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

+ BAIL APPLN. 1705/2024

BALJEET SINGH @ AMAN

.....Petitioner

Through: Mr.Aditya Agarwal, Mr.Naveen
Panwar, Ms.Kajol Garg, Ms.Shivani
Sharma, Mr.Mohd. Yasir,
Ms.Ruchika and Mr.Manas Agarwal,
Advts.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms.Priyanka Dalal, APP for the State.
SI Rajbir Singh, AGC, Crime Branch
PS Crime Branch

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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18.09.2024

1. The present petition has been filed for grant of regular bail in case FIR No.0063 dated 10.03.2023 registered under section 21/25/29/22 NDPS Act at PS Crime Branch.
2. The facts in brief are that on 10.03.2023, a secret information was received by crime branch and in furtherance to which raid was conducted. Police apprehended two accused -Baljeet @ Aman (present petitioner) and one Nigerian national Daniel in trafficking of Narcotic Substances. 51 Grams of Cocaine, 35 Grams of MDMA and 60 tablets of Ecstasy were recovered from Accused Baljeet @ Aman and Daniel. During PC remand Daniel led to another arrest of Michael @Beneth, who supplied contraband to him. 157 Grams of Heroin, 57 Grams of



MDMA & 28 tablets of MDMA weighing 12 Grams pink in color were recovered from him. On 14.03.2023, the sampling of the recovered contraband was done under 52A NDPS Act. Thereafter, the samples were sent to FSL for expert opinion.

3. The prosecution has alleged that the subsequent to the disclosure statement of Daniel, allegedly another accused Michael @ Benth who the supplier of the recovered contraband was arrested. Allegedly, Michael @ Benth was trying to flee away on seeing the police party and threw the bag carried by him and tried to escape when he was overpowered. Upon checking the bag 157 gms Heroin, 57 grams MDMA & 28 tablets of MDMA weighing 12 grams pink in color. The prosecution has alleged that the pills/tablets were the similar to the one recovered from the present accused Baljeet and co-accused Daniel. Learned counsel for the petitioner submits that the petitioner is in custody since 10.03.2023. Learned counsel for the petitioner submits that allegedly the present petitioner was found in possession of 51 grams of Cocaine, 35 grams of MDMA and 26.50 grams of MDMA which included 10 green colour tablets and 50 pink colour tablets. There is no dispute to the fact that the alleged recovery of cocaine and MDMA were of intermediate quantity. Learned counsel submits that during the sampling of third polythene which contained 26.5 grams of MDMA which included 10 green colour tablets 50 pink colour tablets proper procedure was not followed. In the seizure memo dated 10.03.2023, the small portions from green as well pink tablets were broken and checked with Field Testing Kit and both tested positive for MDMA.



4. Learned counsel submits that 60 tablets were weighed cumulatively on scale and found to be 26.50 grams along with the white polythene bag. Learned counsel submits that perusal of the seizure memo itself indicates that the tablets were not weighed separately and all the tablets were weighed cumulatively. Learned counsel for the petitioner further submits that in the proceedings under Section 52 A also which was conducted on 15.03.2023 by learned M.M.-08, South District Saket, all the tablets were weighed cumulatively and IO had taken two samples of 7 grams each with polythene weight in transparent poly bags and converted into two pulanda with the help of white cloth which was marked as C1 and C2. The weight of the remaining substance was found to be 17 grams. Learned counsel for the petitioner submits that, however in the FSL report filed along with the charge sheet dated 29.12.2023 there were two parcels Ex.C1A and Ex.C1B. Learned counsel submits that in Ex.C1A, the green colour tablets were found to be amphetamine and the pink colour tablets in Ex.C1B was found to be MDMA.
5. Learned counsel for the petitioner submits that commercial quantity of amphetamine is 50 grams and of MDMA is 10 grams. Learned counsel submits that since the weight of the individual tablets nor of the bunch of same colour tablets from Ex.C1 had been taken by the Investigating officer therefore there is doubt as to the fact that whether the tablets alleged to be recovered falls under the commercial quantity. Learned counsel submits that the proceedings under Section 52 A indicates that the green tablets and pink tablets were not weighed individually and only the weight of the polythene mark C was taken as 26.50 grams.



Learned counsel has also submitted that clubbing of quantity with co-accused can also not be taken in view of the judgment of this court in *Nawab vs. State (NCT of Delhi)* Bail Appln.2458/2024 , *Anita vs. State (NCT of Delhi)* Bail Appl.1538/2022 and *Amar Singh Ramji Bhai Barot vs. State of Gujarat* (2005) 7 SCC 550 and therefore the petitioner is entitled to bail.

6. *Per contra*, learned APP for the State has opposed the bail application on the ground that the petitioner is seeking the bail on the ground that 60 Ecstasy Tablets which included 10 green tablets and 50 pink tablets were weighed and sampled cumulatively rather than separately. Learned APP submits that the plea of the petitioner is that 50 pink tablets which were not scaled separately from the green tablets could not be considered to be more 10 grams. Learned APP submits that pink tablets were 50 in number and has tested positive for MDMA and commercial quantity of the same is 10 grams. Learned APP submits that 50 pink tablets which have tested positive for MDMA and inadvertently not weighed separately were similar to the 28 tablets weighing 10 grams recovered from the co-accused Beneth and which also tested positive for MDMA. Learned APP submits that the natural inference is that the weight of the 50 tablets were around 21.42 grams which is way over commercial quantity. Learned APP has also submitted that the defects in the sampling cannot be a ground to grant the bail and has relied upon *Shailender vs. state of NCT of Delhi*, BAIL APPLN. 3508/2021, *Saddam Alam vs. State (Govt. of NCT Of Delhi)*, BAIL APPLN. 2475/2023 and *Masibur Khan vs. State (Govt. of NCT Of Delhi)*, BAIL APPLN. 2894/2022. Learned APP has also



submitted that since there are material on the record to show there is conspiracy amongst the accused persons, the petitioner may not be admitted to bail in view of *Ridhm Rana vs. State (Govt. of NCT Of Delhi)*, CRL.REV.P. 385/2021. Learned APP has also submitted that there are other few FIRs pending against the applicant, however, those are not under NDPS Act.

7. In the present case, three polythene bags were recovered from the possession of the accused. Two of them were of cocaine and amphetamine which were admittedly of intermediate quantity and therefore rigors of Section 37 NDPC will not be attracted. However, the controversy is only regarding the third polythene in which allegedly 10 green colour tablets and 50 pink colour tablets were recovered. The third polythene was cumulatively found to be 26.50 grams. The seizure memo and the proceedings under Section 52A as discussed above specifically indicates that the tablets were not weighed separately and were weighed cumulatively. It is also not clear from the record of the prosecution that how many tablets of green colour and how many tablets of pink colour were opened and sent to the FSL for examination. It is also not explained that how the sample C1 has tuned into C1A and C1B. The FSL report indicates that the tablets in C1B were found to be MDMA.
8. The State wants this court to make an inference that since 28 tablets recovered from co-accused Daniel were of 12 grams therefore the weight of these 50 pink colour tablets allegedly recovered from the possession of the accused has to be more than 21 grams which is far above commercial quantity. If the court is to accept this submission of



the State then the court will have to draw presumption and inferences. I am afraid that such presumptions and inferences cannot be drawn to deny the concession of bail to the petitioner. It is a matter of trial that whether the 50 pink colour tablets recovered from the accused were of the commercial quantity or the intermediate quantity. In respect of the clubbing of contrabands, this court has held in *Nawab vs. State (NCT of Delhi)* (*supra*), *Anita vs. State (NCT of Delhi)* (*supra*) and *Amar Singh Ramji Bhai Barot vs. State of Gujarat* (2005) 7 SCC 550 that the same cannot be clubbed. The allegation regarding conspiracy is also a matter of trial.

9. In the facts and circumstances of the case, the petitioner is admitted to regular bail on his furnishing personal bond in the sum of Rs.50,000/- with a surety of the like amount, subject to the verification of address and to the satisfaction of trial court, subject to the following conditions:
 - a) the Petitioner shall cooperate in the investigation and appear before the Investigating Officer of the case as and when required;
 - b) the Petitioner shall under no circumstances leave India without prior permission of the Court concerned;
 - c) the Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
 - d) the Petitioner shall provide his/her mobile number(s) to the Investigating Officer and keep it operational at all times;
 - e) In case of change of residential address and/or mobile number, the Petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.
10. In view of the above, the petition stands disposed of.



11. The copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

DINESH KUMAR SHARMA, J

SEPTEMBER 18, 2024

rb/ht..