

(2022) 05 DEL CK 0053

In the Delhi High Court

Case No : Bail Application No. 199 Of 2022

Krishnan Subramanian

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision : 09-05-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 18, 21, 25, 26, 29, 37
Evidence Act, 1872 — Section 25, 26
Code Of Criminal Procedure, 1973 — Section 82, 83
Indian Penal Code, 1860 — Section 174A

Citation : (2022) 05 DEL CK 0053

Hon'ble Judges : Talwant Singh, J

Bench : Single Bench

Advocate : Aditya Dhawan, Saurabh Duggal, Tanveer A. Khan, Neelam Sharma

Final Decision : Disposed Of

Judgement

Talwant Singh, J

1. This is a petition for grant of regular bail filed by the petitioner Kayoom in case FIR No. 18/2018 under Sections 21/29 of Narcotic Drugs & Psychotropic Substances Act, 1985 (NDPS Act). The petitioner has submitted that case of the prosecution is that on 13.02.2018, at about 12.05 p.m., the information was received that Virender Pal Singh and Ram Nath had brought Heroin from West Bengal and they were coming to supply the same to one Ansar at Sector-24, Rohini. The raiding party was formed and Virender Pal Singh and Ram Nath were arrested with 4 kg. of Heroin and the above-mentioned FIR was recorded.

1.1 In the disclosure statement of Virender Pal Singh and Ram Nath, many persons were named including one Parvej, who was arrested on 17.02.2018 and 1 kg. of Heroin was recovered from his possession. In the disclosure statement of one Parvej, again many persons were named including Aneesh and the present petitioner. Aneesh was arrested on 14.06.2019 and his disclosure

statement was recorded in custody. On completion of investigation, charge-sheet was filed in August, 2018 and thereafter a supplementary charge-sheet was filed in July, 2019.

1.2 The present petitioner was arrested on 29.09.2020 and his disclosure statement was recorded by the Special Cell while in custody, in the Court premises, on which the petitioner refused to sign. After completion of investigation against the petitioner a supplementary charge-sheet was filed.

1.3 The petitioner has submitted that he is a law-abiding citizen of India, he is having deep roots in the society and he belongs to a respectable family and he has his own business of raw coal and woods etc. In March, 2021, the petitioner preferred Bail Application no. 784/2021 before this court and in June 2021, he moved a regular bail application before learned Trial Court. The bail application filed before the Trial Court was dismissed on 24.06.2021 and on 20.07.2021, the bail application No. 784/2021 filed by the present petitioner was dismissed as withdrawn with liberty to file a fresh petition at an appropriate stage.

1.4 On merits, it has been submitted that the petitioner only used to talk to people only in relation to his work/business and he has no concern with transportation/supply of any contraband/drug. The petitioner has been implicated solely on the basis of disclosure statement of co-accused, i.e., Parvej, which was recorded when the said co-accused was in police custody and same is inadmissible under Section 25 and 26 of the Evidence Act. There is no material or any independent evidence on record to show that petitioner was involved in the present case and the particulars of the present petitioner given in the charge-sheet and the supplementary charge-sheet are not correct.

1.5 Bail has been prayed on the ground of parity as the other co-accused namely Virender Pal Singh, Ramnath, Aneesh, Ashfaz and Parvej are already on regular bail. The reasonable grounds exist for believing that the petitioner is not guilty, as contemplated under Section 37 NDPS Act. Speedy trial is the essence of criminal justice and delay in trial by itself constitutes denial of justice. In the present case, the trial has been considerably delayed and there is no possibility of commencement and conclusion of trial within a reasonable period. The bail application of the present petitioner was dismissed by the learned trial Court without appreciating the law and indisputable facts and circumstances. The accused is not required for any investigation or further investigation by the investigating agency; the applicant is of young age and he earns his livelihood by running his business of raw coal and woods of bhattha. There is no apprehension that the petitioner will abscond if he is released on bail and the petitioner undertakes not to obstruct the smooth progress of the trial.

2. Notice was issued. Status report has been filed. In the first few pages, the circumstances, under which the FIR was registered and other accused were arrested has been detailed. The police officials came to know during investigation that the present accused Kayoom was arrested in case FIR No. 214/2020 under

Sections 8/18 NDPS Act, PS Bhamora, District Bareilly, UP and he is running in judicial custody. Production Warrant was issued and he was produced before Court on 29.09.2020. The accused was interrogated after seeking permission and thereafter he was formally arrested when sufficient evidence surfaced against him. Necessary permission to take voice sample of accused was obtained from the concerned court and his voice sample was taken on 03.12.2020. The voice sample, along with the questioned exhibits, was sent to CFSL, Lodhi Road, Delhi on 08.12.2020. A report has been received from CFSL and it shows that specimen voice and the questioned voice are matching and it was probably the voice of the present petitioner which was formed in intercepted calls. The accused/applicant was arrested under Section 8/18 of NDPS Act in District Bareilly, and case FIR no. 214/2020 was registered as he was indulging in drug trafficking activities and 260 gms of opium was recovered from him. He was granted bail by Allahbad High Court on 10.09.2029. The present applicant/accused was declared PO in the present case and he was later on arrested and there is evidence against him in the form of intercepted calls from his mobile number to mobile numbers of other accused, duly supported by evidence of other accused persons corroborating each other. The case is still at the stage of framing of charges under Section 29 of NDPS Act as the present petitioner was part of the criminal conspiracy with other co-accused persons. Other co-accused were granted bail. A total 5 kg of Heroin was recovered, which is a commercial quantity, from the co-accused persons.

2.1 Bail has been opposed by the State on the following grounds:-

"a) Accused Virender Pal had disclosed the name of accused Parvej Khan and there are total 22 calls between Virender Pal and Parvej Khan.

b) Accused Parvej Khan had already disclosed the names of Aneesh Ahmed and Qayum. He also disclosed the mobile used by them i.e 7895570345, 9719412407 and 7310976161 (Disclosure statement of Parvej Khan is annexed)

c) On analysis of CDR of mobile number 9719412407, it revealed that accused Qayum has made total 33 calls on the mobile number 9627039643 used by arrested accused Parvej Khan.

d) Mobile phone having mobile number 9719412407 was recovered.

e) It is pertinent to mention here that mobile number 9719412407 was on legalized interception.

f) Voice sample of accused has duly matched with the intercepted voice calls.

g) It is pertinent to mention here that accused has moved similar applications before Hon'ble Court, which were also dismissed, vide order dated 22/10/2020 and 24/06/2021.

h) It is further submitted that regular bail application was also moved before Hon'ble Delhi High court vide B.A. No. 784/2021 Qayum v/s State, which was

dismissed as withdrawn vide order dated 20/07/2021.

3. I have heard counsel for the parties.

3.1 Counsel for the petitioner has also submitted written submissions wherein it has been submitted that the petitioner was neither named in the secret information nor he has been named by main accused Virender Pal Singh and Ram Nath in their disclosure statements. No contraband has been recovered from the petitioner and he has been solely implicated based upon the disclosure statement of co-accused Parvej. The said statement is confessional statement and hit by Section 25 and 26 of the NDPS Act. The case is at the stage of framing of charge and all the other co-accused are already on regular bail; the proceedings under Section 82 and 83 Cr.P.C. commenced against him are doubtful because of the wrong details regarding him had been furnished in the charge-sheet and the supplementary charge-sheet; there is no material or independent evidence on record to show his involvement in the present case; out of the three cases against the petitioner, in two cases offences are bailable and in third case he has already been granted bail by Allahabad High Court. The petitioner is stated to be of young age.

3.2 It is true that FIR No. 18/2018 PS Special Cell, Delhi, name of the present petitioner is not there and only accused Virender Pal Singh and Ram Nath have been mentioned. He has been named in the confessional statement of accused Parvej Khan and the relevant part of the said statement is as under:-

"...Apart from this, he has been supplying Heroin, Opium and Doda to a man named Anish and his associate Quam. When I do not have heroin then I used to take it from Anish and Quam too. Anish and Quam used to come to collect heroin in their car XUV-500 whose number is UP- 25BS-6333 and I used to talk from my above said mobile number 7895570345 and Quam mobile number 9719412407 and 7310976161 regarding the rates and transaction of heroin and other drugs. I had also introduced Quam and Anish to Bilal who is resident of West Bengal and supplier of heroin and other drug substance and Anish used to talk with Bilal many of times from my above mobile number. Shamshad and Islam both residence of Ranchi working in partnership with Anish and Quam also keep ordering Heroin, Opium and Doda in large quantities one person namely Sajid who is also an associate with Islam and Shamshad. Anees and Quam also keep talking with him about drug dealings. He also used to talk about dealings of drugs many of times with Sajid, Islam and Shamshad from the phone of Anish and Kwam and Anish has told him that I had spoken to the above Ranchi peoples and they have the goods ready. There was talk of ordering 2 kg heroin, 10 kg Opium and 18 Quintal Doda from Anish. For which I had given 6 lakh rupees in advance to Anish and it was decided to pay rest of the amount after getting the goods. He also told Anish that he will send his truck but Anish said that he has spoken to the driver Akram. He has sent the truck number 2226, he will go to Jharkhand with the above goods and he also told that the above truck will arrive on 20.2.18 in the morning, which I also said that I will also check the weight of

the goods in the above truck, then Anish said that I will get the weight done on Sirohi Kanta and Sajid's mobile number is 7654647292, Samsha's mobile number is 7462035211 and Islam's mobile number is 8002259360. Anish and Quam keep talking from their mobile numbers on these numbers.

.... I can get Anish and Kwam on their Kanta, Alok by going to Narayani and Pappu going to Bhagwanpur from whom more heroin and drugs can be recovered".

3.3 Similarly, the confessional statement of Aneesh Ahmed, also named the present petitioner as under:

"...I used to talk to Parvez and Alok from my son Qayoom's mobile phone numbers 789557345, 9719412407 and 7310976161 to supply drugs".

3.4 In the supplementary charge-sheet submitted against the present applicant/accused, the narration in the charge-sheet is regarding the role of the present petitioner in the investigation conducted so far is as under:-

"In continuation to the charge sheet already filed in the present case, it is further submitted that -efforts were continuously being made to arrest the absconding accused persons namely Qayum and other associates "as they were members of this narcotic syndicate. On 24/09/2018, Hon'ble Court of Shri Ajay" Pandey, Special Judge, Patiala House Courts, Delhi declared accused Parvez Khan, Ashfaq Khan Mohd. Qayum as proclaimed offenders. During the investigation of the case, efforts were made to arrest the abovesaid absconding accused persons in this case by conducting continuous raids at their residences and their other possible hideouts.

During investigation, it was learnt that accused Qayum was arrested in Case FIR No. 214/2020 u/s 8/18 N-DPS Act, PS Bhamora, District. Breilly, UP and running in judicial custody at-District Jail, Bareilly, UP. An application was moved in the court for issuance of production warrant of accused Qayum in present case. Hon'ble court had issued production warrant of Qayum. Qayum was produced from District Jail, Bareilly, UP on 29/09/2020 as per direction of Hon'ble. court. After taking necessary permission of interrogation/ arrest, accused Qayum was interrogated in length and as sufficient evidence came on record, Qayum was formally arrested in present case after telling him grounds of arrest. Qayum was produced before Hon'ble court and 04 days police custody remand was obtained.

During PC remand sincere efforts were made to trace/arrest the remaining associates of this narco syndicate, but they could not be traced due to incomplete addresses. Efforts are still going on in this regard. Whenever any clue will come proper legal action will be taken.

Thereafter, I prepared report u/s 57 NDPS Act regarding arrest of Qayum and submitted the same to Insp. Kuldeep Singh, who forwarded the same to ACP/NR. I also produced the accused person before Insp. Kuldeep Singh in his office who interrogated him and satisfied himself about investigation of case conducted so

far.

Necessary permission to take voice samples of accused Qayum was obtained from Hon'ble court. Thereafter, voice samples of accused Qayum were taken on 03/12/2020 in CFSL Lodhi Road, Delhi and same was recorded in a new MICRO SD CARD of make SANDISK 16 GB, as per procedure. Accused person repeated the transcripts; after witness HC Krishan Kumar No. 831/SPC. After recording of specimen-voice, Shri Arup Kumar Gupta, SSA(Physics), played the recorded voice of accused Qayum S/o Aneesh, saved in MICRO SD Card. Then, MICRO SD CARD of make SANDISK 16 GB was put in its respective wrapper and in separate Muddy Brown colour Envelope. The envelope was marked as "S-1" and sealed with the seal of SPL CELL NR Seal 1" and seal was handed over to HC Krishan Kumar, Sealed -envelope was signed by accused person, HC Krishan: Kumar, Shri Arun 'Kumar. and by me. Duly sealed envelope was taken into possession through seizure memo and deposited in Malkhana of PS Special Cell, Lodhi Colony, Delhi.

On 08/12/2020-, voice exhibits i.e 01 MICRO SD Card marked S1, and 01 CD marked Q6 along with CFSL form and text transcripts of selected intercepted calls were deposited in CFSL Lodhi Road vide RC No. 340/21/2020, dated 08/12/2020 and CFSL receipt No. CFSL-2020P0651, dated 08/12/2020 for analysis through HC according to CFSL report the specimen voice is matched with the questioned voice, hence the voice is probable voice of Qayum.

As per evidence collected. against Qayum in present-case i.e. statements of PWs, disclosure statement of arrested accused person, voice calls of mobile numbers of all arrested accused persons including CDRs of mobile numbers used by above arrested accused persons-and CFSL report regarding voice. There are sufficient evidence against the accused Qayum under u/s 29 NDPS Act and 174A IPC. There is sufficient evidence against accused Qayum is hereby submitted for trial. Qayum is running in judicial remand".

3.5 It is apparent that the present accused/applicant has been arrested on the basis of confessional statement/disclosure statements of his co-accused. Further case of the prosecution is that his specimen voice sample has matched with the questioned voice recorded during intercepted calls.

3.6. The accused is in custody in the present case since 29.09.2020; Supplementary Charge-Sheet regarding the role of present accused was filed more than one year ago and the case is still at the stage of consideration of charge. Admittedly, no recovery was made from the possession of the present accused. It is admitted case of the State that co-accused of the present petitioner are already on bail, including the accused persons from whom recovery was made. In the charge-sheet against the present accused, Section 29 of the NDPS Act has been invoked, apart from Section 174 A IPC as the applicant/appellant was declared proclaimed offender. The criminal conspiracy theory is to be proved by the prosecution during trial, which is yet to begin; the petitioner

cannot be kept in judicial custody indefinitely only on the strength of his specimen voice sample matching with the questioned voice recorded during intercepted calls, while he was alleged to have been talking to other co-accused persons, who, as noticed, are already on bail.

4. In view of the above, I am inclined to grant bail to the present accused, however, on stringent conditions keeping in view his past involvement in other criminal cases. The petitioner is hereby ordered to be released on bail on execution of personal bond of Rs. 50,000/- with one surety of the like amount to the satisfaction of the trial and subject to the following conditions:-

(i) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(ii) that the petitioner shall not leave India without the previous permission of the Court;

(iii) the applicant/petitioner shall furnish a mobile number to the IO within one week of his release and keep the mobile location on at all times.

(iv) the applicant/petitioner shall appear before the trial Court on every date, when the case is listed.

5. Petition is disposed of.