

Rohit vs Central Bureau Of Narcotics on 5 September, 2023

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 181/2023
ROHIT

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versus

CENTRAL BUREAU OF NARCOTICS

...

Through: Mr. Satish Aggarwal
Counsel and Mr. Gag
Advocate

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA
ORDER

% 05.09.2023 [The proceeding has been conducted through Hybrid mode]

1. This is the bail application under Section 439 of the Code of Criminal Procedure, 1973 filed on behalf of the applicant seeking regular bail in Complaint Case No. F. No. P&I/DEL/SEIZURE-01/2020-156 registered at CBN for the alleged offences under Section 21/22/28/29 and 30 of the NDPS Act.

2. Mr. Mohit Mathur, learned senior counsel appearing for the applicant submits that the applicant has been in custody for almost a period of two years and eight months approximately. Learned senior counsel submits that it is not disputed that the applicant is one of the partners of M/s. Moksh Meditech, which a registered pharmacist This is a digitally signed order.

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3. Learned senior counsel appearing for the applicant submits that charges were framed on 12.02.2021 and the trial has commenced. Although only 12 out of the 59 witnesses have been examined so far.

4. Mr. Mohit Mathur, learned senior counsel submits that according to the case of the prosecution, a secret information led to the respondent /prosecuting agency to conduct a raid on the shop of the applicant on 14.01.2020 at 03:00 pm where it is alleged that in six boxes out of which one box containing 704 unlabelled buprenorphine in a box lying next to the place where the applicant was sitting was seized.

5. Learned senior counsel appearing for the applicant submits that what is relevant so far as the alleged seizure is concerned, is that the witnesses who are projected as independent witnesses stated to be part of the alleged seizure and made as panch witnesses, have already been examined, cross examined and discharged.

6. By referring to the examination of the witness PW-3 namely, Mr. Mayank Jain, learned senior counsel submits that as per the replies elicited during cross examination, the said witness was known to the seizing officer Mr. Praveen Dhull who was examined as PW1.

7. Learned senior counsel also submits that in the entire examination, the said witness is silent about the recovery of the aforesaid buprenorphine.

8. Learned senior counsel drew attention of this Court to page 319 of the present application to submit that the witness had categorically This is a digitally signed order.

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9. On the aforesaid basis, Mr. Mathur, learned senior counsel submits that from the tone and tenor of the answers elicited during cross examination, it is crystal clear that the said witness was planted one and could not have been an independent witness who happened to be there by chance at the time of the alleged seizure which commenced from 03:00 pm on 14.01.2020

10. That apart, learned senior counsel also invites attention of this Court to the second panch witness, namely, Mr. Kapil who was examined as PW2. According to Mr. Mathur, this witness was in fact at a worse situation than the previous witness for the reason that he entered Delhi on 14.01.2020 at 09:30 pm in the night of 14.01.2020 and was present in Bhadurgarh, Harayana at the time when the prosecuting agency alleged that the seizure has commenced at 03:00 pm. Learned senior counsel also submits that the applicant had obtained the CDR records as also location of the witnesses which were duly confronted to him and the witness was constrained to admit that he was, in fact, not present in Delhi at that point of time.

11. Mr. Mathur, learned senior counsel painstakingly read the cross examination placed on record of this Court to show that the second witness was also not only known to the IO, in fact had his mobile number on his own mobile phone which is also admitted and elicited during the cross examination.

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12. From the aforesaid two circumstances, learned senior counsel submits that the very act of seizure becomes not only defective but also doubtful as to whether such seizure had taken place or not at all.

13. Mr. Mathur, learned counsel also invites attention of this Court to the fact that the CCTV footage was obtained by the applicant of the CCTV cameras near the shop of the applicant where the raid is stated to have been conducted to submit that shortly before the said raid is stated to have been conducted, the persons belonging to the prosecution agency were found to be entering into shop of the applicant along with three boxes in their hands and immediately thereafter at 03:00 pm sharp, the raid was conducted. This issue was also confronted to the PW1-IO, who admitted, after seeing the CCTV footage, the veracity of the fact that people were seen carrying three boxes inside the shop of the applicant before the raid was conducted. From this learned senior counsel submits that having regard to the fact that there has been a specific admission, there is any amount of doubt as to whether the said box containing the 704 ampoules of buprenorphine were at all genuinely seized or not, and it could have been a case of planting of false evidence.

14. A relevant aspect which learned senior counsel seeks to draw from the aforesaid CCTV footage is that there obviously is a grave doubt as to whether the applicant was in fact in conscious possession of the said contraband.

15. Though learned senior counsel submits that the issue on law in respect of Section 52A of the NDPS Act, also is pressed, however, submits that the other relevant aspects may be more relevant for this This is a digitally signed order.

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16. Learned senior counsel also submits that the applicant has clean antecedents and there are no previous convictions or involvements in similar cases and there is no reason why this Court should have any apprehension as to whether the applicant if released on bail shall involve himself in offences subsequently.

17. On the above basis, learned senior counsel submits that the applicant is entitled to be released on bail.

18. Per contra, Mr. Aggarwala, learned senior standing counsel for the NCB submits that though there may be contradictions which may have been elicited in the cross examination but that alone could not affect the whole of the case since the entire issue has to be seen holistically after the cross

examination of all the witnesses is conducted.

19. Learned senior standing counsel submits that there has been no dispute in respect of the recovery from the shop. Neither any issue or a submission in respect of as to why the officers of the CBI would conduct any raid against the applicant has been submitted by learned senior counsel for the applicant. In fact, according to Mr. Aggarwala, once the applicant has not attributed any mala fide or enmity with the prosecution officers, the issue of any doubt on the raid and recovery of the aforesaid contraband would be diluted.

20. Learned senior standing counsel submits that bar under Section 37 of the NDPS Act is squarely applicable and therefore the applicant is not entitled to any bail. That apart learned senior standing counsel relies upon the judgment of Supreme Court in Narcotics Control This is a digitally signed order.

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21. Learned senior standing counsel submits that according to the judgment of Supreme Court in Mohit Aggarwal (Supra), the length of custody or delay in filing the chargesheet and the delay in commencement of trial are by themselves, not considerations that can be treated as persuasive grounds for granting relief to the applicant.

22. On that basis learned senior standing counsel submits that the applicant cannot be released on bail.

23. This Court has heard the Mr. Mohit Mathur, learned senior counsel and Mr. Satish Aggarwala learned senior standing counsel and perused the records.

24. According to the nominal roll placed on record by the jail superintendent vide the report dated 16.02.2023, the applicant had, by 16.02.2023 been detained for a period of 2 years, 1 month and 15 days. As of now, the applicant would have been detained in prison for roughly almost 2 years and 8 months as of now.

25. It is also not disputed that out of 59 witnesses only 12 witnesses have been examined so far and it appears from the manner in which the trial is proceeding, it would take considerable time in completing the recording of the evidences of the remaining witnesses. Though the applicant had filed an earlier bail application before this Court, however, keeping in view the fact that the trial was pending, the applicant had withdrawn the same with permission to file a fresh bail This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 16/09/2023 at 16:55:19 application before the learned Trial Court after the commencement of trial which was permitted by this Court vide the order dated 11.07.2022.

26. The primary issue which appears to appeal to this court as of now are the three following facts (i) in respect of the CCTV footage covering the day on which raid was stated to be conducted on 14.01.2020, it appears as of now, that the PW1 seizing officer has admitted that just shortly before the raid was conducted three persons were seen carrying three boxes inside the shop, puts a slight doubt in the mind of the court as to whether the seizure of the box containing the aforesaid contraband was not planted. That apart the fact that the said issue was also admitted by the seizing officer as also some relevance relevant to the aforesaid conclusion (ii) apart from that, two public witnesses who are also part of the raid and being the panch witnesses had also given answers in the cross examination which creates doubt in the veracity of the seizure of the contraband.

(iii) So far as the one of the witnesses is concerned, it appears from the reading of the cross examination of PW2, that the presence itself on 14.01.2020 at 03:00 pm, when the raid is stated to have commenced, is highly doubtful. In fact, the contradictions contained in the cross examination as placed on record also create a slight doubt on his presence at the relevant point of time.

27. That apart there is nothing to show on record that the other witness namely Mr. Mayank Jain, had confirmed the recovery of the said contraband. That apart what is more relevant which has been elicited during the cross examination is that neither of the witnesses This is a digitally signed order.

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28. Having the aforesaid in mind, the applicant has been successful in prima facie throwing doubt on the alleged recovery of the said contraband from the shop of the applicant. That apart there is nothing on record to show any previous involvement similar or any other offences whatsoever of the applicant.

29. As per the nominal roll the overall conduct of the applicant is stated to be good. Merely because the offences under Sections 21(c), 22(c), 28 and 29 of the NDPS Act have been posited against the applicant would not entail an undue detention in prison without any justification. The issue of section 37 of the NDPS being applicable cannot be doubted, however, it has to be seen from case to case basis.

30. In the present case, the first bar is covered since Mr. Aggarwal, learned senior standing counsel has appeared and had filed his reply and made substantive arguments. The second aspect as to whether this Court is satisfied there are reasonable ground for believing that the applicant is not guilty of such offence or that he is not likely to commit such offence while on bail is concerned, from

the aforesaid prima facie observations made in respect of the recovery itself, would propel this Court to consider that there are no reasonable grounds for believing that the applicant is guilty for the purposes of deciding the present bail application.

31. Learned senior standing counsel relies upon the judgment of Mohit Aggarwal (Supra), rendered by the Supreme Court which has been considered by this Court. The Supreme Court has laid down This is a digitally signed order.

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32. However, so far as pre condition under Section 37 are concerned, the Supreme Court in Mohd Muslim @ Hussain Vs. State (NCT of Delhi) in SLP No. Crl.915/2023 and Rabi Prakash Vs. The State of Odisha in SLP (Crl.) No.(s). 4169/2023 has also simultaneously held that the embargo under Section 37 would be considered against the fundamental right under Article 21 of the Constitution of India and the embargo shall not be unfettered.

33. The judgment of the Supreme Court in Mohd. Muslim (Supra) in respect of reasonable reading has held as under:-

"19. A plain and literal interpretation of the conditions under 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad This is a digitally signed order.

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Union of India v. Rattan Malik. Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable....."

34. Keeping in view the aforesaid issue as also the judgment of the Supreme Court in Biswajit Mondal @ Biswajit Mandal Vs. The State of West Bengal, Crl..A. Nos. 450/2023 rendered on 14.02.2023, this Court is of the considered opinion that the applicant is entitled to be released on regular bail.

35. It is directed that, the applicant be released on bail on his furnishing personal bond in the sum of Rs. 2,50,000/- lacs with one surety of like amount to the satisfaction of the Trial Court, subject to the conditions as follows:-

a) He shall surrender his passport, if any, to the Court concerned and shall under no circumstances leave Delhi without prior permission of the Court concerned;

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b) He shall cooperate in the trial and shall appear before the Court as and when required;

c) He shall provide his mobile number(s) to the Investigating Officer and keep it on his person and operational at all times;

d) He shall drop a PIN on the Google map to ensure that his location is available to the Investigating Officer at all times;

e) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;

f) He shall not indulge himself in criminal activity of any nature whatsoever; and

g) In case of change of residential address and/or mobile number, the same shall be intimated to the Investigating Officer/ Court concerned by way of an affidavit.

36. Any infraction of the aforesaid conditions shall make the applicant liable for the revocation of this bail.

37. Nothing in this Order shall be construed as an expression of opinion on the merits of the pending matter.

38. With the aforesaid conditions, the bail application stands disposed of.

39. Dasti under signatures of Court Master.

TUSHAR RAO GEDELA, J SEPTEMBER 5, 2023/ms This is a digitally signed order.

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