

Gopal Das vs Ncb on 4 February, 2021

Author: Suresh Kumar Kait

Bench: Suresh Kumar Kait

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 3491/2020
GOPAL DAS

..... Petitioner
Through: Ms. Sushma Sharma, Mr. Girish
Kumar Sharma & Mr. Karan
Verma, Advocates

Versus

NCB
Through: Respondent
Mr. Subhash Senior Standing
Counsel with Mr. Shaswat Bansal,
Advocate with I.O. Sh. Rampal

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% 04.02.2021 The hearing has been conducted through video conferencing.

1. Vide this petition, petitioner is seeking bail in Complaint Case No. VIII/4/DZU/2017, registered for the offences under Sections 20/25/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth referred to as the "NDPS Act").

2. The case putforth by the prosecution is that on 19.01.2017, at about 1800 hours, Rampal, Investigating Officer received secret information that one Rajinder, handicapped, aged around 25 years and 05 ft. in height, having a slim body with fair complexion, who brings charas from Himachal Pradesh and supply in Delhi, Faridabad and Palwal areas, shall be coming Delhi via Ambala, Karnal and Panipat route on the next day i.e. 20.1.2017 at around 1900 hrs with some other person in i-20 white colour car, bearing registration Number HR-29- AN 3126 having charas concealed in the car, and if the vehicle is searched, huge quantity of charas can be recovered. Rampal, Investigating Officer, reduced this secret information into writing and placed it before Ms.Tulika Morang, Superintendent, who directed him to take action as per law. Consequently, Rampal, Investigating Officer, constituted a raiding team comprising himself Sh. Sanjay Mehta and Sh. Rajeev Sehrawat, Sh. Anand Kumar, Sh. Pradeep, Investigating Officers and Havaldar Bhavnes Kumar, Sepoy Sanjeev Kumar & Y.S.Yadav and Drivers Babu Lal and Jai Kishan. Ms. Tulika Morang, Superintendent on 19.1.2017 at around 21:00 hours, handed over official seal bearing impression "Narcotic Control Bureau DZU-2" to Sh. Rampal, Investigating Officer and the entry was made in the Seal Movement Register. Thereafter, Sh. Rampal, Investigating Officer collected

necessary material like IO kit, DD kit, weighing machine, sealing material etc. and after briefing the team, left the office at DZU, R.K.Puram, New Delhi in official vehicle DL 12 CK 7897 and CH 01 GA 5491 at about 21:30 hours on 19.01.2017 for Panipat toll plaza. At about 03:30 hours, a i-20 white colour car, bearing registration Number HR-29- AN 3126 was spotted and when the team members tried to stop the said car, it did not stop and proceeded towards Delhi and after chasing, it could only be overtaken and stopped at Jhangirpuri, metro station. Two persons were sitting in the car. Rampal, Investigating Officer, introduced himself and his team and informed them the purpose of stopping their car. On inquiry, the driver of the car disclosed his name as Rajinder s/o Sh. Khemi and other passenger disclosed his name as Brij Kishor, s/o Sh. Devi Singh, both resident of village Hulwana, Post Kadona, PS Kosi Kalan, Tehsil Chatta, District Mathura, UP. Some passerby were requested to join the investigating team as independent witnesses and one person, namely, Deepak Kumar Jha, s/o Sh. Dalip Kumar Jha, voluntarily agreed to join the NCB team. IO Pradeep Singh served Notice under Section 50 of NDPS Act upon the driver Rajinder and IO Sanjay Mehta served Notice under Section 50 of NDPS Act upon driver Brij Kishor and they were explained about their legal right to be searched before a Gazette Officer or Magistrate, to which they declined and stated that any officer of the NCB team could search them or the vehicle. They appended their reply and signatures on the Notices served upon them and the same were also signed by Deepak Kumar Jha, IO. Thereafter, Pradeep Singh, IO conducted personal search of Rajinder and Sanjay Mehta, IO conducted personal search of Brij Kishore but nothing incriminating was recovered from their person search.

3. Upon inquiry, Rajinder told that there is a false cavity in the middle of the back seat of the car and charas has been concealed under it and he opened the cover of the back seat and showed the false cavity and also the packets containing dark brown colour substance. All the packets were taken out and they were 12 in number. One of the packets (of transparent polythene) was opened and it was found containing two small packets, which after opening were found to be containing dark brown colour substance, which smelled like charas. A small quantity of the charas was taken out and tested with the help of DD kit, which gave positive result for charas. The remaining 11 packets, out of which 02 were wrapped with light colour tape, 05 packets on which best quality was written contained 02 packets each and remaining 04 packets having no marking containing 02 packets each. A small quantity was taken out from each packet and upon testing from DD Kit, they were positive for charas. Since the recovered substance in all the packets was similar, it was collected in separate transparent polythene and mixed homogeneously after breaking and upon weighing, it came out to be 14 kg. Two samples of 25 gms each were drawn out and put inside zip lock polythene pouches and kept inside two white colour paper envelopes and marked A1 and A2. The remaining substance was tied from mouth of the polythene with help of plastic rope and was kept in another transparent polythene, and its mouth too was tied with plastic rope. Both the polythene containing remaining substance and the packing material was kept in separate plastic bag and was marked as "A" .

4. At this stage, learned counsel pointed out that by mixing the contents of the ploythene/ packets before weighing individually and drawing any sample, the sanctity of the case property was lost but also the evidence as to how much each packet weighed. In support this submission, reliance is placed upon a decision of a Coordinate Bench of this Court dated 13.03.2020 in Criminal Appeal No. 1027/2015, titled as Amani Fidel Chris Vs. NCB, wherein the accused was acquitted while observing

that mixing of the substance before drawing any sample vitiates the entire sample. Reliance was also placed upon a decision of High Court of Allahabad dated 14.10.2020 in Bail Application 24444/2020, titled as Satish Vs. State of UP. In addition, learned counsel also placed reliance upon a decision dated 02.07.2012, pronounced by me in CrI. Appeal 909/2005, titled as Basant Rai Vs. State.

5. On the contrary, learned counsel appearing for respondent/NCB submits that the decisions relied upon by the petitioner are on conviction, whereas in the present case, trial is still pending and if petitioner has a strong case, benefit of the same can be taken during trial.

6. Heard learned counsel appearing from both the sides.

7. In Basanti Rai (Supra), while dealing with a case where accused was found carrying a polythene bag containing 8 similar polythene bags having brown colour substance and Investigating Officer took small pieces of charas from each packet, mixed the same and drew two sample parcels which were sent to FSL for analysis, while allowing the appeal I had held as under:-

"25. After hearing both the learned counsel for parties and going through the Trial Court Record, I find force in the submission of learned counsel for appellant. Admittedly, the samples were drawn after breaking small pieces from 08 of the polythene bags which were allegedly kept in a green coloured bag by the appellant in his right hand. The 10 prepared two samples of 25 grams each after taking a small quantity from each of the slabs.

26. Though the settled law is that if it is not practicable to send the entire quantity then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination. Otherwise, result thereon, may be doubted.

27. For example, if the 08 packets were allegedly recovered from the appellant and only two packets were having contraband substance and rest 6 packets did not have any contraband; though all may be of the same colour, when we mix the substances of all 8 packets into one or two; then definitely, the result would be of the total quantity and not of the two pieces. Therefore, the process adopted by the prosecution creates suspicion. In such a situation, as per settled law, the benefit thereof should go in favour of the accused. It does not matter the quantity. Proper procedure has to be followed, without that the results would be negative."

8. The fact of the present case is that prosecution has mixed all the packets and thereafter, sent to FSL for examination, which is contrary to the procedure prescribed under the law.

9. The petitioner is in judicial custody since 20.01.2017. No doubt the recovered substance in the present case is of commercial quantity, however, the procedure prescribed is contrary to the dictum of this Court. This court is informed by learned counsel for the petitioner that no other case is

pending to the credit of the petitioner and he is not likely to get involved in any other case during bail.

10. Keeping in view the aforesaid fact, petitioner qualifies both the conditions stipulated under Section 37 of NDPS Act. Therefore, I am of the view that petitioner deserves bail. Accordingly, petitioner is directed to be released on bail forthwith on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount, to the satisfaction of the trial court.

11. Petitioner shall not directly or indirectly influence the witnesses or tamper with the evidence.

12. Trial court shall not get influenced by any observations made in this order.

13. The petition is disposed of accordingly.

14. A copy of this order be transmitted to the trial court and Jail Superintendent concerned for information and compliance.

15. The petition is accordingly disposed of.

16. The order be uploaded on the website of this Court forthwith.

SURESH KUMAR KAIT, J FEBRUARY 04, 2021 r