

(2021) 10 DEL CK 0122

In the Delhi High Court

Case No : Bail Application No. 2303 Of 2021

Abul Kalam @ Sultan

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 21-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21, 29, 37, 37(1)
(b), 50, 61, 85

Citation : (2021) 10 DEL CK 0122

Hon'ble Judges : Subramonium Prasad, J

Bench : Single Bench

Advocate : Madhav Khurana, Kartikeye Dang, Amit Chadha

Final Decision : Dismissed

Judgement

Subramonium Prasad, J

1. The petitioner seeks bail under Section 439 Cr.P.C in FIR No. 161/2020 dated 22.06.2020 registered at Special Cell for offences under Sections 21, 29, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. The brief facts leading to the present case are as follows:-

a) On receipt of information, some mobile numbers were put on surveillance after obtaining requisite permissions. On 22.06.2020, Office of Special Cell, NR, Rohini was given a tip about supply of heroin by one Md Samiual @ Raj and Md Mukhtiyar, residents of West Bengal that they were bringing heroin from Manipur to Delhi. It was also informed that they would be supplying heroin at Nigam Bodh Ghat on Ring Road towards ISBT Kashmiri Gate and they would be in a pick-up vehicle bearing No.WB-73B-4972 between 11:00 AM to 1:00 PM.

b) Information was received by SI Raj Singh and he informed Inspector Puran Pant about the said information, and the informer was produced before him. After making further enquiries, the informer was produced before Sh. Jasbir

Singh, ACP, Special Cell, NR and SI Raj Singh was authorized to lead the raiding party and intercept the vehicle.

c) Members of public were asked to join the raid party, but no member of the public was agreed to do so. SI Raj Singh, along with the raiding party, reached opposite Nigam Bodh Ghat on Ring Road towards ISBT Kashmiri Gate at about 11:00 AM.

d) At about 11:30 AM one Mahindra pick-up van bearing No.WB 73B 4972 was spotted coming from Yamuna Bazar flyover. The said vehicle was stopped. Two people de-boarded the vehicle. SI Raj Singh, with the help of the raiding party, overpowered both of them, namely, Md Samiul @ Raj and Md Mukhtiyar.

e) After serving notices under Section 50 of the NDPS Act, search of their bags was carried out. The search was done in front of ACP, Special Cell, NR and five kilogram of heroin was recovered from the black colour bag pack carried by Md Samiul @ Raj and five kilogram of heroin was recovered from the black colour backpack carried by Md Mukhtiyar. Body search was also conducted, but nothing incriminating was found. Case was registered by SI Raj Singh, Rakesh Kumar and subsequent investigation was conducted by SI Rakesh Kumar.

f) During investigation, both the accused persons , namely, Md Samiul @ Raj and Md Mukhtiyar were informed about the grounds of their arrest. They were subjected to sustained investigation and they revealed that they were part of the narcotics syndicate and both of them revealed that they work for one Manju Didi, who is a resident of Manipur, and the recovered heroin was taken from her. It was stated that the heroin recovered is crude heroin and one process remains. It was also stated that they are working in trade of heroin for the last 1-1/2 years with Manju Didi and they have supplied heroin to Sultan @ Abul Kalam i.e. the petitioner herein, and one Islam. They also said that they could help in apprehending Manju Didi, Sultan@ Abul Kalam i.e. the petitioner herein and other associates.

g) After monitoring the interception, it was revealed that all the accused persons were communicating with their associates in code words. The accused persons were confronted with the CDRs of their mobile numbers and of their associates. SI Rakesh Kumar along with his team departed from Delhi on 24.06.2020 at about 11:00 AM and reached Malda, West Bengal for apprehending the petitioner after taking permission from the ACP to take necessary action.

h) On 27.06.2020, Md Samiul @ Raj was made to call the petitioner from his mobile number 7479321127 to 8001681987 about the supply of 4 kgs of heroin.

i) On 28.06.2020 at about 11:00 AM, the petitioner was identified by Md Samiul @ Raj and raid was conducted. The petitioner herein was served notice under Section 50 of the NDPS Act. However, on search, no drugs were recovered from his possession. The petitioner was arrested at about 1:00 PM. After informing him the grounds of his arrest, the petitioner was produced before the Chief

Judicial Magistrate, Malda, West Bengal, given transit remand, and then was brought to Delhi.

j) It is pertinent to mention that no drugs have been recovered from the house of the petitioner herein. However, a sum of Rs.1,29,500/- was recovered from his almirah. The petitioner could not justify the source of money and disclosed that the money was earned through sale of drugs. The interrogation of the petitioner revealed that the petitioner received four kilogram of contraband for Md Samiul @ Raj and Md Mukhtiyar for supplying the same to the various parties in Malda, West Bengal and it was also supplied to one person in Bangladesh.

k) Further investigation revealed that mobile number 9609579582 which was recovered from the petitioner was found in the name of Phutu Tudu S/o Som Tudu R/o Village Shampur Tapan, South Dinajpur, Dakshin Dinajpur, West Bengal. On verification, Phutu Tudu said that the he never purchased the said number and the same does not belong to him.

l) Similarly, mobile number 8001681987 recovered from the petitioner was found in the name of Nasim Seikh S/o Seraj Seikh R/o Baliadanga, Karari, Chandpur, Malda City. On verification, the address was found to be incorrect.

m) Similarly, mobile number 9734467302 recovered from Md Samiul @ Raj was found to be in the name of Kanai Mahanta S/o Ganesh Mahanta R/o Gangarampur Naya Bazar Dakshin Dinajpur, West Bengal. On verification, it was revealed that no person in the name of Kanai Mahanta resides in the village.

n) Mobile No.7479321127, which was recovered from Md Samiul@ Raj was found in the name of Shailen Mandal S/o Praphulla Mandal R/o Mothbari, Hamidpur, Malda, West Bengal. On verification, above address was found to be incorrect.

o) Further investigation was carried out and it was revealed from the CDRs of the mobile numbers that the accused persons were in touch with each other in drug trafficking activities, indicating the conspiracy.

4. The learned Special Court, NDPS, Patiala House Courts vide order dated 04.12.2020 rejected the application of the petitioner praying for bail, stating that bail was not matter of right under the scheme of NDPS and, moreover, the quantity of drugs seized was commercial in nature and there was no reasonable ground to disbelieve the prosecution since the accused and the syndicate they were a part of were deft in the production, procurement, transportation and proliferation of harmful drugs and substances, and that fact was proofed by the CDRs that showed a nexus, along with the intercepted conversations between the Petitioner and other accused who could not be arrested. The Ld. Judge, after relying on judgments of the Apex Court, further aired the likelihood of the Petitioner again indulging in drug trade if let out on bail.

5. The second bail application of the Petitioner was dismissed by the Ld. Special Court, Patiala House vide order dated 15.6.2021 recording that ample evidence existed against the Petitioner without any change in circumstances and reiterated

the principles of granting or rejecting bail under the NDPS Act, which is a special legislation.

6. Mr. Madhav Khurana, learned counsel for the petitioner, submits that out of the three mobile phones recovered from the petitioner, one mobile phone number was under surveillance. He states that the interception order has been obtained only for phone number 9609579582. He states that no interception order was obtained for phone numbers 7718286898 and 8001681987. He contends that as far as phone No. 9609579582 which was being used by the petitioner is concerned, there are no transcripts in the charge sheet in relation to this number. It is stated that phone numbers 7718286898 and 8001681987, where there are transcripts against the petitioner, the same had been obtained without authorization and there has been no interception order, and telephonic conversations for these numbers cannot be relied on. He further states that the petitioner has been arrested only on the basis of disclosure statements of Md Samiul @ Raj, Md Mukhtiyar, which is not admissible in law. He contends that only a sum of Rs.1,29,500/- was recovered and there is nothing to demonstrate that this money has been earned through the drug trade. He contends that the charge sheet has been filed, and in the charge sheet no dubious transaction has been found, and there is no material against the petitioner which would show that he is guilty of the offences under the NDPS Act.

7. Per Contra, Mr. Amit Chadha, learned APP, contends that the petitioner was a key person in the inter-State drug trade, and there is enough material to bring home the offence under Section 29 of the NDPS Act. He, therefore, contends that the petitioner ought not be granted bail. He contends that even though no interception orders were obtained for phone numbers 7718286898 and 8001681987, calls were received on these telephone numbers from those numbers which were under surveillance and for which proper interception orders had been received. He, therefore, states that the transcripts of the phone calls made from those phone numbers, for which interception orders had been received, to the phone of the petitioner herein, could be relied upon at this stage and these materials could be taken into consideration for the purpose of ascertaining as to whether the petitioner was a part of drug syndicate or not.

8. Heard Mr. Madhav Khurana, learned counsel for the petitioner and Mr. Amit Chadha, learned APP for the State and perused the material on record.

9. A perusal of the CDRs of the three mobile numbers i.e. 8001681987, 7718286898 and 9609579582 indicates that the petitioner was in touch with Md Samiul @ Raj on a regular basis and three mobile numbers recovered from the petitioner and two phone numbers were recovered from Md Samiul @ Raj. The gist of the transcripts have been supplied to the Court wherein there are discussions about various quantities of drug between petitioner and Md Samiul @ Raj from 17.06.2020 to 28.06.2020, that is the date on which Md Samiul @ Raj was arrested.

10. The evidentiary value regarding the transcripts which have been taken from the mobile numbers for which surveillance orders have been obtained would be seen in the trial. The transcripts indicate that a network of inter-State drug cartel is operating which is transporting narcotics between Manipur, West Bengal and Delhi. Material placed at this juncture is sufficient to indicate that the petitioner herein is a part of the criminal conspiracy to commit offences under the NDPS Act.

11. Learned counsel for the petitioner has relied on *Tofan Singh v. State of T.N.*, (2013) 16 SCC 31, *Abdul Rashid v. State of Bihar*, (2001) 9 SCC 578, *A.K. Mahboob v. Intelligence Officer, Narcotic Control Bureau*, (2001) 10 SCC 203, *Surinder Kumar Khanna v. Intelligence Officer, Directorate of Revenue Intelligence*, (2018) 8 SCC 271, *Vasanti v. State of A.P.*, (2005) 5 SCC 132. None of the judgments are applicable to the facts of the present case because in the present case, other than disclosure statements, CDRs have been obtained by the department which shows the close connectivity of the accused. The transcripts point out that the petitioner was in touch with the co-accused discussing the supply of various quantities of narcotics and drugs, the date on which the goods would be dispatched as well as the date on which the goods will arrive.

12. Grant or rejection of bail under the NDPS Act is governed by Section 37 of the Act. Under Section 37 of the Act, the court before granting bail has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offences and is not likely to commit any offence while on bail. Both the requirements are conjoint. The parameters for grant of bail under the NDPS Act have been laid by the Apex Court in several judgments. The Supreme Court in *Collector of Customs v. Ahmadaliev Nodira* reported as (2004) 3 SCC 549 has observed as under:-

"6. As observed by this Court in *Union of India v. Thamisharasi* [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression "reasonable grounds" means something more than *prima facie* grounds. It contemplates substantial probable causes for believing that the

accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence....." (emphasis supplied)

13. In *Union of India v. Rattan Malik* reported as (2009) 2 SCC 624, the Supreme Court has observed as under:-

"12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of subsection (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide *Union of India v. Shiv Shanker Kesari* [(2007) 7 SCC 798 : (2007) 3 SCC (Cri) 505]). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail." (emphasis supplied)

14. In *State of Kerala & Ors. v. Rajesh & Ors.* reported as (2020) 12 SCC 122, the Supreme Court has observed as under:-

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also

subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

13. The facts of the present case disclose that the accused have taken mobile numbers on the basis of fictitious addresses so that they cannot be traced. All this indicates that the petitioner and his associates are a part of the well-organized syndicate and are involved in inter-State transport, supply and sale of drugs. The petitioner is not a resident of Delhi and there is a potential threat to jump bail. The CDRs and the transcripts provide a reasonable ground to believe that the petitioner is guilty of the offence and the material collected at this stage shows that he is a part of the well-oiled machinery and he is likely to commit the offence again if granted bail.

15. In view of the above, the bail application is dismissed along with the pending application(s), if any.