

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

Presided by: Sudhir Kumar Sirohi, DHJS

**Crime No. VIII/70/DZU/2022
NCB VS Mohammad Nafees @ Musha
29.11.2023**

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

Present: Mr. Arun Khatri, Ld. SPP for NCB

IO Mr. Sandeep in person.

None for applicant.

Clarifications tendered by the IO.

Brief facts of the case are that on the secret information on 30.09.2022, was received by Sh. Manoj Kumar Yadav, Jr. IO, that one parcel bearing AWB No. 6978956482 is lying at DHL Express Pvt. Ltd., 71/3, Rama Road, Najafgarh Industrial Area, Near Kirti Nagar, New Delhi and the said parcel is suspected to contain psychotropic substance and examination of the same may result in the recovery of psychotropic substances. Sh. Manoj Kumar Yadav, Jr. IO reduced the Information in writing and placed the same before Sh. Amit Kumar Tiwary, Superintendent, NCB-DZU who marked the same to Sh. Jameel Saifi, Jr. IO with the direction to constitute a team and take necessary action as per law. Information dated 30.09.2022. During the search and seizure of the aforesaid parcel the said transparent polythene of the parcel was cut and found a receipt of express TDX & DHL, proforma invoice and shipment receipt. On the receipt sender name Rahul Yadav 53, B/4, Neur Hygia Institute, Faizull Gang. Sitapur Road, 206020 Lucknow, Uttar Pardesh, India, and receiver Name as Oliver, Kim, 1003,



Lakeside, Driver, Newark Del, 19711 New Ywark, Delware, United state of America were mentioned. After that the carton box was opened with the help of cutter and on opening of the parcel two big size rolls were found. Thereafter on checking one roll it was found wrapped with blue coloured plastic in a transparent polythene. The transparent polythene was cut and on removing the plastic, the carbon paper was found wrapped with the help of rubber band on the roll. On removing the carbon paper the medicine strips were found wrapped with the help of rubber band. The medicine strip was removed and on counting 90 strip were found and in one strip total 10 Tablets were found. On checking all the strip Tramadol Hydrochloride tablets OL-Tram tablets 100 mg Batch No. 964-23 MRP Rs -120, MFG 03/2022 per 10 tab. Exp. 02/2025, Mfg by Hab Pharmaceutical and research limited, 10, Pharmaceutical sidqual, Dehradun-248011 were mentioned. After that the second roll was checked and on removing the carbon paper same medicine strips were found wrapped with the help of rubber band. The medicine strips were removed from the roll and on counting total of 110 strips were found. On checking all the strips, Tramadol Hydrochloride Tablets, Ol-Tram Tablets 100 mg, Batch No. 96-23, MRP Rs. 120.00, MFG 03/2022, per 10 Tabets, Exp. 02/2025, Manufactured by HAB Pharmaceuticals & Research Limited, 10, Pharmacy, SIDCUL, Selaqui, Dehradun- 248011 was mentioned. Total of 200 strips from 2000 tablets were recovered from the two rolls. The weight of 10 tablets of one strip came to 3.35 Grams. Thereby total weight of the recovered 2000 tablets was came 670 Grams. Thereafter on 04.02.2023, on the basis of



the evidence collected during the investigation, Sh. Sandeep Kumar served notice under section 67 of NDPS Act to Mohamed Nafees @ Musba, S/o Late Mohamed Sefeeq, who had collected the mobile phone from his friend Mohamed Mudashshir and he was directed to tender his statement under section 67 of NDPS Act at the NCB/DZU office forthwith. On 05.02.2023, in response to the notice issued under Section 67 of NDPS Act Mohamed Mudashshir, S/o Late Sh. Merrajuddin Siddique appeared before Sh. Sandeep Kumar Jr. IO in the NCB/DZU office and tendered his voluntary statement under Section 67 of NDPS Act in his own handwriting. Sh Sandeep Kumar, Jr. IO briefed Mohamed Mudashshir, S/o Late Sh. Merrajuddin Siddique that his statement can be used against him or any other person in the court of law as evidence. Sh. Sandeep Kumar Jr. IO also briefed him about his legal right to remain silent. In his statement Mohamed Mudashshir, S/o Late Sh. Merrajuddin Siddique admitted his complicity in the commission of the crime and his involvement in the commission of the offence along with other associates. He admitted that he had booked the said parcel in question on the direction of Mohd. Naffes & Mohamad Yusaf. He also told that he borrowed the Nokia Mobile phone from his friends Mr. Mohamed Khalid and same was given to his friends Mohamed Nafees @ Musa, so that he can used the Nokia phone for online booking the said parcel. Further, he stated that he know the house of Mohamed Naffes and he could show his house and also stated in his statement that on 04/02/2023, he along with the NCB Team and local police, went to the house of Mohamed Naffes and identified him, whose gave the drugs parcel for



booking. On asking about the money for booking of the said parcel he told that Rs. 2000 was given by him to Mohamed Naffes for arrangement of the mobile phone and Rs.2000 was given by Yusaf for booking the said parcel. On 05.02.2023, in response to the notice issued under Section 67 of NDPS Act Mohamed Nafees @ Musha, S/o Late Mohamed Sefeeq appeared before Sh. Sandeep Kumar Jr. IO in the NCB/DZU office and tendered his voluntary statement under Section 67 of NDPS Act in his own handwriting. Sh Sandeep Kumar, Jr. IO briefed Mohamed Nafees @ Musha, S/o Late Mohamed Sefeeq that his statement can be used against him or any other person in the court of law as evidence. Sh. Sandeep Kumar Jr. IO also briefed him about his legal right to remain silent. In his statement Mohamed Nafees @ Musha, S/o Late Mohamed Sefeeq admitted his complicity in the commission of the crime and his involvement in the commission of the offence along with other associates. He admitted that he gave the said Medicine parcel and extra amount for booking the said parcel to Mohamed Mudashshir. He also stated that he and his friend Hamja Yusaf involved in trafficking of drugs parcel and also stated that on his request, Mohamed Mudashshir arranged a mobile phone for booking the said drugs parcel. On 05.02.2023 on the basis of evidence collected during investigation and voluntary statement of Mohamed Nafees @ Musha, S/o Late Mohamed Sefeeq, he was arrested by Sh. Sandeep Kumar, Jr.I.O. on 05.02.2023.

Consequent to arrest Jamatalashi of Mohamed Nafees @ Musha taken. In the statement u/s 67 NDPS Act Mohamed Nafees @ Musha, S/o Late Mohamed Sefeeq admitted his complicity in



the commission of the crime and his involvement in the commission of the offence along with other associates. He admitted that he gave the said Medicine parcel and extra amount for booking the said parcel to Mohamed Mudashshir. He also stated that he and his friend Hamja Yusaf involved in trafficking of drugs parcel and also stated that on his request, Mohamed Mudashshir arranged a mobile phone for booking the said drugs parcel. On the basis of reliable information disclosed by the accused Mohamed Mudashshir during his voluntarily statement, NCB team intercepted accused Mohamed Nafees @ Musha. I.O. recorded the voluntarily statement u/s 67 NDPS ACT of accused Mohamed Nafees and arrested him on 05.02.2023, after confirmation of his involvement in the present case. On 07.02.2023 the accused Mohamed Mudashir & Mohamed Nafees@Musha were medically examined at Safdarjung Hospital and was produced before this Hon'ble Court from Departmental/police custody remand and this Hon'ble Court was pleased to remand the accused to judicial custody remand. As per analysis of mobile phone CDRs it was found that both accused persons were regularly in touch with each other. On 14.03.2023, in response to the notice under section 67 of NDPS Act Mr. Sanjeev Kumar (parcel pickup boy) appeared in the NCB office before the complainant. In his statement Sh. Sanjeev Kumar stated that on 14.03.2023, on called by the NCB officer, he appeared in the Madhya Ganj, Police station, Lucknow and he along with NCB team and local police went to the house of Arif Mansurri and met with a person. On asking by the NCB team he told his name Mohamed Mudashshir and he was the same boy



who told him his name as Rahul Yadav while giving the parcel. Further he stated that Mohamed Mudashshir identified him as a courier boy who gave the parcel near the Hygia college Lucknow on dated 06.09.2022.

Ld. Counsel for accused argued that in present matter, accused has been falsely implicated, accused/applicant was arrested on disclosure of co accused Mudashshir and there is no evidence against the applicant/accused except the disclosure statement of co-accused Mudashshir and Section 67 NDPS Act sttemet of present/accused which is hit by judgment of Tofan Singh Vs. State of Tamil Nadu Criminal Appl. No. 152/2013 decided on 29.10.2020 by Hon'ble Supreme Court of India. It is further argued byLd. Counsel for accused that NCB is alleging the CDR connectivity between applicant and remaining co accused but there is no transcription on record to show that the applicant was involved in any way to the parcel in question. It is further argued that there is no recovery from applicant and applicant is not involved in any other case nor any monetary transaction has been brought on record between applicant and co-accused while credibility of CDR has to be seen during trial, therefore, bail may be granted to applicant.

Ld. counsel for accused relied upon the following judgments/orders:

1. *Amit Ranjan Vs. NCB Bail Appln. No. 1189/2020 decided decided by Hon'ble High Court of Delhi on 20.05.2022*

Sanjay Negi Vs. State Bail Appl No. 302/2022 decided by Hon'ble High Court of Delhi on 13.07.2022



3. *Kale Ram @ Kalu Ram Vs. NCB Bail Appl. No. 3045/2019 decided by Hon'ble High Court of Delhi on 10.03.2022*
4. *Jalil Khan Vs. State Bail Appln. No. 2585/2021 decided by Hon'ble High Court of Delhi on 18.11.2022*
5. *Ajmal T. A. @ Kuru Vs. State of Kerala (SLP Crl. No. 6599/2023 decided by Hon'ble Supreme Court of India on 23.08.2023*
6. *Haresh Rawal Vs. NCB Bail Appl No. 1177/2021 decided Hon'ble High Court of Delhi on 03.06.2021*
7. *Kingsley Ofobike Vs. NCB, Bail Appl No. 12468/2022 decided on 12.07.2023*

Ld. SPP for NCB and IO on the another hand strongly opposed the bail application on the ground that parcel in question was given by Late Hamza Yusuf to the applicant then applicant handed over the parcel to Mohd. Mudashshir thereafter Mohd. Mudashshir booked the parcel. The mobile number given with the parcel was 7068081345, though the said number has not been recovered but the phone which was used with the said number belongs to Mr. Khalid Khan and Mr. Khalid Khan has given statement that he gave the phone to Mohd. Mudashshir then Mohd. Mudashshir told that he gave phone to applicant and the applicant told that phone was given to Late Hamza Yusuf. It is further argued by Ld. SPP for NCB that there is CDR connectivity of present accused/applicant with co accused Mudashshir and there is recovery of commercial quantity of



contraband, therefore, there is bar of Section 37 NDPS Act and bail may be granted to accused.

Submissions of all the parties heard.

There is no recovery from accused-applicant in this matter, the parcel in question was booked by accused Mudashshir, accused Mudashshir disclosed that the parcel was handed over to him by the present accused/applicant who got the same from Late Hamza Yusuf. Mobile phone or number 7068081345 also not recovered from the accused/applicant in this matter rather the mobile phone was recovered from Mr. Khalid Khan who disclosed that he gave the same to accused Mohd. Mudashshir and then Mohd. Mudashshir told that he gave the phone to present accused/applicant and present accused/applicant gave the phone to Late Hamza Yusuf for booking the parcel. Therefore, these are only disclosure statements of co-accused Mudashshir against the present accused/applicant and there is no recovery either of mobile phone, phone number SIM or contraband from the present accused/applicant and in the absence of any recovery from applicant even Section 67 NDPS Act statement of applicant is of no use. There is no monetary transaction between accused/applicant and co accused Mudashshir. The only evidence against the applicant/accused is CDR connectivity with co-accused Mudashshir but there is no transcription for the alleged CDR on record and CDR is a matter of trial (reliance has been placed upon *Amit Ranjan Vs. Narcotics Control Bureau 2022*, *OnLine Del 1532*), accordingly, accused has crossed the bar of Section 37 NDPS Act and it can be said that there are



reasonable grounds to believe that accused is not guilty of offence and not likely to commit the offence again due to absence of any previous involvement. In these facts and circumstances of the case, accused Mohammad Nafees @ Musha is admitted to bail on furnishing personal bond in the sum of Rs. 1,00,000/- with two sureties of like amount and with 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 or in absence of passport, LOC be opened against accused.
4. he will daily drop a PIN on the google map to ensure that his location is available to the Investigation Officer of the case every week during the period of trial.
5. he will inform the IO about change of his residence/address, if any
6. he will mark his attendance in the NCB office on first Monday of every month till trial is completed.
7. he will not leave the India under any circumstances without prior permission of court.
8. he will not commit any offence whatsoever during the period that he is on bail in the instant case.

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.

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