(2016) 02 DEL CK 0074

In the Delhi High Court

Case No : Bail Appln. 224 of 2016

Sanjay Kumar Bhartiya APPELLANT

Vs

Directorate of Revenue RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 25A, 29

Citation : (2016) 8 ADDelhi 124 : (2016) 230 DLT 660 : (2016) 334 ELT 588 : (2016) 2 JCC 97 : (2016) 5 RCRCriminal 176

Hon'ble Judges : Sunita Gupta, J.

Bench : Single Bench

Advocate : Ramesh Gupta, Sr. Advocate with Jaideep Malik, Advocate, for the Appellant; Satish Aggarwala, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Gupta, J. - Vide this application under Section 438 Cr.PC, the petitioner seeks anticipatory bail in SC No. 06A/2015 Vide F.No. DRI/HQ/GI/338/XVIII/ENQ-91NT - NIL/2015 under Sections 25A/29 NDPS Act.

2. Mr Ramesh Gupta, learned Senior Counsel for the petitioner submits that a false case has been registered by DRI officials under Section 25A and 29 of the NDPS Act, 1985 (hereinafter, ''the Act'') wherein the petitioner has been unnecessarily implicated who is only an ordinary director and is not concerned with day-to-day affairs of the company. No recovery has been effected either from the petitioner or at his instance. He is ready to join investigation. The provisions of Section 37 of the Act are not attracted in the instant case. The offence allegedly pertains to a controlled substance which is punishable under Section 25A of the Act where no minimum punishment has been provided, therefore, there is no embargo of Section 37 of the Act. Some of the co-accused have already been released on bail. As such the petitioner be also granted protection.

3. The bail application is vehemently opposed by Mr Satish Aggarwala, learned counsel for the respondent - DRI on the ground that the petitioner is not entitled to be released on bail either in law or on facts. The petitioner had approached the Himachal Pradesh High Court at the very initial stage of investigation wherein interim protection was granted to him vide order dated 31.08.2015 and he was directed to join investigation. However, the petitioner failed to comply with the directions. Instead simultaneously, he filed an application for anticipatory bail before learned Special Judge, NDPS Cases, Saket Courts, New Delhi. Ultimately the said application was dismissed as withdrawn on 10.09.2015. The second application seeking same relief was dismissed. The application moved by the petitioner before the Himachal Pradesh High Court at Shimla was dismissed as withdrawn after hearing arguments at length on 09.09.2015. There is no change in the circumstances. Rather the situation has worsened as now despite execution of process under Section 82 Cr.PC, the petitioner has failed to appear. A complaint for non-compliance of summons issued by the competent officer of the respondent department has been filed before the court of Chief Metropolitan Magistrate, Patiala House Courts for offence punishable under Section 172 and 174 IPC.

4. Counsel further submits that the address given in the affidavit filed by the petitioner in support of the application is wrong as when the summons were sent on this very address, the family members of the petitioner reported that the petitioner had not come to the premises for a long time and they are not having any information. Copies of the reports on the summons/warrants have been filed.

5. Counsel further submits that the charge-sheet had to be filed against 12 persons including petitioner within 60 days as number of persons are involved and qua some of the accused the offences were such that if the charge-sheet was not filed within 60 days, they would have been entitled to statutory bail under Section 167(2) Cr.PC. However, so far as the petitioner is concerned, the provisions of Section 37 of the Act are attracted. Reference was made to the averments made in the complaint where it is specifically alleged that the petitioner is the managing director of M/s G.T. Biopharma Pvt. Ltd., Kala Amb. (HP) and 75.370 kg of Ketamine Hydrochloride, 20 kg of Alprazolam Hydrochloride, both psychotropic substance under the Act and 6000 tablets containing pseudoephedrine, a controlled substance under the Act were found. It was further submitted that the investigation reveals that a conspiracy was hatched at Delhi in the year 2014 amongst persons operating their individual business at different places to enrich themselves by illegal trade of controlled substances under the cover of their individual legal business by sourcing controlled substances from manufacturing units located at Maharashtra and finally disposing the same as such without carrying out any manufacturing process in illicit market at Delhi at high premium price for use in clandestine manufacture of psychotropic substances by routing the consignment of controlled substance through the authorised dealer - M/s GT Biopharma Pvt. Ltd., Kala Amb of which the petitioner is managing director and M/s Daffohils Lab. Pvt. Ltd.

6. On the basis of specific information, DRI officers had searched the factory premises of the petitioner on 19/20.08.2015. During the course of search, in presence of Sultan Ansari, Manager-cum-Chemist of the company and two independent witnesses, the DRI officials recovered 75.370 kgs of Ketamine Hydrochoride, 20 kg of Alprazolam, both psychotropic substances and 6000 tablets of BIOCET containing pseudo-ephedrine hydrochloride, a controlled substance. The purchase, possession, storage of these substances were not reflected in the statutory records prescribed under the NDPS Rules, 1985 and the NDPS (Regulations of Controlled Substances) Order, 2013 respectively. The recovered substances were seized. On 17.08.2015, a consignment of 275 kg of Pseudo-ephedrine Hydrochloride, a controlled substance was clandestinely and fraudulently removed from the petitioner''s company under parallel invoices for delivery to M/s Lakshya Traders, New Delhi out of which 250 kg was seized by DRI from the business premises of M/s Lakshya Traders, New Delhi on 19.08.2015. The said 275 kg pseudo-ephedrine hydrochloride was received in the manufacturing unit of the petitioner for manufacture of BIOCET tablet in terms of license under the Drugs and Cosmetic Act, 1940 and Rules made thereunder and as well as in terms of registration granted by NCB, Chandigarh under the NDPS (RCS) Order 2013. However, the said 275 kg of pseudo-ephedrine hydrochloride was clandestinely and fraudulently removed from the factory without carrying out any process under parallel invoices in violation of the license and registration and delivered the same to an unauthorized person/firm for further disposal in illicit market. The company had also diverted 74.995 kg of ketamine hydrochloride, a psychotropic substance in the illicit market through M/s Lakhsya Traders, Delhi by mis-declaring the same as controlled substances which specifically attracts the embargo of Section 37 of the Act.

7. Counsel further submits that Sultan Ansari was examined under Section 67 of the Act and in his voluntary statement dated 20.08.2015 he admitted the fact of clandestine removal of psychotropic substances and controlled substances from the petitioner''s factory and diversion of the said substances to Delhi for illegal trade and other incriminating facts. He also disclosed active role of the petitioner in above prejudicial activities of illicit trade of psychotropic substances and controlled substances under the Act. It was denied that the petitioner was an ordinary director or was not in any way concerned with the day-to-day affairs of the company. In fact, the documents, namely, invoices and consignment notes issued at the factory signed by the petitioner clearly indicate that the petitioner was regularly visiting the factory at Sirmaur, HP during the relevant period and was also present at the said factory at the time of removal of pseudoephedrine and ketamine from the said factory even at late night. The invoices issued at the factory were signed either by the petitioner or authorised signatory of the company, namely, Jai Ballabh who is also absconding and all the consignment notes in respect of pseudoephedrine hydrochloride and ketamine hydrochloride were signed by the petitioner. Counsel further submits that summons under Section 67 of the Act for his appearance on 28.08.2015 and 31.08.2015 were

issued to the petitioner to join investigation. The same were duly received by the family members in his absence. The counsel for the petitioner vide his letter dated 31.08.2015 had informed DRI that the petitioner will appear before DRI officer in the first week of September, 2015 as he was in Nasik to attend Kumb and further submitted that his client''s absence was not intentional, deliberate or wilful. But despite a number of summons issued to the petitioner for his appearance before the DRI officer on 2/3/7/10/15/30.09.2015 and 12.10.2015, the petitioner failed to join the investigation till date, which clearly indicates his intention to delay the investigation, which was required to be completed expeditiously for filing of complaint within 60 days in respect of controlled substances.

8. It was not disputed that some of the co-accused have been granted bail by Special Judge, NDPS cases, Saket Courts, Delhi. It is, however, submitted that they were involved in illegal trading of controlled substances and embargo of Section 37 of the Act was not attracted in their cases. By relying upon several judgments, it was submitted that the petitioner is not entitled even to regular bail what to speak of anticipatory bail as such, the bail application is liable to be dismissed.

9. Countering the submissions of learned counsel for the respondent, learned Senior Counsel for the petitioner did not dispute that the petitioner was directed by the High Court of Himachal Pradesh to join investigation, but, it is submitted that due to medical problems, he could not join investigation and in case an opportunity is granted, he will join investigation. As regards the statement of Sultan Ansari under Section 67 of the Act, it is submitted that same was retracted, therefore, no reliance can be placed on the same.

10. Needless to say, the allegations against the petitioner are very serious in nature. He is the managing director of M/s Biopharma Pvt. Ltd., Kala Amb. (HP). As per the allegations 75.370 kg of ketamine hydrochloride, 20 kg of Alprazolam hydrochloride, both psychotropic substance under the Act and 6000 tablets containing pseudoephedrine hydrochloride, a controlled substance under the Act were recovered in the presence of Sultan Ansari, manager-cum-chemist of the company and two independent witnesses. Over and above, a consignment of 275 kg of Pseudoephedrine Hydrochloride, a controlled substance was clandestinely and fraudulently removed from the petitioner''s company under parallel invoices for delivery to M/s Lakshya Traders, New Delhi out of which 250 kg was seized by DRI from the business premises of M/s Lakshya Traders, New Delhi on 19.08.2015. It is also alleged that the invoices and consignment notes issued at the factory were signed by the petitioner which indicate that he was regularly visiting the factory at Sirmaur and was also present at the said factory at the time of removal of aforesaid articles from the said factory. It is alleged that recovery of these substances attracts provisions of Section 37 of the Act. That being so, it is required to be seen is as to whether the statement made on behalf of prosecution witnesses, if believable, would result in conviction of the petitioner

or not. At this juncture, one cannot say that the petitioner is not guilty of the offence if the allegations made in the charge-sheet are established. It cannot also be said that there are no ground to hold that the petitioner is not guilty of said offence. That being so, there is embargo of Section 37 of the Act which disentitles the petitioner to the relief claimed

11. Over and above, the conduct of the petitioner dis-entitles him to the relief. Summons were sent to the petitioner for appearance on 28.08.2015 and 31.08.2015 but he sent a reply through counsel showing his inability to appear on the ground that he was in Nasik Kumbh Mela. Thereafter, he approached the High Court of Himachal Pradesh seeking protection. He was granted interim protection subject to the condition that he shall join investigation as and when required by the investigating agency besides other conditions. Several summons were sent to him to join investigation on 2, 03/07/10/15.09.2015 but he failed to join the investigation. Simultaneously, while his application before the High Court of Himachal Pradesh was pending, he also approached the Special Judge, NDPS Cases, Saket Courts, New Delhi and after arguments, withdrew the application before the High Court of Himachal Pradesh on 09.09.2015 and the application before the Special Judge, NDPS Cases, Saket Courts, New Delhi on 10.09.2015. The second application was dismissed on 22.01.2016. The submission of learned Senior Counsel for the petitioner that the petitioner be granted another opportunity to join investigation cannot be entertained because as stated above, number of opportunities were granted to him to join investigation but he failed to avail the same.

12. Not only that, when various summons were issued to him, he failed to appear with the result criminal complaint has been filed against him. The Court had issued non-bailable warrants and even process under Section 82 Cr.PC has been executed as per report dated 18.01.2016.

13. The petitioner cannot claim parity with co-accused who have been granted bail as, as per the prosecution case, in their cases, provision of Section 37 of the Act was not attracted.

14. Keeping in view the seriousness and gravity of the offence and the conduct of the petitioner himself, he is not entitled to the relief as claimed by him.

15.The bail application is accordingly dismissed.

16. Nothing stated herein shall, however, tantamount to an expression of opinion on merits of the case.

