

Vineet Garg @Banti vs The State Nct Of Delhi on 4 December, 2023

Author: Amit Sharma

Bench: Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 3319/2023

VINEET GARG @BANTI

Through:

THE STATE NCT OF DELHI

Through: Mr. Aman Usman, A
with Insp. Rake
AGS/Crime Branch

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% 04.12.2023

1. The present application under Section 439 read with Section 482 of the CrPC seeks regular bail in case FIR No. 218/2018, dated 29.08.2018 under Sections 22 and 29 of the NDPS Act, Sections 63 and 65 of the Copyright Act, 1957 and Sections 468/471/120B of the IPC registered at PS Crime Branch.

2. Briefly stated, the facts of the present case are as under:

i. On 20.08.2018, secret information was received at about 04:00 PM at the office of the Crime Branch that one Sunil Sharma (the present applicant) alongwith his associates - Rajesh and Nagesh were involved in illegally supplying „Tramadol to Kolkata and other parts of North-East India. Information was received that co-accused Sunil Sharma, Rajesh and Nagesh would arrive at a spot near the Minto 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 05/12/2023 at 01:59:11 Road Bus Stop, Bhavbhooti Marg, New Delhi with consignments of Tramadol in two separate cars and that Sunil Sharma would further handover these consignments to a man for sending them to Kolkata. ii. Acting on the

said information, a team of police personnel reached the above spot and at about 07:45 PM spotted an Elantra car bearing registration number DL 7C P 0927, being driven by Sunil Sharma. He stepped out of the car and waited for some time. After 10 minutes, a Tata Indica car bearing registration number UP 14 BR 2362, being driven by Rajesh with Nagesh in the passenger seat arrived at the spot. Rajesh took one parcel out of his car, which Nagesh handed over to Sunil Sharma who put it in the trunk of his car. Rajesh took another parcel out and handed over the same to Sunil, at which time the raiding team apprehended all three of them at about 08:00 PM. iii. Upon a search of the Elantra car bearing registration number DL 7C P 0927, 156 boxes of Spasmo Proxyvon Plus capsule were recovered. From the search of Red colour Tata Indica car bearing registration number UP 14 BR 2362, 112 boxes of Spasmo Proxyvon Plus capsule were recovered. From the personal search of Nagesh Sharma, one white coloured parcel containing 56 boxes of Spasmo Proxyvon Plus capsule was recovered. Each of these boxes contained 18 strips of 8 capsules each. Each of these were hard gelatin capsules containing Dicyclomine Hydrochloride I.P. 10 mg, Tramadol Hydrochloride I.P. 50 mg and Acelaminophen 325 mg.

iv. Out of the materials recovered, samples were drawn and seized and the present FIR was registered.

v. During investigation, the accused persons were interrogated and they 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 05/12/2023 at 01:59:11 admitted to their involvement in the alleged offences. It was also revealed that a part of the recovered Spasmo Proxyvon Plus capsules were procured by them through black marketing channels and part of it was manufactured by them at a factory, set up in Ghaziabad. vi. During investigation, it was discovered that Sunil Sharma was the mastermind behind the entire racket that dealt in illegal drugs. He financed the illegal drug business. Sunil Sharma was also involved in illegally supplying Buprenorphine injections to his contacts in various states. Based on his disclosure, 1.68 lakh ampoules of Buprenorphine injection were recovered from two courier companies

- Madhur Courier and Om Logistic.

vii. Sunil Sharma disclosed that his associate and proprietor of M/s Banti Pharma - Vineet Garg, i.e., the applicant had booked a consignment of 9000 ampoules of Buprenorphine injections to their contacts in Bikramganj, Bihar. Accordingly, on 03.09.2018, the said consignment was intercepted and a representative of Madhur Courier presented 6 parcels of Buprenorphine injections containing 18,000 ampoules, out of which 3,000 were without any label. On enquiry, the said representative stated that the consignment was booked by one M/s Banti Pharma (owned by the applicant) and was bound to M/s Deep Kumar Medical Agency in Bikramganj, Bihar.

viii. It was further disclosed that Sunil Sharma, through the applicant, had booked another large consignment of Buprenorphine injections from Ideal Chemical Works Ltd, Kanpur through Om Logistics. Accordingly, on 10.09.2018, the said consignment was intercepted and a representative of Om Logistioes presented 75 parcels containing 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 05/12/2023 at 01:59:12 1.5 Lakh ampoules of Buprenorphine injections, out of which 8,000 were found to be without any label.

ix. Accordingly, a notice under Section 67 of the NDPS Act was served upon Madhur Courier and total 18000 Buprenorphine Ampoules were seized in the case on being produced by Madhur Courier. Out of above seized ampoules, 3000 Buprenorphine Ampoules were found without label/sticker. These ampoules were booked by the applicant through his firm M/s Banti Pharma Aligarh, UP and shipment of these contrabands was destined to Deep Kumar Medical Agency, Ihankar Market, Bikarmganj, Distt Rohtash, Bihar.

x. During investigation, M/s Om Logistics Ltd informed that the shipment of above medicines was received from M/s Ideal Chemical Works Ltd and same was delivered to M/s Banti Pharma on 28.08.2018. It was further informed that the applicant, i.e., proprietor of M/s Banti Pharma of Aligarh had given the shipment in question for re-booking back to M/s Ideal Chemical Limited, Kanpur on 30.08.2018 (after the arrest of Sunil Sharma) with old papers but Aligarh staff of M/s Om Logistics Ltd. refused to do so as without re- booking papers, material couldn't be re-booked and as such in want of re-booking papers shipment was on hold at risk and cost of the consignee M/s Banti Pharma and its proprietor, i.e, the applicant. xi. The Managing Director of M.s Ideal Chemical Works informed that the applicant and Sunil Sharma contacted him regarding an order of Buprenorphine injections and sent the order letter via speed post. Accordingly, a consignment of 1.5 Lakh Buprenorphine injections was provided to M/s Banti Pharma on 25.08.2018 and the same were 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 05/12/2023 at 01:59:12 recovered on 10.09.2018 from M/s Om Logistics.

xii. The applicant also purchased Pantoprazole granules from M/s Supercure Biotech, Kundli, Sonipat for preparation of duplicate/infringed Pantocid DSR medicine on the directions of co-accused Sunil Sharma. Above Pantoprazole granules were recovered from their factory set up in Ghaziabad on 30.08.2018 at the instance of the applicant and co-accused persons.

xiii. The mobile phone of Sunil Sharma was sent to FSL Rohini for data retrieval and from analysis of data retrieved, his mobile phone was found containing various documents viz Tax invoices of Ideal Chemical Works Ltd in the name of M/s Banti Pharma, various deposit slips of corporation Bank in the name of M/s Banti Pharma, consignment notes of Madhur Courier in respect of various illegal consignment booked by M/s Banti Pharma including one disclosed by Sunil Sharma during

his interrogation (i.e. consignment note in respect of Deep Kumar Medical, Bikramganj, Bihar). xiv. The drug license possessed by the applicant in the name of his firm M/s Banti Pharma was also found to be fake/forged during the investigation and hence, charges under Sections 420/468/471/120B of the IPC were also framed against the applicant and co-accused Sunil Sharma.

xv. During investigation, it was discovered that the accused persons used to send the drugs through courier/railway parcels, in the names of different medicine shops in different cities, chosen at random. However, the consignees whose details were mentioned on these parcels did not know the sender, i.e., the accused persons. The said 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 05/12/2023 at 01:59:12 accused persons used to track the real time status of these parcels and their contacts would take delivery directly from the godowns of the courier company, after the parcel reached the destination city. xvi. Co-accused Sunil Sharma intended to send the recovered Spasmo Proxyvon Plus capsules to his contact Shamim in Kolkata. xvii. Rajesh Sharma was also stated to be one of the main persons involved in the running of the illegal drug business. During interrogation, he disclosed that had his own Lathe machine setup in the name of „OSATA Industry in Shihani, Ghaziabad and had arranged for a private and isolated accommodation in Nandgram, Ghaziabad for running a manufacturing unit. He had known Sunil Sharma since 2014 and lured Nagesh Shamra into getting involved with them on the pretext of making money quickly and easily.

xviii. Sunil Sharma further disclosed that he procured preparatory salts/raw materials like Tramadol, Dicycloamine and Acetaminophen from his business associate - Vijay Dubey, which were then used for preparing the recovered Spasmo Proxyvon Plus capsules. Sunil Sharma and Nagesh Sharma also carried out the work of filling, packaging and blistering.

xix. During the course of further investigation, accused Vijay Dubey @ Moni was also arrested and during interrogation, he disclosed that he met Rajesh Sharma though a business acquaintance, who then introduced him to Sunil Sharma. Vijay Dubey had supplied raw material, i.e., Tramadol, Acetaminophen and Dicyclomine to accused persons 2-3 times through Kalpana Travels. The said information was corroborated by a bus conductor of Kalpana Travels and the Call 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 05/12/2023 at 01:59:12 Detail Record („CDR) analysis of Rajesh Sharma.

xx. On 30.08.2018, the accused persons led the police party to their factory setup in Ghaziabad. During the search of the said factory, raw materials, printing and packaging materials and machine parts were recovered and seized. It is the case of the prosecution that the said premises was arranged on rent by Rajesh Sharma. The keys of the said premises were found in his possession during his personal search. xxi. The applicant was arrested on 12.09.2018, and under interrogation, he disclosed that he joined the other co-accused persons because he was in dire need of money. He

met Sunil Sharma through one Harish Singhal - both of whom were stated by him to be financing the entire illegal drug business. He disclosed that he supplied drugs to their contacts on the directions of Sunil Sharma and Harish Singhal. xxii. On 24.09.2018, Afroz Alam was arrested who disclosed that he was contacted by Sunil Sharma regarding supply of some materials, who promised him to pay 10 times the normal price of the products and consequently, Afroz Alam supplied materials like printed boxes, PVC, labels of companies etc. xxiii. The CDRs of all the accused persons were analysed and it was found that they were in regular touch with each other telephonically. They were also in regular touch through WhatsApp messenger. xxiv. Chargesheet in the present case was filed qua Sunil Sharma @ Rahul, Rajesh Sharma @ Manoj, Nagesh Sharma, Vijay Dubey @ Moni, Vineet Garg @ Banti (the applicant herein) and Afroz Alam.

3. Learned counsel for the applicant submits that co-accused Nagesh Sharma has been granted bail by this Court vide judgment dated 28.03.2023 This is a digitally signed order.

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4. It is submitted that the case of the prosecution qua the present applicant is that there is a recovery of 1.68 Lakh ampoules of Buprenorphine injections which were illegally booked by the applicant. It is submitted that, even as per the case of prosecution, the applicant acted at the instance of co-accused Sunil Sharma, who has been granted bail by this Court. It is further urged that M/s Banti Pharma, of which the applicant is the proprietor, holds a valid license with regard to trade of pharmaceuticals. It is further submitted that the letter dated 06.09.2019 sent on behalf of Ideal Chemical Works Limited Trust to SI Rakesh mentions that on the basis of whole sale drug licenses and registration of Central Bureau of Narcotics, Gwalior, Buprenorphine injections were supplied to to M/s Sunshine Pharma, Roorkie and M/s Banti Pharma, Aligarh.

5. Learned counsel further contended as per the documents filed alongwith supplementary chargesheet, there is a document downloaded from the website of Central Bureau of Narcotics demonstrating that there was a valid license with M/s Banti Pharma with respect to the trade of pharmaceuticals. It is submitted that the case of the prosecution is that the 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 05/12/2023 at 01:59:12 said license is forged is a disputed question of fact.

6. Learned counsel submits that the applicant is at parity with other co-accused persons who have been granted bail in the present case and submits that the applicant has been in judicial custody for more than 2 years. It is further pointed out that out of 45 witnesses cited by the prosecution, only 3 witnesses have been examined so far and the trial is likely to take a long time. It is further stated that while granting bail to the other co-accused persons, the delay in trial has been duly taken note of by this Court and the same would apply to the case of the present applicant as well. It is further pointed out that the applicant was released on interim bail on various occasions and has surrendered on time, without misusing the liberty granted to him.

7. Per contra, learned APP for the State submits that the present applicant cannot claim parity with the other co-accused persons on the ground that the recovered Buprenorphine injections were booked by him illegally. It is further submitted that the license of M/s Banti Pharma for trade in pharmaceuticals has been found to be forged. It is argued that the tracking number of the consignment which was seized from M/s Om Logistics was extracted from the mobile phone belonging to co-accused Sunil Sharma by the FSL. It is also stated that as per the letter dated 06.09.2019 written by Ideal Chemical Works, the consignment of the Buprenorphine injections was booked by M/s Banti Pharma, by the present applicant as well as co-accused person Sunil Sharma on telephone. It is further pointed out by the learned APP for the State that in the said letter, it is recorded that 1,50,000 injections were supplied to M/s Banti Pharma on 25.08.2018 vide invoice no. T0000777 and the recovery from M/s Om This is a digitally signed order.

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8. It is pointed out that the present applicant has been released on interim bail and has not spent any substantial amount of time in judicial custody as compared to the other co-accused who have been granted bail. In view of the above, it is submitted that the present application may be dismissed.

9. Heard learned counsel for the parties and perused the record.

10. The case of the prosecution is that the mobile phone of co-accused Sunil Sharma was deposited with the FSL and the data retrieved from it revealed documents viz Tax invoices of M/s Ideal Chemical Works Ltd in the name of M/s Banti Pharma, various deposit slips of M/s Banti Pharma, consignment notes of Madhur Courier in respect of various illegal consignment booked by M/s Banti Pharma including that disclosed by accused Sunil Sharma during his interrogation (i.e. consignment note in respect of Deep Kumar Medical, Bikramganj, Bihar). It is pertinent to note that the mobile phone referred to in the aforesaid status report was never seized by the Investigating Officer by way of any seizure memo. The said phone was taken into possession by the Investigating Officer vide a personal search memo dated 29.08.2018 and therefore, the same was not sealed. Hence, the sanctity of the data extracted from the said mobile phone is doubtful.

11. The Hon ble Supreme Court, in Union of India v. K.A. Najeed, (2021) 3 SCC 713 observed that if a timely trial is not possible, courts are ordinarily obligated to release the undertrial on bail and statutory restrictions do not exclude the discretion of constitutional courts to grant bail on grounds of violation of fundamental rights enshrined in Part III of the Constitution. It was held as under:

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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 05/12/2023 at 01:59:12 "15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] , it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by

him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the This is a digitally signed order.

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(emphasis supplied) More recently, vide order dated 13.07.2023 passed in Special Leave to Appeal (Crl.) 4169/2023 titled Rabi Prakash v. The State of Orissa, the Hon'ble Supreme Court held that prolonged incarceration of a person overrides the statutory restriction contained in Section 37(1)(b)(ii) of the NDPS Act. It was held as under:

"2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur- Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

(emphasis supplied) This is a digitally signed order.

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12. As per the nominal roll dated 03.11.2023, the present applicant has been in judicial custody for 02 years 04 months and 10 days. It is also reflected that the present applicant has been released on interim bail on various occasions and had not misused the liberty granted to him. Out of the 45 witnesses cited by the prosecution, only 3 have been examined so far and the trial is likely to take a long time. All other co-accused persons are already on bail.

13. In view of the facts and circumstances of the present case, the application is allowed and the applicant is admitted to bail upon his furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith two sureties of like amount to the satisfaction of the learned Trial Court/Link Court, further subject to the following conditions:

i. The memo of parties shows that the applicant is residing at H. No. 21/24, Mangal Vihar Colony, Nagla Molvee, Aligarh, Uttar Pradesh. In case of any change of address, the applicant is directed to inform the same to the Investigating Officer.

ii. The applicant shall report at the office of Superintendent of Police, Aligarh twice in a week, i.e., on every Tuesday and Friday at 10:30 AM and the concerned officer is directed to release him by 11:00 AM after recording his presence and completion of all the necessary formalities. If the applicant chooses to stay in Delhi or is present in Delhi on account of his Court hearing, he shall report at PS Crime Branch twice in a week, i.e., on every Tuesday and Friday, at 10:30 AM or on whichever of the aforesaid days are coinciding with his Court hearing in Delhi. The concerned officer is directed to release 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 05/12/2023 at 01:59:12 him by 11:00 AM after recording his presence and completion of all the necessary formalities.

iii. The applicant shall not leave India without the prior permission of the learned Trial Court.

iv. The applicant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times. v. The applicant shall not, directly or indirectly, tamper with evidence or try to influence the witness in any manner.

vi. In case it is established that the applicant has indulged in similar kind of offences or tried to tamper with the evidence, the bail granted to the applicant shall stand cancelled forthwith.

14. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case pending before the learned Trial Court.

15. The application stands disposed of along with all the pending application(s), if any.

16. Order be communicated to the concerned Jail Superintendent for necessary information and compliance.

17. Order be uploaded on the website of this Court, forthwith.

AMIT SHARMA, J DECEMBER 4, 2023/bsr This is a digitally signed order.

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