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

% *Date of decision: 05th September, 2024*

+ **BAIL APPLN. 2207/2024**

MAHFOOZPetitioner

Through: Mr. Aditya Aggarwal, Mr. Manas
Agarwal, Ms. Kajal Garg & Mohd.
Yasir, Advocates.

versus

NCBRespondent

Through: Mr. Utsav Singh Bains, Mr. Prashant
Pathak, Mr. Shantanu Dubey & Mr.
Ravi Pandey, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Section 439 of the Code of Criminal Procedure, 1973 read with Section 36A(3) of the Narcotic Drugs and Psychotropic Substances Act, 1925 (*hereinafter referred to as "NDPS Act, 1925"*) has been filed on behalf of the petitioner seeking grant of regular bail in the Complaint No. VIII/06/DZU/2023 registered under Sections 8/21(c)/23/29 of NDPS Act, 1925 at Police Station Narcotics Control Bureau (NCB).

2. It is submitted that as per the case of the prosecution, the petitioner along with one lady i.e., Hushan Jahan, were apprehended at the IGI Airport, Delhi who were to travel from Delhi to Riyadh through Hyderabad. They were stopped at the IGI Airport, New Delhi and from the search of the suitcase, 173 bottles of 100 ml each of Phensedyle Chlorpheniramine



Maleate and Codeine Phosphate Cough Linetus, were recovered. 173 Bottles of *Phensedyle Chlorpheniramine Maleate and Codeine Phosphate Cough Linetus* were recovered from the suitcase of Hushan Jahan. After due investigations, the Chargesheet has been filed against the petitioner and Hushan Jahan.

3. It is submitted that the petitioner has been in judicial custody from 27.02.2023 i.e. one and a half year. The petitioner has no previous criminal antecedent. The bottles of Phensedyl recovered contained only miniscule percentage of *codeine phosphate along with chlorpheniramine i.e., 0.17%-0.18%* as is reflected from the FSL Report., the petitioner is entitled to regular bail.

4. There are 12 prosecution witnesses and the charges against the petitioner are yet to be framed. The trial may take a long time to get concluded. Therefore, it is submitted that the regular bail may be granted to the petitioner.

5. Learned counsel for the petitioner has placed reliance on the decisions of the Apex Court in *Saddam Hossain vs. State of West Bengal*, decided vide SLP (Crl.) No. 15496/2023 on 03.05.2024, *Mohidul Sarkar vs. The State of West Bengal*, decided vide SLP (Crl.) Appeal No. 15668/2023 on 19.04.2024, *Ripon Seikh & Ors. vs. State of West Bengal*, decided vide SLP (Crl.) No. 16663/2023 on 17.08.2023, *Sawdagar SK @ Sada vs. State of West Bengal*, decided vide SLP (Crl.) No. 13561/2023 on 02.05.2023, *S.K. Nasiruddin @ Nasiruddin SK vs. State of West Bengal*, decided vide SLP (Crl.) No. 3402/2024 on 06.03.2024, *Nandalal Mondal @ Abhay Mondal vs. The State of West Bengal*, decided vide SLP (Crl.) 12788/2023 on 03.01.2024, *Md. Humayun @ Humayan vs. The State of West Bengal*,



decided *vide* SLP (CrI.) 7265/2023 on 12.10.2023, *Hasanujjaman & Ors. vs. The State of West Bengal*, decided *vide* SLP (CrI.) No. 3321/2023 on 04.05.2023, *Hanef Kharsani @ Hanef Sheikh vs. Union of India*, decided *vide* SLP (CrI.) No. 2685/2024 on 08.04.2024, *Md. Aliul Islam @ Aliul Islam @ Aliul vs. The West of Bengal*, decided *vide* SLP (CrI.) No. 1202/2024 on 26.02.2024, *Mithun SK & Anr. vs. The State of West Bengal*, decided *vide* SLP (CrI.) No. 16598/2023, *Indrajit Mondal @ Piglu vs. The State of West Bengal*, decided *vide* SLP (CrI.) No. 8512/2023 on 25.01.2024, *Harun SK vs. The State of West Bengal*, decided *vide* SLP (CrI.) No. 11593/2023 on 28.11.2023, *Md. Kajem Ali vs. The State of West Bengal*, decided *vide* SLP (CrI.) NO. 9344/2023 on 08.11.2023, *Sikander Ali vs. State of West Bengal*, decided *vide* SLP (CrI.) No. 3371/2023 on 30.10.2023, *Sahabul Hoque @ Mukfar & Anr. vs. The State of West Bengal*, decided *vide* SLP (CrI.) No. 9137/2023 on 16.10.2023, *Saurabh Gadewal vs. The State of Chhattisgarh*, decided *vide* SLP (CrI.) No. 9158/2023 on 11.10.2023, *Basanti Mondal & Ors. The State of West Bengal*, decided *vide* SLP (CrI.) No. 12586/2022 on 29.03.2023 and *Saniya Bibi @ Soniya Bibi vs. The State of West Bengal*, decided *vide* SLP (CrI.) No. 2354/2024 on 26.04.2024.

6. ***Learned counsel on behalf of the respondent*** has opposed the present Bail petition by placing reliance on the decision in *Hira Singh and Another vs. Union of India and Another*, AIR 2020 SC 3255, wherein the Apex Court has held that the neutral substance quantity cannot be ignored while labelling the quantity of contraband recovered as small quantity or commercial quantity. The CDR connectivity of the Applicant with the co-accused Danish (PO) who dropped the Applicant at the Airport, is established. The contraband was intended to be supplied to Rihad when they



were intercepted at the Airport. Therefore, the present petition has been opposed.

7. **Submissions heard.**

8. As per the case of the prosecution, 173 bottles of Phensedyle Chlorpheniramine Maleate & Codeine Phosphate Cough Linetus 100 ML, i.e. commercial quantity of contraband was recovered from the possession of the Applicant at Terminal 2 of the IGI Airport, while there was a recovery of 172 bottles of the same cough syrup from the co-accused Hushn Jahan. The date of seizure is 26.02.2023 and the date of the filing of the Application under Section 52A NDPS Act, 1985 is 19.04.2023, though, no prejudice has been shown to the petitioner by this delay in moving the Application under Section 52, NDPS Act, 1985.

9. It is the commercial quantity of the contraband which has been recovered, but as per the FSL Report, it contains 0.17% -0.18% of codeine phosphate along with chlorpheniramine.

10. However, it cannot be overlooked that the accused is in Judicial Custody since 27.02.2023, i.e. about 17 months and the Charges were yet not framed. The trial may take long and the detention of petitioner, shall amount to pre-trial conviction, which is violative of his constitutional right. In the similar facts, considering the nature of the contraband, the quantity and the delay, the Apex Court has granted Bail. Reference be had to the cases referred above on which Petitioner has placed reliance.

11. Considering the aforesaid Judgements and the facts of the present case, the petitioner is granted Bail on the following conditions:-

- a) The petitioner/accused shall furnish a personal bond of Rs.50,000/- and one surety of the like amount, subject to the



satisfaction of the learned Trial Court.

b) The petitioner/accused shall appear before the Court as and when the matter is taken up for hearing.

c) The petitioner/accused shall provide mobile number to the IO concerned which shall be kept in working condition at all times and he shall not change the mobile number, without prior intimate to the Investigating Officer concerned.

d) The petitioner/accused shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.

e) The petitioner/accused shall not leave the country, without permission of this Court.

f) The petitioner/accused shall not change his residential address and in case of change of the residential address, the same shall be intimated to this Court, by way of affidavit.

12. The copy of this Order be communicated to the concerned Jail Superintendent as well as to the learned Trial Court.

13. The Bail Application is accordingly disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 5, 2024/PT