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

+ BAIL APPLN. 31/2024 & CRL.M.A. 9289/2024 (Preponement of next date of hearing)

GANESH CHOUDHARY

..... Petitioner

Through: Mr. Aditya Aggarwal, Mr. Naveen Panwar, Ms. Kajol Garg, Mr. Mohd. Yasir and Mr. Vineet Chawla, Advocates.

versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Utsav Bains, SPP for the CBI.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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06.05.2024

1. The present application under Section 439 of the CrPC read with Section 36A(3) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS') seeks regular bail in Crime No. VIII/19/DZU/2022, under Sections 8/22(c)/23(c)/29 of the NDPS Act. The first application on behalf of the applicant being BAIL APPLN. 2567/2022 was withdrawn with permission to file afresh *vide* order dated 21.08.2023.

2. The case of the respondent, as per the status report dated 02.01.2024, against the applicant is as follows:

“That on 24.02.2022, information was received by Sunil Kumar, JIO that a parcel bearing AWB No. 7702909491 is lying at DHL Express Pvt. Ltd., Rama road, Kirti Nagar, New Delhi and is suspected to contain Psychotropic substance and search of the same could yield recovery of huge amount of Psychotropic substance. The information was reduced into



writing by Sunil Kumar, JIO and placed before Sh. Amit Kumar Tiwary, Superintendent who directed Anoop Kumar, JIO to constitute a team and take further necessary action as per law. On the direction of the Superintendent, Anoop Kumar, JIO constituted a team consisting himself, Parasnath, IO, Vijay Kumar, Head Constable and R.S. Yadav driver. At about 1500 hours, NCB team left the NCB/DZU office for DHL Express Pvt. Ltd., Rama road, Kirti Nagar, New Delhi and reached there at about 1540 hours. After reaching at DHL Express Pvt. Ltd., the team called Mr. Ankur Singh, disclosed him about the information, the purpose of their visit and requested him to join the team as independent witness to witness the proceedings at the spot, which he voluntarily agreed upon. On the request of Anoop Kumar JIO, the officials of DHL Express Pvt. Ltd. produced the parcel booked under Air Way Bill No. 7702909491. On examination of the parcel, it was seen that the parcel was booked on the IDs of one Mr. Nishu Bhatnagar S/o Surendra Kumar Bhatnagar, J11128 2nd floor, Rajouri Garden Tagore Garden, New Delhi 110027 and was destined to one John Gentile 2525 Arapahoe AVE E4 544 Boulder CO -80302 USA. The parcel was opened in presence of the independent witness and it was found to contain 11 Lace Rolls of Golden colour and three pieces of clothes. After that all Lace Rolls were checked and it was found to be 120 strips of Tramadol Tablets wrapped and concealed inside each Lace Roll, each strip contained 10 tablets, hence 1200 (120 x 10) Tramadol Tablets were recovered from each Lace Roll. Thereafter, remaining Lace Rolls were examined and led to recovery of total 13200 Tramadol Tablets (1200 x 11). Recovered contraband and the documents annexed with the parcel were seized under Panchnama for further investigation in presence of the independent witness and the panchnama was prepared on the spot. On initial enquiry from DHL Express Pvt. Ltd., Rama Road, Kirti Nagar, New Delhi about the booking of the said parcel having AWB No.77029029491, it was revealed that the parcel in question was initially booked at OGS Groups, Courier Company Mahipalpur, New Delhi.

2. ROLES OF ACCUSED'S:

a) GANESH –

- (i) He used to collect drug consignments from various bus stands such as Anand Vihar, Delhi or Kaushambi Ghaziabad by bus based on the details of the bus and conductor provided by the coaccused. He used to get 20-25 parcels per month and he had received 70 parcels till then. After receiving, he used to courier them to USA.
- (ii) In the greed of money he started to indulge in sending the parcels of NRx Drugs & Tablets to foreign countries for Kashif & Tamir Ali.



(Whatsapp Chats)

3. RECOVERY FROM ACCUSED:

a) GANESH

- i. On disclosure of Ganesh, UPS Express Pvt. Ltd., CARGO Terminal 3, AIR CARGO, IGI Airport, New Delhi on 28.02.2022 at about 15:00 hours and intercepted the parcel having consignment number IZ98XIW70451682510. On the invoice of the parcel, name of the consigner mentioned as Jyoti Kapoor W/o Rajesh Kapoor, 24-AJ-A Block, LIG Flats, Hari Nagar, Mayapuri, South West Delhi and name of the consignee mentioned as Freedy Gonzalez, 400 Schenck Avenue, APT IB Brooklyn, New York 11207, USA. The parcel was cut opened in presence of the independent witnesses and "it was found to contain .15 Lace Rolls of White, Black & golden colour and few pieces of clothes. After that all Lace Rolls were checked and it was found to be 15000 tablets of Zolpidem wrapped and concealed inside the Lace Rolls. Panchnama/Seizure memo was prepared on the spot in presence of the independent witnesses. Total - 15000 tablets of Zolpidem were seized as per provision of NDPS Act-1985.
- ii. Invoice Parcel no. 2562761 name of the consigner mentioned as Sagar Jain, A-304, Sector-PI Khushbu ,Apartment, Greater Noida, Surajpur, Gautam Buddha Nagar, Uttar Pradesh and name of the consignee mentioned as Johanna Yogel, 10625 SW RIVER, DR TIGARD OR 97224, USA.= Lace Rolls of Golden colour, two small packets of beads and few pieces of cloths,-- After that all Lace rolls were checked and it was found to be 13300 tablets of', tramadol wrapped and concealed inside the Lace Rolls.
- iii. Invoice Parcel no. 2562760 name of the consigner mentioned as Arun Dadhich, Puran Bari, Sikar Rajasthan 16 and name of the consignee mentioned as Dianilda Cintron, 686 W CUTHBERT BLVD, #127 WESTMONT NJ, 08108 USA= 05 Lace Rolls of Golden colour, three small packets of beads and few pieces of clothes. After that all Lace Rolls were checked and it was found to be 2600 tablets of Tramadol wrapped and concealed inside the Lace Rolls.
- iv. Invoice parcel no. 2556200 name of the consigner mentioned as Sanskriti Attray, A-60 Ram Prastha Ghaziabad, Chander Nagar, Hapur Uttar Pradesh and name of the consignee mentioned as Michael Tremel, 2307 8TH STREET APT 12, . COLUMBUS NEBRASKA 68601, USA= one packet of Corn Flakes, One packet of Chocos webs, two plastic box of Patanjali Badam Pak and two plastic box of Patanjali Power Vita+. After that the same were opened & checked and it was found to be 3540 tablets of Tramadol wrapped and concealed in aluminium foils and carbon papers.



8. CONNECTIVITY WITH OTHER ACCUSED'S:

I. The accused Ganesh Chaudhary was in regular contact with accused Kashif and accused Tamir Ali on WhatsApp. Kashif and Tamir Ali sent details of consignee on the WhatsApp of Ganesh Chaudhary and after booking the consignment of NRx tablets, Ganesh Chaudhary sent booking slip/receipt of the consignment to Kashif and Tamir Ali.

II. Screen Shots of WhatsApp chats of Ganesh Chaudhary with Arvind Kumar Jha & Alok Kumar was also found. They used to send IDs through WhatsApp.”

3. Learned counsel for the applicant submits that there are total 10 accused persons in the present case and out of them, 9 have already been released on bail. It is pointed out that 3 of the co-accused have been granted regular bail by this Court and the other 6 were granted regular bail by learned Special Court. The learned Single Judge of this Court *vide* judgments dated 18.05.2023 in BAIL APPLN. 253/2023 and 22.05.2023 in BAIL APPLN. 3718/2022 have granted bail to co-accused Kashif and Tamir Ali respectively, on the ground of violation of Section 52A of the NDPS Act vitiating the sample collection procedure and giving the benefit of the same to the said co-accused persons. Learned counsel for the applicant submits that the said order has not been challenged by the respondent and on the basis of the aforesaid order learned Trial Court has granted bail to other co-accused persons. It is submitted that the findings in the aforesaid orders granting bail squarely apply to the present applicant as the same has been rendered in the facts of the present case. It is further submitted that the applicant has been in judicial custody since 25.02.2022. It is further submitted that the complaint has been filed and the matter is at the stage of prosecution evidence and therefore, the present application is sought on the basis of parity.



4. *Per contra*, learned SPP for NCB submits that the facts of the present case are distinct to the facts of the case of co-accused persons, namely, Kashif and Tamir Ali. It is pointed out that recoveries in the present case have been made on disclosure statement made by the present applicant. It is further submitted that WhatsApp chats between the present applicant and other co-accused persons have been placed on record to demonstrate his complicity in the present complaint. It is further contended that the submission of learned counsel for the applicant that the latter was a mere courier boy is not tenable inasmuch as evidence shows that the money has been transferred to the bank account of the family members of the present applicant therefore, establishing the conspiracy between the applicant and his co-accused persons. Learned SPP for NCB further relies upon certain WhatsApp chats placed on record to oppose the present bail application.

5. Heard learned counsel for the parties and perused the record.

6. It is pertinent to note that the order granting bail to the co-accused persons, namely, Kashif and Tamir Ali, by the learned Single Judge of this Court, as pointed out hereinabove, have specifically noted violation of Section 52A of the NDPS Act in the facts of the present case. The said observation would, in the considered opinion of this Court, apply to the facts of the present application as well. It is further noted that chats relied upon by the learned SPP for NCB is between the present applicant and co-accused Kashif and Tamir Ali, who, as pointed out hereinabove, have already been granted bail. The case of the prosecution as stated in the status report is that the applicant used to indulge in sending parcels at the behest of co-accused Kashif and Tamir Ali. Nominal roll reflects that the applicant has been in custody since 25.02.2022 and has undergone incarceration for



approximately 2 years and 3 months. It is further reflected in the nominal roll that the present applicant is not involved in any other previous offence. Investigation in the present case stands concluded and chargesheet stands filed.

7. In totality of the facts and circumstances of the case, the present application is allowed. The applicant is directed to be released on bail, on his furnishing a personal bond of Rs. 25,000/- with one surety of like amount, to the satisfaction of the learned Trial Court/Link Court, further subject to following conditions:

- i. The applicant shall not leave India without prior permission of the learned Trial Court.
- ii. The applicant shall intimate the learned Trial Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.
- iii. The applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iv. The applicant is directed to give his mobile number to the Investigating Officer and keep it operational at all times.
- v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

8. The application is allowed and disposed of accordingly.

9. Pending application(s), if any, also stand disposed of.

10. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present application.

11. Copy of the order be sent to the concerned Jail Superintendent for



necessary information and compliance.

12. Order be uploaded on the website of this court *forthwith*.

AMIT SHARMA, J

MAY 06, 2024/sn

Click here to check corrigendum, if any