

(2021) 10 DEL CK 0176

In the Delhi High Court

Case No : Bail Application No. 2813 Of 2021

Ram Kumar Gupta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-10-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 18, 19, 24, 27A, 29, 37, 37(1)(b)(ii), 41, 42, 50, 61, 85

Evidence Act, 1872 — Section 27

Citation : (2021) 10 DEL CK 0176

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Rajiv Mohan, Swapnil Kirshna, Rishabh Bhati, Abhimanyu Kampani, Rajni Gupta

Final Decision : Dismissed

Judgement

Rajnish Bhatnagar, J

1. The present bail application has been filed by the petitioner under Section 439 Cr.P.C. read with Section 37 NDPS Act seeking regular bail in case FIR No. 28/2016 under Sections 18/29/61/85 NDPS Act registered at P.S. Special Cell.

2. Briefly stated, the facts of the case are that many mobile numbers including 8006402719 (Being used by Master), 7085436193 (being used by Jagannath), 9759290233 (being used by Mangli), 9675022666 (being used by Rakesh Gupta), 9675815056, 8650270945 (being used by Umesh Sahni), 9639324617 (being used by Tarun Maurya) etc. and a few other numbers being used by associates of above persons including Umesh Sahni were under lawful interception. All identified by their names during subsequent stage after monitoring their above numbers. Above persons appeared to be members of an interstate narcotic syndicate who were indulging in drug supplying in Delhi, UP, Punjab & Manipur and they were doing this in close association with each other.

3. During monitoring of these numbers it was also revealed that Nand Ram, Mangli Ram and Umesh Sahni, all resident of Bareilly, UP used to frequently go to Manipur and they used to collect big consignments of opium from Jagannath of Churachandpur in Manipur on the behest of Rakesh Gupta, Mangli Ram, Ram Kumar Gupta (present petitioner) etc. All three used to carry these drugs to Bareilly, UP where they used to hand over the contraband to their handlers/ associates. SI Raj Singh briefed Insp. Attar Singh about said information and development regarding monitoring on 16/05/2016 who briefed Shri Nishant Gupta, ACP/ Special Cell/NR. SI Raj Singh also deployed his sources to develop the information and also to keep watch upon activities of members of this syndicate. SI Raj Singh recorded DD No. 24 on 16/05/2016 in this regard and it was put up before ACP/ Special Cell/NR through Insp. Attar Singh.

4. On 24/05/2016, on receipt of secret information by SI Raj Singh that two members of the syndicate namely Nand Ram and Mangli Ram would come from Bareilly in their Bolero Jeep No. UP-87E 0282 and they would handover big consignment of opium to their contacts at Mukarba Chowk in Delhi between 03:30 PM to 04:30 PM., SI Raj Singh immediately reduced said information into writing on a separate piece of paper at about 01:50 PM and thereafter, SI Raj Singh informed Insp. Attar Singh about this information. Insp. Attar Singh informed ACP/Special Cell/NR and SI Raj Singh lodged DD No. 19 at 02:00 PM in this regard. Copies of said DD entry and information were put up before ACP/ Special Cell/NR through Insp. Attar Singh.

5. SI Raj Singh constituted a raiding party. Police team intercepted above Bolero jeep beneath flyover at Mukarba Chowk and two drug suppliers namely Nand Ram and Mangli Ram were apprehended at about 03:45 PM. SI Raj Singh served notices u/s 50 NDPS Act to both of above accused persons separately. First of all Nand Ram @ Master and there after Mangli Ram was served notice u/s 50 NDPS Act. SI Raj Singh also told them about contents of the notice and meaning of gazetted officer and magistrate. Nand Ram himself read the notice and understood the meaning. Both accused persons denied to be searched by any gazetted officer or magistrate and also denied to take search of any member of police party or Govt. vehicle. Nand Ram @ Master wrote his refusal on original copy of notice and SI Raj Singh wrote refusal of Mangli Ram upon original copy of notice as per his dictation. 80 kgs. opium was recovered from Bolero Jeep at the spot. Above mentioned case was got registered and further investigation was taken up. Both the accused persons were subjected to sustained interrogation upon which they disclosed that they alongwith their associate Umesh Sahni had brought 105 kgs. opium from Manipur and above three alongwith Rakesh Gupta, Chanderpal @ Tesu, Mahabir, etc. used to indulge in drug supply for last 20 years. They also disclosed that they had handed over 13 kgs. opium to Umesh Sahni and 10 kgs. opium to Chanderpal in Bareilly, U.P.

6. During investigation, SI Bhushan Kumar deputed to arrest Chanderpal @ Tesu. On the basis of information provided by arrested Nand Ram @ Master, house of

Chanderpal was located at about 04:15 AM. SI Bhushan Kumar alongwith staff conducted raid at house of Chanderpal @ Tesu i.e. in Shivdham Colony, Village Kandharpur, District Bareilly, UP at about 04:30 AM on 25/05/2016. Chanderpal jumped from 2nd floor of his house upon roof of his neighbor, thus injuring his ankle. Search of his house led to recovery of 10 kgs opium. He also disclosed that he has been indulging in supplying of opium and heroin for last 20 years. Another team led by SI Bijender Singh arrested accused Rakesh Gupta from his house i.e. H. No. 160, Bukhar Pura, Near Bhdh Wali Masjid, District Bareilly, UP, at about 02:30 PM and 02 Kg. opium was recovered from his possession. Accused Umesh Sahni was arrested by SI Sandeep Kumar as per directions of senior officers from his house i.e. H No A-119/2, Rajender Nagar, District Bareilly, UP and 13 Kg. opium was recovered from his possession. After taking permission from senior officers, SI Jitender Tiwari conducted a raid and accused Jagannath, was arrested from the house of his in-laws in village Jatoli, Mohalla Thatiya, Distt. Muzaffarpur, Bihar and 08 kgs opium was recovered from his possession. Accused Jagannath was subjected to sustained interrogation upon which he admitted to have supplied 105 kgs. opium to persons arrested in above case. He also disclosed that he has been indulging in supply of opium and heroin to various persons of Bareilly, UP for last 10 years. Apart from names of arrested 05 accused persons in above case, he disclosed that he used to supply opium to many other persons namely Ram Gupta (present petitioner), Tarun Maurya, Ravi Gupta of Bareilly, UP and many others. Accused Tarun Kumar Maurya was arrested in above case on 22/08/2016 from Bareilly UP and 03 kgs. opium was recovered from his possession.

7. On 27/09/16, accused Ram Kumar Gupta (present petitioner) was arrested from his house in Bareilly at about 08:45 AM and 01 kg. opium was recovered from his possession. As per the Status Report filed by the State, many mobile numbers suspectedly used by members of syndicate including arrested Ram Kumar Gupta (present petitioner) and his other associates were on interception. Monitoring of interception revealed that all accused persons were communicating with each other and their associates about discussing of transaction, quality rate, weight etc. of heroin. Sample voices of all above accused persons including Umesh Sahni were taken in FSL Rohini and the same were deposited with FSL Rohini alongwith intercepted voice calls for expert opinion. As per FSL report, the voice samples of all accused persons including Ram Kumar Gupta (present petitioner) matched with intercepted voice calls of accused persons. FSL report of voice samples is also proving the indulgence of Ram Kumar Gupta (present petitioner) in drug trafficking activities. Tarun Kumar Mourya went to Manipur in order to procure opium from Jagannath Rai on the direction of petitioner Ram Kumar Gupta. After completion of investigation, charge-sheet against all accused person including petitioner Ram Kumar Gupta was filed.

8. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, perused the Status Report and also perused the records of this case.

9. It is submitted by the Ld. counsel for the petitioner that the petitioner/accused is in J.C. since 27.09.2016 and the recovery alleged to have been effect from him is 01 Kg. of opium which is intermediate quantity. It is further submitted by the Ld. counsel for the petitioner that since the quantity of contraband recovered from the petitioner/accused is of intermediate quantity, so, the bar U/s 37 of the NDPS Act does not apply. He further submitted that co-accused Nand Ram and Mangli Ram were apprehended, thereafter, co-accused Umesh Sahni, Chanderpal and Rakesh Gupta were apprehended but none of them named the present petitioner in their disclosure statements. He further submitted that it was only on 20.06.2016 when co-accused Jagannath Rai was apprehended and 08 Kg. of opium was recovered form he, he then disclosed the name of the present petitioner.

10. It is further submitted by the Ld. counsel for the petitioner that accused Tarun Kumar Mourya who was apprehended on 22.08.2016, and from whom 03 Kg. of opium was recovered, he in his disclosure statement has also named the present petitioner and on 27.09.2016, on the basis of his disclosure statement, the present petitioner was apprehended and the alleged recovery of 01 Kg. of opium was made from him. He further submitted that there is no evidence against the petitioner except the disclosure statements of the co-accused persons on the basis of which, it could be said that the petitioner was in conspiracy with other co-accused persons.

11. It is further submitted by the Ld. counsel for the petitioner that there is a violation of provisions of Section 41 and 42 of the NDPS Act and these violations itself are sufficient to grant bail to the petitioner. He further submitted that the prosecution has relied upon the telephonic conversations and transcript between the petitioner and co-accused Jagannath Rai for the purposes of inferring the conspiracy but there is nothing in the transcription which shows that there was any talk about the contraband. He further submitted that there is only talk regarding some material, vehicle and some amount. He further submitted that the voice samples of only the petitioner matched as per the report and not of co-accused Jagannath Rai as the voice speech of co-accused Jagannath Rai was not examined by the FSL experts. He further submitted that the trial in this case is not likely to be concluded in the near future and no purpose would be served by keeping the petitioner in custody. Ld. counsel for the petitioner has relied upon:

(a) Sudhir Chaudhary Versus State (2016) 8 SCC 307.

(b) Union of India Versus K.A. Najeel Criminal Appeal No. 98 of 2021 (Arising out of Special Leave Petition (Crl.) No. 11616 of 2019) decided by the Supreme Court of India on 01.02.2021.

(c) Thana Singh Versus Central Bureau of Narcotics (2013) 2 SCC 603.

(d) Kashmira Singh Versus State of Punjab (1977) 4 SCC 291.

(e) Babu Singh Versus State of UP (1978) 1 SCC 579.

- (f) State of Punjab Versus Balbir Singh 1994 (3) SCC 1872.
- (g) State of Punjab Versus Baldev Singh AIR 1999 SC 77.
- (h) Roy V.D. Versus State of Kerala 2000 (8) SCC 590.
- (i) DRI Versus Manjinder Singh 2014 SCC OnLine Del 319.
- (j) Deepak Pandey Versus State, Bali Application No. 903/2019 decided on 01.11.2019 by the Delhi High Court.
- (k) Ranjit Singh Brahmjeet Singh Versus State of Maharashtra and Anr. (2005) 5 SCC 294.

12. On the other hand, Ld. APP for the State has argued on the lines of the Status Report. She further submitted that SI Raj Singh had written the secret information and produced the same before the ACP through Inspector Attar Singh on 24.05.2016, who after due satisfaction authorized him for the search and seizure and the said fact though, not mentioned but will be explained by PW 22 at the time of his deposition. Ld. APP for the State has further submitted that SI Bijender Singh was duly authorized to conduct the search and seizure in respect of the petitioner as he had arrested the petitioner on the directions of Inspector Attar Singh who had telephonically directed SI Bijedner to conduct search and seizurfe and this fact is clearly mentioned in the charge sheet and will be explained by PW 23 during the course of the trial. It is further submitted by the Ld. APP that on the basis of the disclosure statement of the co-accused persons, petitioner was arrested and 01 Kg. of Opium was recovered from his possession, therefore, on this basis, since the recovery and discovery of new fact has come to light, the same is admissible U/s 27 of the Indian Evidence Act.

13. It is further submitted by the Ld. APP that in the present case, 117 Kg. of opium was recovered from the arrested accused persons who are part of drug syndicate and the petitioner is a member of the Interstate Narcotic Syndicate which is connected through mobile phones and the fact has been established through CDRs and intercepted voice calls and it is thus argued that there is a bar of Section 37 of the NDPS Act. She further submitted that after obtaining necessary permission from the Court, the voice samples of all the arrested accused persons were deposited in the FSL Rohini for comparison with intercepted voice calls and as per the report received, voice samples of all the accused persons duly matched with their intercepted voice calls.

14. It is further submitted by the Ld. APP that the voice of co-accused Jagannath was not examined in transcript call ID 13410430 but the FSL officials had examined and compared both the speakers of the said call ID and the further clarifications would be made by the concerned FSL official at the time of his deposition. She further submitted that the petitioner was regularly in touch with the source of supply of opium which is established from the analysis of CDR. It is further submitted by the Ld. APP that the CDR of mobile No. 7085436193 which was used and recovered from co-accused Jagannath, 5 calls were found of

petitioner Ram Kumar Gupta from his mobile No. 9436619601. It is further submitted by the Ld. APP that the petitioner is the key member of the interstate narcotic syndicate and all the mandatory provisions of NDPS Act have been complied with. Ld. APP for the state has relied upon Union of India through Narcotics Control Bureau, Lucknow Versus Md. Nawaz Khan, Criminal Appeal No. 1043 of 2021 (Arising out of SLP (Crl.) No.1771 of 2021) decided on September 22, 2021 by the Supreme Court of India.

15. As far as the question of non compliance of procedural requirements U/s 42 of the NDPS Act are concerned, the same is a question of fact. The complaint states that the information was immediately reduced to writing and therefore, the contention that the provisions of Section 42 of the NDPS Act was not complied with prima facie not appreciable and this question can be raised by the petitioner during the course of trial. In *Karnail Singh Vs. State of Haryana* (2009) 8 SCC 539, the Supreme Court has even held that though the writing down of information on the receipt of it should normally precede the search and seizure by the officer but in exceptional circumstances that warrant immediate and expedient action, the information shall be written down later alongwith the reasons for the delay. So all the contentions in regard to the procedural non compliance U/s 42 of the NDPS Act can be raised by the petitioner during the course of the trial.

16. It has also been argued by the Ld. counsel for the petitioner that there is no mention of any contraband in the transcript relied upon by the prosecution. The said transcript has been filed on record alongwith the bail application. During the course of the argument, Ld. counsel for the petitioner, has drawn the attention of the Court to the transcript to contend that there is no talk in regard to the contraband between the co-accused Jagannath and the petitioner. No doubt, the contraband has not been mentioned clearly in the said transcript but in the said transcript there are talks with regard to some material though it is not being clearly mentioned and there is also mention of money like "Dus - Dus - Dus - Dus" meaning thereby, that they had some secret talks between them otherwise, if the talks were so plain, in that case there was no reason for them to talk in the manner which has been depicted in the said transcript. Moreover, the total recovery in the instant case is 117 Kg of opium and the present petitioner is associated with co-accused Jagannath Rai, who according to the prosecution is the kingpin and procures the opium from Naga Tribes and supply the same to his contacts in Bareilly, Badaun and other parts of the country.

17. The voice samples of all the accused persons were sent to FSL which duly matched and if according the counsel for the petitioner, there is any discrepancy, the same can be elucidated by the petitioner during the course of trial when the witness from the FSL comes for his deposition. The CDR records also shows that the petitioner was in regular touch with co-accused Jagannath Rai who is alleged to be the kindpin of the entire case. In the entire facts and circumstances of this case, it cannot be said that the petitioner's role is only restricted to the

possession of 01 Kg. of opium but as per the allegations he is the part of the larger conspiracy and is instrumental alongwith other-co-accused persons in supplying the narcotic drugs to various parts of the country.

18. As far as the judgments relied upon by the Ld. counsel for the petitioner is concerned, the same are not applicable in the facts and circumstances of the present case as they relate to violation of the procedural aspects which can only be looked into during the course of trial and cannot be deeply analyzed at the stage of bail.

19. Looking into the facts and circumstances of this case and the fact that the total recovered opium is 117 Kg which is a commercial quantity so rigors of Section 37 of NDPS Act definitely applies in this case.

20. Under Section 37(1)(b)(ii), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27A and also for offences involving a commercial quantity are :

(i) The Prosecutor must be given an opportunity to oppose the application for bail; and

(ii) There must exist "reasonable grounds to believe" that (a) the person is not guilty of such an offence; and (b) he is not likely to commit any offence while on bail.

21. The standard prescribed for the grant of bail is "reasonable ground to believe" that the person is not guilty of the offence. Interpreting the standard of "reasonable grounds to believe", a two-judge Bench of Supreme Court in Union of India Vs. Shiv Shanker Kesari (2007) 7 SCC 798 held that:

"7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

"7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy."

(See Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497]

(SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532]

[...]

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. [(2003) 6 SCC 315]

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

(emphasis supplied)

22. Based on the above, the test which is required to be applied while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit an offence while on bail. Looking into the seriousness of the offence punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.

23. In the instant case, the petitioner was in touch with the alleged main co-accused Jagannath Rai which is evident from the analysis of CDRs and in the CDR of mobile No. 7085436193 which was used and recovered from co-accused Jagannath, 5 calls were found of petitioner from his mobile No. 9436619601. The voice samples also matched as per the FSL report and the petitioner allegedly is in conspiracy with other co-accused persons and the recovered quantity i.e. 117 Kg of opium is a commercial quantity, so rigors of Section 37 are applicable in this case.

24. The charges in the instant case have been framed and the examination of the witnesses is in progress. So keeping in view the entire facts and circumstances, the petitioner is not entitled to bail. The present bail application is accordingly dismissed.

25. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.