

Rex Ajmeria @ Rajeev Rex vs Narcotics Control Bureau on 9 March, 2022

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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BAIL APPLN. 3644/2021

REX AJMERIA @ RAJEEV REX

Through: Mr. N. Hariharan, Senior Advocate
alongwith Mr. Yogesh Saxena, Mr. Vaibha
Sharma, Ms. Punya Rekha Angara, Mr. Pra
Bhalla & Mr. Mandeep Dahiya, Advocates

Versus

NARCOTICS CONTROL BUREAU

..... Respondent

Through: Mr. Subhash Bansal, Senior Standing
Counsel alongwith Mr. Shashwat Bansal,
Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
ORDER

% 09.03.2022

1. The present bail application has been filed under Section 439 Cr.P.C. on behalf of the applicant seeking regular bail in SC No. 132/2021, Crime No. VIII/13, 13A/DZU/2020 registered under Sections 8/22/23/25/29 of the NDPS Act at Police Station NCB, R.K. Puram, New Delhi.

2. Mr. N. Hariharan, learned Senior Counsel for the applicant submits that the applicant has been in judicial custody since 12.04.2021 and the complaint having been filed, the applicant is no longer required for any investigation. It is submitted that as per the prosecution case, the present case came to be investigated on receipt of secret information on 12.02.2020, when three parcels sent by the name of Jitendra Kumar to Aurangabad, Surat and Bokaro were found to be lying at Tirupati Courier Service Private Signature NotVerified Digitally Signed By:SANGEETAANAND Limited, Punjabi Bagh, New Delhi which were later found to contain medicines, subsequently on checking opined to be narcotics.

3. Learned Senior Counsel for the applicant submits that the applicant has been falsely implicated in the present case and there is no incriminating material collected against him during the course of investigation. It is further submitted that neither any recovery has been effected from the present applicant nor any such material has been come during investigation, which connects him to the alleged offence. He submits that the material put against the present applicant are the statements of

co-accused recorded under Section 67 of the NDPS Act, which are inadmissible in law in terms of the celebrated decision of the Supreme Court in Tofan Singh v. State of Tamil Nadu reported as (2021) 4 SCC 1. Lastly, he submits that the applicant is not found involved in any other case.

4. Mr. Subhash Bansal, learned Senior Standing Counsel appearing on behalf of the respondent/NCB, on the other hand, has opposed the bail application. He, while, relying on the statement of the co-accused, namely, Kashmir @ Mausam recorded during investigation has submitted that he in his statement, had disclosed about one Preeti, who had earlier worked for him and had stated that the applicant, Kashmir @ Mausam and other co-accused were working together and she had joined the job in the year 2016. Though, she has joined in the year 2016 but had left thereafter and only re-joined co-accused, namely, Arun Kumar in the year 2018. It is submitted that in her statement, she had further stated that the applicant alongwith other co-accused persons used to deal in Valium, Alko & Zolfresh medicines and used to send the same through parcels. It is further submitted that the statement of Vishwas (brother of Kashmir @ Mausam) has also been Signature NotVerified Digitally Signed By:SANGEETAANAND recorded, who has stated that he has seen the applicant and accused working together. Lastly, he submits that the present case relates to seizure of commercial quantity of NRX (psychotropic medicines).

5. Besides above, reliance is also placed on Call Detail Records, which according to the learned counsel for the respondent, establish call connectivity between the co-accused persons. He, however, on instructions, submits that the applicant is not involved in any other case.

6. I have heard learned counsels for the parties and have gone through the entire material placed on record.

7. As per the prosecution case, a source information was received on 12.02.2020 that three parcels were lying at Tirupati Courier Service Private Limited, Punjabi Bagh, Delhi. The said parcels were checked, which resulted in recovery and seizure of 2250 tablets of Alprazolam (450 grams); 490 tablets of Lorazepam (98 grams) from parcel bearing No. 311900047136, 3000 tablets of Alprazolam (600 Grams) from parcel bearing No. 311900047137; and 100 tablets of Tramadol (40 Grams) from parcel bearing No. 311900047135.

8. It is the case of the prosecution that Bharat Shiyani, the owner of Tirupati Courier Service Private Limited, disclosed the address of the person, who had booked the said parcels as Flat No. 1101, H-3 Block TDI, Kingsbury Kundli, Sonipat and also showed his photo in his mobile phone. Thereafter, raid was conducted at the aforesaid premises, however the same were found to be locked. It is stated that two persons, namely, Salman and Madhu who were present near the said flat, were shown the said photograph. After seeing the photograph, Salman informed the name of the said person as Kashmir @ Mausam and stated that he was having a business of medicines Signature NotVerified Digitally Signed By:SANGEETAANAND and was living in the Penta House of Flat No. 1102 of the same building. Subsequently, during raid proceedings, further NRX tablets were seized from Penta House of Flat No. 1102, Block H-3, Kingsbury, TDI Kundli, Sonipat, Haryana which is stated to be the tenanted premises of Kashmir @ Mausam.

9. From the discussion hereinabove, it is apparent that the entire recovery prima facie is attributed to Kasmir @ Mausam. Admittedly, there has been no recovery from or at the instance of the present applicant. The only link between the present applicant and Kasmir @ Mausam is the Call Detail Records or the statements of Preeti and Vishwas recorded under Section 67 of the NDPS Act. A perusal of the statement of Vishwas would show that he had stated that the applicant used to work alongwith Kasmir @ Mausam and others whereas the statement of Preeti would show that the applicant, Kasmir @ Mausam and others used to deal in Valium, Alko & Zolfresh medicines, which are stated to be NRX.

10. It is worthwhile to note that none of the aforesaid tablets have been seized in the present proceedings. Further, as per the statement of Preeti the allegations relates to the year 2016/2018, which according to the learned Senior Counsel for the applicant is only presumptive in nature.

11. Keeping in view the aforesaid facts and circumstances of the case and on prima facie reading of the entire material placed on record, this Court is of the opinion that bar of Section 37 of the NDPS Act is met in the present case. Accordingly, it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/Duty M.M./concerned Court and subject to the following further conditions:-

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(i) The applicant shall remain available on mobile number:

8813855177, which shall be kept operational at all times during the pendency of the trial.

(ii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.

(iii) The applicant shall regularly appear before the concerned Court during the pendency of the trial.

(iv) The applicant shall not leave the NCR of Delhi without prior permission of the concerned Court.

(iv) The applicant shall not directly/indirectly try to get in touch with the complainant or any other prosecution witnesses or tamper with the evidence.

12. The bail application stands disposed of in the above terms.

13. A copy of this order be communicated electronically forthwith to the concerned Jail Superintendent for information.

14. A copy of this order be also uploaded on the website forthwith.

15. Needless to state that nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case.

MANOJ KUMAR OHRI, J MARCH 9, 2022 p'ma Click here to check corrigendum, if any Signature
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