents. However, the applicant needs to satisfy the triple test viz. flight risk; influencing any witness and tampering with evidence. In my view, the same can be taken care of by imposing stringent bail conditions upon the applicant."

In Gaurav Chopra (supra) it was held that:-

"6. It presently cannot be disputed that there is a discrepancy in the weight of the samples drawn and what was found to be the actual weight of the samples by the FSL. The reason for such discrepancy will be a matter of trial, however, in my view, it is sufficient to cast a doubt on the case of the prosecution at this stage. Coupled with the above is the fact that the quantity which was produced before the learned Magistrate was 988 grams, which is not commercial. In my view, even otherwise, the applicant has made out a case for release on bail under Section 37 of the Act."

Nowhere, in the panchnama dated 23.08.2022 & 27.08.2022, it is mentioned that only the weight of single strip was taken and total weight of strips was not taken. The weight of



strip of first recovery was 2.42 gram at the time of seizure then the same became 2.5 gram at the time of 52A NDPS Act proceedings and in CRCL it became 3.8 gram, therefore, there is change in weight at every stage and there is no explanation of the NCB qua the said change. The change from 2.42 gram to 2.5 gram is .08 gram but the change from 2.4 gram to 3.8 gram is 1.4 gram which is increase in more than half of the weight of each sample and in total there is difference of 105 gram in first recovery of zolpidem tablets at the time of seizure and when the same was produced before Ld. Magistrate for 52A NDPS Act proceedings. The same is with the second seizure of tramadol tablets in which the weight of each strips was 2 gram at the time of seizure, same became 2.8 gram of 52A NDPS Act proceedings and when the same was sent to CRCL then the weight became 3.7 gram i.e. nearly double the weight of 2 gram/initial seizure weight and in total there is difference of 864 gram between the weight of tramadol tablets at the time of seizure and at the time of production before Ld. Magistrate u/s 52A NDPS Act proceedings. The difference in weight is matter of trial as there is no explanation of NCB at this stage, how the weight of each strip and total weight has increased and the benefit of the same must be given to the accused in view of the abovesaid prepositions laid down by Hon'ble High Court of Delhi. There is no previous involvement of accused on record, therefore, in view of the abovesaid facts and circumstances, the accused Anil Kumar has crossed the bar of Section 37 NDPS Act and it can be said that there are reasonable ground to believe that accused is not guilty of offence and is not likely to commit the offence, accordingly, accused Anil Kumar is admitted to bail on furnishing of personal




bond in the sum Rs. 1,00,000/- with two sureties of like amount and subject to the following conditions:-

1. he will provide his mobile number to the IO.
2. he will keep his mobile phone on at all times.
3. he will deposit his passport in the court during the period of bail and if he does not have passport then to file the affidavit in this regard in the court. LOC be opened against accused.
4. he will inform the IO about change of his residence/address, if any
5. he will mark his attendance in the NCB office on first Monday of every month till trial is completed.
6. he will not leave India under any circumstances without prior permission of court.
7. he will not commit any offence whatsoever during the period that he is on bail in the instant case.
8. In the event of there being any FIR/DD Entry/complaint lodged against the applicant/accused it would be open to the NCB to seek cancellation of bail of the accused.

Accordingly, bail application of accused stands disposed off. Copy of this order be given dasti and be also sent to Jail Superintendent.




(Sudhir Kumar Sirohi)
ASJ/Spl. Judge, NDPS/N. Delhi
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