

Chavvi Ram vs Narcotics Control Bureau on 1 November, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 749/2022
CHAVVI RAM

NARCOTICS CONTROL BUREAU

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

% 01.11.2023

1. The present petition has been filed under Section 439 CrPC seeking regular bail in case no. VIII/1/DZU/2019 registered under Sections 8/20(B)(II)(C) & 29 NDPS Act.
2. Vide order dated 05.05.2022, notice was issued in the bail application of the petitioner and the respondent/NCB to file its status report. The status report has been filed, which is on record.
3. Learned senior counsel appearing for the petitioner submits that as per the version of prosecution, secret information was received that Mohd. Latif would be handing over a bag of contraband to Pradeep. On the basis of the said information, both Mohd. Latif and Pradeep were caught red-handed along with five packets containing charas weighing 4.8 kg.
4. He submits that insofar as present petitioner is concerned, his name 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 04/11/2023 at 22:24:02 has only surfaced in the statement of Pradeep recorded under Section 67 of the NDPS Act, which is inadmissible in evidence as per the decision of the Hon'ble Supreme Court in Toofan Singh v. State of Tamil Nadu: (2021) 4 SCC 1.

5. He further submits that another incriminating circumstance pressed by the prosecution is that an amount of Rs.1,70,000/- was transferred by the petitioner in the account of Pradeep. He invites the attention of the Court to the statement of Chavvi Ram recorded under Section 67 of the NDPS Act, to explain as to why an amount of Rs.1,70,000/- was transferred by the present petitioner in the account of Pradeep. Elaborating further he submits that in fact the present petitioner was owning a car and on account of having suffered losses in his business he had pledged his car to one Bikam

Singh for an amount of Rs.2,00,000/- and to repay that amount for getting the pledged car redeemed, an amount of Rs.1,70,000/- was transferred in the account of Pradeep, who admittedly is a relative and was driver of the petitioner.

6. Insofar as the reliance placed by the prosecution on the CDRs is concerned, he submits that the same cannot be relied upon at this stage. Further, since the petitioner is related to Pradeep and was also working as a driver of the petitioner, there is nothing unusual in petitioner calling co- accused Pradeep.

7. He further submits that the petitioner is already in custody for the last more than 03 years and 11 months and relies upon the decision of the Supreme Court in Rabi Prakash vs. The State of Odisha: SLP (Crl.) No.4169/2023, decided on 13.07.2023, wherein the Hon'ble Supreme Court 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 04/11/2023 at 22:24:02 has observed that prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, conditional liberty must override the statutory embargo contained under Section 37(1)(b)(ii) of the NDPS Act. He, therefore, urges the Court to enlarge the petitioner on bail.

8. Per contra, the learned SPP for the NCB has argued on the lines of the status report. He has referred to para 8 of the status report, to contend that an amount of Rs.1,70,000/- was transferred by the present petitioner into the account of the co-accused Pradeep which shows the petitioner was also involved in the sale and purchase of contraband. He urges that the bail application filed by the petitioner be dismissed.

9. I have heard the learned senior counsel for the petitioner and the learned SPP for the respondent/NCB.

10. Undoubtedly, no recovery of contraband has been made from the present petitioner. The incriminating material pressed against the present petitioner is in the form of - (i) statement of Pradeep recorded under Section 67 of the NDPS Act, (ii) the CDRs showing that the present petitioner was in contact with Pradeep and (iii) a transfer entry of Rs.1,70,000/- whereby said amount was transferred by the petitioner into the account of co-accused Pradeep.

11. Insofar as the statement of Pradeep recorded under Section 67 NDPS Act is concerned, the same is inadmissible in evidence as held by the Hon'ble Supreme Court in Toofan Singh (supra). The relevant paragraph of the judgment reads as under:-

"158. We answer the reference by stating:

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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 04/11/2023 at 22:24:02 158.1. That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

158.2. That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."

(emphasis supplied)

12. In regard to the CDRs, this Court in Deepak Nagiya vs. State (NCT of Delhi): BAIL APPLN. 1716/2023 decided on 13.09.2023 has held that CDRs cannot be the ground to deny the bail to the petitioner as the evidentiary value of the same is to be seen at the stage of trial. The relevant paragraphs of the said judgment reads as under:-

"24. Insofar as the CDRs are concerned, I am of the view that the evidentiary value of the same shall be seen at the stage of the trial and it cannot be a ground to deny anticipatory bail to the petitioner at this stage. I am supported in my view by the judgment of the Supreme Court in State (by NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.: (2022) 12 SCC 633, the relevant paragraph of which reads as under:-

"12. It has been held in clear terms in Tofan Singh v. State of T.N. [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246] , that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under 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 04/11/2023 at 22:24:02 Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders [Pallulabid Ahamad Arimutta v. State, 2019 SCC OnLine Kar , 3516] [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 3433] , [Munees Kavil Paramabath v. State, 2020 SCC OnLine Kar 3431] , [Abu Thahir v. State, 2019 SCC OnLine Kar 3517] , [Mohd. Afzal v. Union of India, 2020 SCC OnLine Kar 1294] , [Munees Kavil Paramabath v. State of Karnataka, 2020 SCC OnLine Kar 3432] releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders....."

(emphasis supplied)

25. Likewise, a Coordinate Bench of this Court in Phundreimayum Yas Khan vs. State (NCT of Delhi): 2023 SCC OnLine Del 135 has observed that in the absence of any other incriminating material, the CAF/CDR details cannot be a ground to deny the bail. The relevant para reads as under:-

Existence of any conspiracy between the applicant and Sayed Javed Hussain based on the CDRs a. It is stated by learned counsel for the Respondent that the call record details show that the applicant was in frequent contact with one Amarjit Singh Sandhu on

26.01.2021, i.e, the date when the Tramadol tablets were collected by the co-accused Sayed Javed Hussain. He further states that according to the CAF/CDR details, location of the co-accused Sayed Javed Hussain and the applicant is also found to be in Rajouri Garden on 26.01.2021.

b. In my view, in the absence of any financial dealings, any recovery of narcotic substance or 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 04/11/2023 at 22:24:02 psychotropic substance from the applicant or from the premises of the applicant and/or at the behest of the applicant, the fact that the CAF/CDR details show calls between the applicant and Amarjit Singh Sandhu and the applicant and Sayed Javed Hussain, cannot be a ground to deny him the bail in the present matter.

c. It is for the prosecution to establish the guilt, abetment, conspiracy of the applicant beyond a reasonable doubt which is not borne out from the CAF/CDR details.

(emphasis supplied)

13. Notably, there is no material to show that the amount of Rs.1,70,000/- transferred by the petitioner into the account of co-accused Pradeep was apropos transaction of any contraband. At this stage, it cannot be ruled out that the petitioner had paid said amount to Pradeep to get his pledged car redeemed from Bikam Singh as recorded in the petitioner's statement recorded under Section 67 of NDPS Act. Further, it also in the said statement of the petitioner that co-accused Pradeep was his driver and a distant relative, therefore, there is substance in the submission of the learned Senior Counsel that there is nothing unusual in petitioner having called Pradeep.

14. It is also not in dispute that the petitioner is in custody for past 03 years and 11 months and only 5 out of 15 witnesses have been examined and the trial is nowhere near conclusion. Therefore, the petitioner is also entitled to the benefit of the decision of the Supreme Court in Rabi Prakash vs. The State of Odisha (supra).

15. In view of the circumstances discussed above, there is a reasonable This is a digitally signed order.

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16. Considering the circumstances in totality, I am of the view that the petitioner has made out a case for regular bail. Accordingly, the petitioner is admitted to bail subject to his furnishing a Personal Bond in the sum of Rs.50,000/- and one Surety Bond of the like amount subject to the satisfaction of the Trial Court/Jail Superintendent/Duty Magistrate, further subject to the following conditions:-

- a) Petitioner/applicant will not leave the country without prior permission of the Court.
- b) Petitioner/applicant shall appear before the Court as and when the matter is taken up for hearing.
- c) Petitioner/applicant shall provide all mobile numbers to the IO concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned.

17. The petition is disposed of.

18. Copy of the order be forwarded to the concerned Jail Superintendent for information and necessary compliance.

19. Order dasti under signatures of the Court Master.

VIKAS MAHAJAN, J NOVEMBER 1, 2023/MK This is a digitally signed order.

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