

Tunkara Ali vs Narcotics Control Bureau on 5 April, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 3490/2021
TUNKARA ALI

.....
Through: Mr.J.S.Kushwaha, Advocate, A

versus

NARCOTICS CONTROL BUREAU

Through: Mr.P.C.Aggarwal, A

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 05.04.2022

1. This petition is for grant of regular bail to the petitioner who was arrested on 07.04.2019 and on search of his bag, 24 ladies bags were found and when each bag was searched it was found to contain a packet of white crystal substance. 24 packets were recovered from the bag and on testing the contents of all the packets it was found to be Pseudoephedrine. The total weight of the drug was 22 kg and the contents of all the 24 packets was transferred in a transparent polythene and mixed homogeneously and after that two samples were taken for sending to FSL.

2. Earlier the petitioner moved bail application No.1516/2020 before this Court which was withdrawn on 06.10.2020.

3. The bail application was moved before the Special Judge, NDPS but it was dismissed vide order dated 10.03.2021.

4. It is submitted by learned counsel for the petitioner though the prosecution has allege 24 ladies bag were recovered and each contained the substance but no separate samples were obtained from each of the ladies bag and such proceeding are against the standing orders 1/88 dated 15.03.1988 issued by Narcotics Control Bureau, for which reference is made to order dated 13.03.2020 in Crl.Appeal 1027/2015 passed by this Court which portion is as under:

13. The manner of drawing a sample of narcotics has been laid down in Standing Order 1/88 dated 15.03.1988 issued by the Narcotics Control Bureau. The relevant

paras of the Standing Order are reproduced as under :-

"1.5 Place and time of drawal of sample. - Samples from the Narcotic Drugs and Psychotropic Substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from whose possession the drug is recovered, and mention to this effect should invariably be made in the panchnama drawn on the spot.

1.6 Quantity of different drugs required in the sample - The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas/Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn 1.7 Number of samples to be drawn in each seizure case-

(a) In the case of seizure of single package/container one sample in duplicate is to be drawn. Normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.

(b) However, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect/the packages/container may be carefully bunched in lots of 10 packages/containers may be bunched in lots of 40 such packages such packages/containers.

For each such lot of packages/containers, one sample in duplicate may be drawn.

(c) Where after making such lots, in the case of Hashish and Ganja, less than 20 packages/containers remains, and in case of other drugs less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.

(d) If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish, one more sample in duplicate may be drawn for such remainder package/containers.

(e) While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot."

(emphasis added)

14. Pari materia with Standing Order 1/88 is the Standing Order No.1/89 dated 13.06.1989 issued under subsection (1) of Section 52A of NDPS Act by the Department of Revenue, Ministry of Finance, Government of India. Section (II) provides for general procedure for sampling, storage and reads as under:-

"SECTION II- GENERAL PROCEDURE FOR SAMPLING, STORAGE ETC.

2.1 All drugs shall be properly classified, carefully, weighed and sampled on the spot of seizure.

2.2 All the packages/containers shall be serially numbered and kept in lots for sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witness (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchanama drawn on the spot.

2.3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in cases of opium, ganja and charas (hasish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages /containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4 In the case of Seizure of a single package/container, one sample (in duplicate) shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.

2.5 However, when the packages/containers seized together are of identical size and weight, bearing identical markings and the content of each package given identical results on color test by the drug identification kit, conclusively indicating that the packages are identical in all respects, the packages/containers may be carefully bunched in lots of 10 packages/ containers/except in the case of ganja and hashish (charas), where it may be bunched in lots of 40 such packages/containers. For each such lot of packages/containers, one sample (in duplicate) may be drawn.

2.6 Whereafter making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching will be necessary and no sample need to be drawn.

2.7 If such remainders are more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such a reminder package /container.

2.8 While drawing one sample (in duplicate) from a particular lot, it must be ensured that representative sample are in equal quantity is taken from a package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot. 2.9 The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should bear the S.No. of the package(s)/containers from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope which should also be sealed and marked „secret-drug sample/ Test memo is to be sent to the chemical laboratory concerned. 3.0 The Seizing officers of the Central Government Departments, viz., Customs. Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, Directorate of Revenue Intelligence etc. should dispatch samples of the seized drugs to one of the Laboratories of the Central Revenues Control Laboratory nearest to their office depending upon the availability of test facilities. The other Central Agencies like BSF, CBI and other Central Police Organizations may send such sample to the Director, Central Forensic Laboratory, New Delhi. All State Enforcement Agencies may send samples of seized drugs to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.

3.1 After sampling, detailed inventory of such packages /containers shall be prepared for being enclosed to the panchanama. Original wrappers shall also be preserved for evidentiary purposes."

5. Admittedly, Pseudoephedrine recovered does not attract bar under Section 37 of NDPS Act. The respondent in para 6 of their reply to the bail application admitted it as under :

6. That so far as submission of the accused that Section 37 of NDPS Act is not applicable in the present case as recovery is of controlled substance, in this regard it is submitted that although Section 37 of NDPS Act is not applicable in the present case even then present offence is of the serious in nature since the recovery of substance is in very heavy quantity and in this regard complainant department is relying upon the judgment of Hon ble Delhi High Court whereby it has recently dismissed a bail application in Bail Application No.277 of 2020 in case titled as Nagary Ally Kamba Vs. Narcotics Control Bureau dated 24.11.2020 wherein petitioner was involved in a case of recovery of 24.5 kg Pseudoephedrine and recovery was effected from his co-accused, even then the Hon ble Court dismissed the bail application whereas in the present case entire recovery was effected from the accused and therefore submission of the accused in this regard is not tenable and liable to the dismissed.

6. Admittedly the petitioner is inside the jail for the last three years, being arrested on 07.04.2019.

7. Considering the submissions above, viz. the violation of standing orders 1/88 and 1/89 as also the fact that the above drug does not attract the bar under Section 37 NDPS Act, thus relying upon

Niranjan Jayantilal Shah Vs. Directorate of Revenue Intelligence 2014 (2) LRC 295 (Del), I admit the petitioner on bail on his executing a personal bond of Rs.1.00 lac with one surety of the like amount to the satisfaction of the learned Trial Court/Duty MM.

8. The petitioner is directed to deposit his passport, if any, with the trial court and shall not leave the country without the permission of the trial court. He shall also furnish latest address to the respondent and also change in the address, if any.

9. He shall keep his mobile location app open at all time.

10. The bail application stands disposed of in above terms.

11. Copy of this order be sent electronically to the learned Trial Court for information and compliance.

YOGESH KHANNA, J.

APRIL 05, 2022 VLD