

Ashish Anandrao Rangari vs State Of Nct Of Delhi on 4 February, 2025

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 4456/2024 & CRL.M.(BAIL) 205

ASHISH ANANDRAO RANGARI

STATE OF NCT OF DELHI
Through:

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA
ORDER

% 04.02.2025

1. The present application has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking grant of regular bail in FIR No. 0167/2024 dated 29.08.2024 registered under Sections 22/23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') at Police Station (P.S.) - Crime Branch, Delhi.

2. As per the case of the prosecution, on 29.08.2024, on basis of secret information, a raid was conducted at DHL Office, Plot No. 40, Okhla Phase- III, New Delhi and a parcel labelled 'By Medway Enterprises' was recovered. Upon checking, 10 boxes of Zolpidem tablets containing 1500 tablets were found inside the said parcel and the total weight of the recovered contraband was 300 grams. It is stated that subsequently, the This is a digitally signed order.

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3. It is stated the during the investigation, the Applicant disclosed that he is the proprietor of the firm-Medway Enterprises, which deals in export of generic and branded medicines for past two (2) years. The Applicant completed his M. Pharmacy in the year 2012. He was gainfully employed

between 2013 to 2022 and thereafter, he started the aforesaid independent proprietorship Firm. The Applicant enlisted his firm on e-commerce platform of IndiaMART and foreign customers reached out to him for the orders.

4. In the month of July, 2024, the Applicant had booked an order of 100 strips of Zolfresh 10 mg tablets for one of his USA based client, Mr. Neal Ram Naraine. The Applicant purchased the said tablets from a wholesale distributor-Mukund and Company, who in-turn had purchased the medicines from the manufacturer, Abbott India Pvt. Ltd. It is stated that all invoices related to the sale and purchase of the said medicines were collected and verified by the prosecution.

5. It is stated that on 12.07.2024, the Applicant sent these medicines through a local courier and it reached the office of the DHL at Delhi for shipping to USA. It is stated that the Applicant failed to procure medical prescription from his client, Neal Ram Naraine before dispatching the consignment. It is stated that due to absence of necessary documents, the said parcel got stuck in DHL office.

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6. It is stated that between 22.07.2024 to 22.08.2024, the Applicant addressed numerous e-mails to DHL to return the package to him at the original address.

7. It is stated that in this background on 29.08.2024, the Department received secret information that the aforesaid parcel contains a narcotic substance. It is stated that medicine-Zolpidem falls under the category of NRx and prescription from a registered medical practitioner is required for its sale and purchase.

8. It is stated that in the aforesaid facts, the Applicant was arrested on 31.08.2024 and investigation was carried out. The charge-sheet has been filed on 26.10.2024. The bail application filed before the Trial Court stands dismissed.

Arguments on behalf of the Applicant/accused

9. Learned counsel for the Applicant/accused states that the Applicant, who is a verified pharmaceutical exporter, operating under the name Medway Enterprise has conducted business in strict compliance with both national and international regulations, which governs the pharmaceutical trade. He states that the Applicant holds an import-export code ('IEC') and has been engaged in legitimate pharmaceutical export for some time and has a clear record with respect to compliances.

10. He states that in July, 2024 the Applicant upon receiving a legitimate business order from Mr. Neal Ram Naraine (a client based in USA), the Applicant procured 100 strips of Zolfresh 10 mg

tablets along with 5 strips of Limcee tablets from his trusted supplier and thereafter, delivered the said medicines to DHL Office, Delhi for international shipping to Mr. Neal Ram Naraine in USA. He states that at this stage, the Applicant neither had This is a digitally signed order.

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10.1. He states that the Applicant followed all the necessary procedures for exporting the said medicines and the said transaction was conducted as a routine part of his lawful business activities.

10.2. He states that in July, 2024, upon learning that Zolpidem, which is an active ingredient in Zolfresh 10mg tablets, is classified as a controlled substance under the NDPS Act, the Applicant instructed DHL to halt the delivery of the medicines to USA, to mitigate any inadvertent legal violation. In this regard, he relies upon the e-mails issued by the Applicant to DHL during the period from 22.07.2024 to 24.08.2024, giving instructions to DHL to recall the impugned shipment. The said e-mails have been placed on record as Annexure-A-7 (colly) to this application. 10.3. He states that despite repeated and well-documented instructions to DHL to recall the shipment of the said medicines, DHL in explicable failed to return the said medicines to the Applicant. He states that during this period, the Applicant had no control over the said medicines and it is pertinent to note that the Applicant has not received any financial consideration from Mr. Neal Ram Naraine for the said medicines. 10.4. He states that the conduct of the Applicant, which was in accordance with his legal obligations, demonstrates Applicant's genuine intention to adhere to law.

10.5. He states that the Applicant was fully co-operative during the investigation and no incriminating evidence has been found at the Applicant's premises.

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10.6. He states that the action of the Police is based on assumption that the Applicant was attempting to export Zolpidem unlawfully. He states that despite the absence of recovery of an any illegal material or contraband from the possession of the Applicant, the Applicant was arrested on 31.08.2024 for allegedly exporting 300 grams of Zolpidem.

10.7. He states that as per the Nominal Roll, as on 01.01.2025, the Applicant has been in judicial custody since 31.08.2024. He states that the investigation in the present matter has been completed and the charge-sheet has also been filed on 26.10.2024. He states that the matter before the Trial Court, which is at the stage of arguments on charge is being delayed due to pendency of the FSL report. He states that therefore, the continued detention of the Applicant will serve no purpose other than to cause hardships to the Applicant.

10.8. He states that there is no risk of evidence or witness tampering as there is no public witnesses and the evidence is based on documents. He states that the Applicant is 39 years old, has deep roots in the society with a permanent residence in Nagpur along with a family. He states that the Applicant is not at flight risk, as the Applicant has no intention to abscond. 10.9. He states that the Applicant has already surrendered his pharmacy license after the filing of the subject FIR and will take up employment upon being released on bail. He states that thus, the prosecution can have no apprehension that Applicant is likely to commit any offence under the NDPS Act.

10.10. He states that in view of the aforesaid, this Court be pleased to grant regular bail to the Applicant in the subject FIR.

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11. In reply, Mr. Laksh Khanna, learned APP states that since the quantity recovered in the present matter is 300 grams, which is more than the commercial quantity of 250 grams, the bar under Section 37 of the NDPS Act would be attracted and the Applicant should not be released on bail. 11.1. He states that contraband Zolpidem is a controlled medicine. He states that the contraband Zolpidem falls under the category of NRx, wherein, for sale/purchase of the said drug, a prescription is required from the Registered Medical Practitioner.

11.2. He states the Applicant's act of exporting the restricted psychotropic substance/drug to his foreign client, Mr. Neal Ram Naraine without any valid export authorization is in violation of Rule 53 of the Narcotic Drugs and Psychotropic Substances Rules, 1985 ('NDPS Rules'). He states that the Applicant's defense that the Applicant was not aware of the legal implications of exporting Zolpidem is not sustainable in law. He states that ignorance of law cannot be claimed as an excuse or a defense in law. 11.3. He states that this is not first time the Applicant has got involved in exporting of a restricted psychotropic substance/drug. He states that during the investigation, 140 bills of exporting different drugs were recovered from the Applicant's Nagpur office and on a detailed analysis of the said bills, it has surfaced that the Applicant has shipped psychotropic drugs in the past as well; though there is no allegation that the said drugs were exported illegally.

11.4. He states that from a perusal of the WhatsApp chats of the Applicant with his client, Mr. Neal Ram Naraine recovered from the Applicant's This is a digitally signed order.

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11.5. He fairly submits that the Applicant has no prior criminal antecedents apart from the present FIR. He however, states that considering the circumstances and gravity of the offence in the present matter, the Applicant is not entitled to be released on regular bail. He also confirms that the Applicant had issued e-mails to DHL between 22.07.2024 to 24.08.2024 for recall of the impugned parcel.

Analysis and conclusion

12. The present case is based on the recovery of a parcel on 29.08.2024 from DHL, Delhi office based on a secret information. It is an admitted fact that 10 boxes of Zolpidem tablet containing 1500 tablets were found inside the parcel and the total weight of the contraband was found to be 300 grams which is more than the commercial quantity under the NDPS Act. It is an admitted fact the said parcel which was supposed to be shipped to Mr. Neal Ram Naraine got held up in transit with the DHL office due to absence of proper documentation and it never reached USA.

13. It is admitted that the Applicant between 22.07.2024 to 24.08.2024 wrote several e-mails to DHL to return the said parcel to him.

14. The Supreme Court in the matter of Union of India v. Shiv Shanker Kesari², has held as under: -

"11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the (2007) 7 SCC 798 This is a digitally signed order.

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12. Additionally, the court has to record a finding that while on bail the accused is not likely to commit any offence and there should also exist some materials to come to such a conclusion."

(Emphasis Supplied)

15. The Supreme Court in Mohd. Muslim alias Hussain v State (NCT of Delhi)³ has further enunciated the law under Section 37 of NDPS Act. The relevant paragraph of the judgment is produced hereinunder:

"20. A plain and literal interpretation of the conditions under Section 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.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*¹⁹). 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 2023 SCC OnLine SC 352 This is a digitally signed order.

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(Emphasis supplied)

16. The parameters to be kept in mind while granting bail under the NDPS Act was also summarized by the Supreme Court in *State of Kerala v. Rajesh and Others* 4, wherein relevant paras read as under: -

"19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision

requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

(Emphasis Supplied)

17. The prosecution's case primarily hinges on the allegation that the Applicant attempted to export Zolpidem which falls under the category of (2020) 12 SCC 122 This is a digitally signed order.

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18. The prosecution has argued that the Applicant's attempt to export Zolpidem was in violation of Rule 53 of the NDPS Rules, which requires valid export authorization and the Applicant admittedly did not possess the same. However, in the facts of the present case, it has come on record that the Applicant between 22.07.2024 to 24.08.2024 wrote several e-mails to DHL to return the said parcel to him. The e-mails written by the Applicant to DHL, whereby the Applicant had requested DHL to send back the subject parcel have been placed on record and marked as Annexure A-7 (colly). A perusal of the said e-mails makes it evident that indeed the Applicant has asked DHL not to ship the subject parcel to USA and rather return it to the Applicant at the earliest. The prosecution admits the issuance of the said e-mails by the Applicant and in fact the said e-mails were responded to by DHL. The said e-mails therefore, evidence that the Applicant made best endeavour to retrieve the parcel and stop it from reaching USA. It is also a matter of record that no financial consideration This is a digitally signed order.

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19. In this case, no consideration had been received by the Applicant and delivery had admittedly not been affected to the client. The submission of the Applicant that he retained the constructive possession of the drugs until its delivery by DHL to the client and since, the Applicant recalled the parcel and issued stop delivery instructions to DHL also has merit, indicates the bona fide of the Applicant and its final effect would be considered at the final stage of trial. The possession of the drugs with the Applicant was otherwise lawful, since he held a valid license and therefore, the benefit of the fact that the Applicant admittedly recalled the parcel from DHL has to be extended to him at the stage of grant of bail.

20. Pertinently, the Applicant has surrendered his pharmacy license and therefore, he is not likely to commit similar offence while on bail.

21. In the aforesaid facts, this Court is of the opinion that the Applicant's defence has prima facie met the rigors of Section 37 of the NDPS Act. The charge-sheet stands filed in October, 2024. The case of the prosecution is based on documents and there are no public witnesses, which can be influenced by the Applicant.

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22. In view of the foregoing, and the fact that the trial in this case is anticipated to take some time, it would not be prudent to keep the Applicant behind bars, this Court deems it to be a suitable case for the Applicant's release on bail. As a result, the Applicant is directed to be released on bail in FIR No. 0167/2024 dated 29.08.2024 registered under Sections 22/23 of the NDPS Act at Police Station (P.S.) - Crime Branch, Delhi, upon providing a personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount subject to the satisfaction of the Trial Court, and further subject to the following conditions: -

(i) Applicant will not leave the country without prior permission of the Court.

(ii) Applicant shall provide permanent address to the Trial Court. The Applicant shall intimate the Court by way of an affidavit and to the IO regarding any change in residential address.

(iii) Applicant shall appear before the Court as and when the matter is taken up for hearing and not seek any unnecessary adjournment.

(iv) Applicant shall join investigation as and when called by the IO concerned.

(v) 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 IO concerned.

(vi) Applicant will report to the concerned IO of the local police station in Nagpur i.e., P.S. Hingna, Nagpur every second and fourth Friday of every month, at 4:00 PM, and will not be kept waiting for more than an hour.

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(vii) Applicant shall not indulge in any criminal activity and shall not communicate with or come in contact with any of the prosecution witnesses, or tamper with the evidence of the case.

23. Needless to state, but any observation touching the merits of the case is purely for the purposes of deciding the question of grant of bail and shall not be construed as an expression on merits of the matter.

24. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

25. Accordingly, this bail application is disposed of. Pending applications (if any) are disposed of as infructuous.

26. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J FEBRUARY 4, 2025/MG Click here to check corrigendum, if any This is a digitally signed order.

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