

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

**Presided by: Sudhir Kumar Sirohi, DHJS**

**SC No. 380/2022  
NCB Vs. Md Mustaqueem**

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

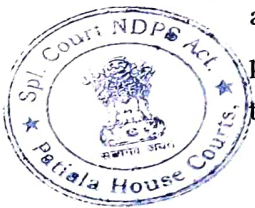
03.07.2023

Present: Sh P C Aggarwal, Ld. SPP for NCB.  
Sh Naveen Panwar, Ld counsel for  
applicant/accused Md Mustaqueem.  
IO of the case Mr Paras Nath.

Reply of the bail application has been filed. Copy  
supplied.

Arguments on the bail application of accused heard.

Ld counsel for accused argued that nothing has been recovered from the possession of accused and bail has already been granted to co-accused Kashif by Hon'ble High Court of Delhi in Bail Application No. 253/2023 dated 18.05.2023 and the role of accused is same as that of accused Kashif. Ld counsel for accused further argued that nothing was also recovered from the possession of accused Kashif and accused Kashif was arrested on the disclosure of co-accused Tamir Ali. It is further argued by Ld counsel for accused that the present applicant/accused has been arrested on the disclosure of co accused Kashif and co accused Kashif has already been granted bail. It is also argued by Ld counsel for accused that Hon'ble High Court of Delhi has granted bail to accused Kashif on technical ground of delay in filing the application u/s 52A NDPS Act as the same was filed after the period of 51 days. It is further argued by Ld counsel for accused that on the ground of parity, the bail may be granted to accused



Md Mustaqueem and there is no other involvement of present applicant/accused.

Ld SPP for NCB on the other hand opposed the bail application and argued that there is CDR connectivity between the accused persons, though no recovery has been effected from the present applicant/accused Md Mustaqueem but there are also various bank transactions between Md Salman, Aqib Ali, Md Mustaqueem and Md Zahid Khan and accused failed to appear before NCB office and was arrested after the issuance of NBW, therefore, bail may not be granted to accused.

Submissions of all parties heard.

In the present matter, from first parcel, there is recovery of 13200 strips of tramadol tablets, the same was booked by accused Ganesh Chaudhary thereafter on the disclosure of accused Ganesh Chaudhary, another parcel was seized on 28.02.2022 of 15000 Zolpidem tablets, on 02.03.2023, 19440 tramadol tablets were seized on the disclosure of accused Ganesh Chaudhary and accused Ganesh Chaudhary disclosed that the said parcel was sent by co accused Tamir Ali and same is to be couriered to USA, thereafter the accused Tamir Ali disclosed about accused Kashif, Md Rizwan and Md Zahid, all of them were arrested and accused Kashif, Tamir Ali, Md Rizwan and Zahid disclosed about Md Mustaqueem i.e. the present applicant/accused and present applicant/accused was apprehended.

In bail application No. 253/2023 of Hon'ble High Court of Delhi has held that :-

***Reasonable time under section 52A***

***28. What is reasonable time depends on the facts and circumstances of each case. However, it cannot be the***

intention of the legislature that an application for sample collection can be moved at the whims and fancies of the prosecuting agency. Therefore, taking cue from the Standing Order 1/88, it is desirable that the application under 52A should be made within 72 hours or near about the said time frame.

29. In the present case, the application for drawing of sample and certification of seizure memo under section 52ANDPS was filed on 22.04.2022 i.e., after 51 days from the period of last seizure on 02.03.2022.

30. A period of 51 days, by no stretch of imagination, can be called a reasonable period for filing an application under section 52ANDPS for drawing the sample. It cannot be that the contraband lying in the custody of the Narcotics Department for 51 days, in their power and possession, is immune from tampering and mischief. Furthermore, no reasons have been furnished by the Respondent for the delay of 51 days for moving an application under section 52ANDPS.

31. In view of the above discussion, I hold that violation of Section 52A vitiates the sample collection procedure and the benefit of the same must accrue to the Applicant.

32. The application by the respondent under section 52A was filed after a delay of 51 days. At that time, the applicant did not object. However, the same being a legal objection can be raised at any stage.

33. The applicant has been in custody since 07.03.2022 and more than a year has passed since then. No further custodial interrogation of the Applicant is required. No recovery was made from the Applicant or at his instance. Therefore, the embargo of Section 37 NDPS is not applicable on the Applicant.

34. The triple test i.e., a) flight risk; b) tampering with evidence and c) influencing the witnesses can be taken care of by imposing stringent bail conditions.

35. For the aforesaid reasons, the application is allowed and the applicant is granted bail on the



*following terms and conditions*

In the present matter, there is no recovery from the present applicant/accused and present applicant/accused was arrested on 07.03.2020 on the disclosure of co accused Kashif, Tamir Ali, Md Rizwan and Md Zahid. The Hon'ble High Court of Delhi in the abovesaid order has held that in the present matter, there is violation of section 52A NDPS Act regarding sample collection procedure and gave benefit of same to co accused Kashif. The present applicant/accused is at parity of co accused Kashif and embargo of section 37 NDPS Act is not applicable in the case of present applicant/accused, therefore, present accused/applicant Md Mustaqueem is admitted to bail on furnishing a personal bond and a surety bond in the sum of Rs. 25,000/-each, to the satisfaction of this court with following conditions:-

- i. The Applicant shall appear before the Court as and when the matter is taken up for hearing;
- ii. The Applicant shall provide his mobile number to the Investigating Officer (IO) concerned, which shall be kept in working condition at all times. The Applicant shall not switch off, or change the same without prior intimation to the IO concerned, during the period of bail;
- iii. The Applicant shall join investigation as and when called by the I.O. concerned;
- iv. In case the Applicant changes his address, he will inform the I.O. concerned and this Court also;
- v. The Applicant shall not leave the country during the bail period and surrender his passport, if any, at the time of release before the Court;

- vi. The Applicant shall not indulge in any criminal activity during the bail period;
- vii. The Applicant shall not communicate with or come into contact with any of the prosecution witnesses or tamper with the evidence of the case.

Application disposed of accordingly.

Copy of the order be given dasti as well as sent to accused in jail.

(Sudhir Kumar Sirohi)  
ASJ/Spl. Judge, NDPS/N. Delhi  
03.07.2023

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