

# Prajwal Bhardwaj vs Narcotics Control Bureau on 6 October, 2022

**Author: Jasmeet Singh**

**Bench: Jasmeet Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ BAIL APPLN. 982/2022  
PRAJJWAL BHARDWAJ

Through: Mr Vishal Chopra, Mr Na  
Singh and Mr Chetan Kum

versus

NARCOTICS CONTROL BUREAU

Through: Mr Subhash Bansal, Sr. Standing  
Counsel for NCB with Mr Raghav  
Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% 06.10.2022

1. This is a petition seeking grant of bail in Case No. SC/244/21 arising out of Criminal Complaint No. VIII/10/DZU/2021 filed by the NCB, under Section 8, punishable under Sections 22(c), 23 and 29 of the NDPS Act, 1985.

2. It is stated in the present case that the applicant has been arrested purely on a confessional statement made by one Jwala Prasad. It is stated that on 13.03.2021 a secret information was received by the NCB, DZU, New Delhi regarding a parcel bearing airway bill No. 4254071485 destined for U.S.A lying at DHL Express Courier Company, Kirti Nagar, New Delhi. The same was confiscated and it was found to contain narcotic medicines. On 17.03.2021 notice under Section 67 of NDPS Act was issued to Muskan Singh i.e. the owner of the parcel and she disclosed that she never booked the parcel. Thereafter, the respondent issued notice to Anoop Dhingra of M/s. Zephfr Express Courier Company which had delivered the parcel to DHL offices. Anoop Dinghra tendered his statement that the said parcel was received from M/s Rightways Logistics, Mahipalpur, New Delhi. Fourteen more parcels were seized and notice was issued to Mr Ajay Bhardwaj. Mr Ajay Bhardwaj disclosed that the parcels were belonging to one Rohit @ Kapil Aggarwal.

3. On 31.03.2021, Rohit @ Kapil Aggarwal tendered his voluntary statement under Section 67 of NDPS Act accepting his involvement in exporting narcotic medicines illegally. He disclosed that he purchased those medicines from Bauji @ Arun Goyal who disclosed that he used to procure medicines from JPEE Drugs, Sikandara, Agra owned by Vinod Aggarwal from Agra and Uttarakhand. There was further recovery made from Agra.

4. During the course of investigation, another accused Jwala Prasad @ Swami was identified and notice under Section 67 of the NDPS Act was served on him. He disclosed that he had been dealing in narcotics with Kapil Aggarwal and used to create fake IDs. Accused Jwala Prasad @ Swami disclosed the name of the applicant as being associated in drug trafficking activities.

5. The applicant was arrested but nothing incriminating has been recovered from him. There is no corroborative evidence linking the applicant with dealing in drugs. The phone of the applicant was also seized but there was no data which was recovered indicating that the applicant was a part of the narcotics medicines trafficking. The applicant has been arrested purely on the basis of the disclosure statement of Jwala Prasad @ Swami.

6. I have heard learned counsel for the parties.

7. In Tofan Singh v. State of Tamil Nadu, Criminal Appeal No. 152 of 2013 the Hon ble Supreme Court held as under:-

"152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India. ....

155. We answer the reference by stating:

(i) 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.

(ii) 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."

8. In addition, as regards the rigours of Section 37 of the NDPS Act are concerned, the complaint in the present case is under Section 8, 22(c), 23 and 29 NDPS Act and not under Sections 19, 24 & 27-A of NDPS Act. Hence, the rigours of sec.37 NDPS are not attracted.

9. No recovery has been made from the applicant or at his instance. Nothing incriminating has been found and there is no corroborative evidence linking the applicant with dealing in narcotics medicines. Hence, the ratio of Tofan Singh (supra) applies to the applicant. The applicant has been in judicial custody since 20.06.2021. The applicant is on interim bail on medical grounds of wife from 09.02.2022.

10. In view of the above discussion, I am of the view that the application needs to be allowed. The applicant is directed to be enlarged on bail subject to the following terms and conditions:

(a) The applicant shall furnish a personal bond in the sum of Rs. 1,00,000/-

(Rupees One Lakh only) with 01 surety in the like amount, to the satisfaction of the trial Court;

(b) The applicant shall not leave the country and if the applicant has a passport, he shall surrender the same to the concerned trial Court;

(c) The applicant shall present himself before the NCB Office, first Monday of every month at 10:30 am to mark his presence. However, he will not be kept waiting longer than half an hour for this purpose;

(d) The applicant shall furnish to the IO/SHO concerned his cellphone number on which the applicant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

(e) The applicant shall not indulge in any act or omission that is unlawful or that would prejudice the proceedings in pending cases, if any.

11. Nothing stated hereinabove shall tantamount to an expression of opinion on the merits of the case.

12. The application is disposed of accordingly.

JASMEET SINGH, 6 OCTOBER 2022/sr [Click here to check corrigendum](#), if any