

Lovedeep Nath vs Union Territory Of J&K & Another on 28 January, 2022

Author: Tashi Rabstan

Bench: Tashi Rabstan

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 30.12.2021
Pronounced on : 28.01.2022

Bail Application No.296/2021

Lovedeep Nath

.....Petitioner(s)

Through: Ms Zainab Shamas Watali, Advocate

versus

Union Territory of J&K & another

.....Respondent(s)

Through: Mr. Amit Gupta, AAG

Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE

JUDGMENT

1. The petitioner has filed this application for grant of bail for the commission of offences punishable under Sections 8/21/22/27-A/29 NDPS Act in case FIR No.28/2019 dated 15.03.2019 registered at Police Station Miran Sahib, Jammu

2. As per the story of prosecution, on 15.03.2019 at 19:35 hours during checking near Kullian, R.S. Pura, the police noticed that two passengers coming from R.S. Pura side on seeing police checking when tried to ran away towards Kullian, the police chased and apprehended them. During their search 3000 capsules of Tramadol were recovered from their possession and they disclosed their names as Lovedeep Nath and Jaswant Singh. However, both of them failed to render any explanation regarding the possession of 3000 capsules each nor they produced any doctor's prescription, license, permit or authorization to carry the said contraband illegally.

3. Learned counsel appearing for petitioner argued that the embargo contained under Section 37 of the NDPS Act is not applicable in the present case because neither the weight/quantity of the narcotic content in the capsules nor the weight of capsules allegedly recovered from the possession of accused has been mentioned in the charge sheet, even the report of FSL is silent regarding the percentage of narcotic content in the capsules. Learned counsel further argued that it is not the

number of capsules that will establish whether the recovery of narcotic substance effected from applicant falls is small, intermediate or commercial quantity, but it is only the weight of narcotic substance which determines the quantity.

4. Objections/status report has been filed by the respondents. While opposing the bail of petitioner, it is contended that accused Jaswant Singh was in the business of selling narcotics in District Jammu and its adjoining areas, namely, Arnia, Miran Sahib, R.S. Pura, who had an established network of the addicts, who were his regular clients. It is contended that the main accused, namely, Ajay Kumar Anand has already been released on bail. It is further contended that the police have failed to arrest one Ramakant, son of Lok Chand, resident of Hindpura, Rajasthan, from whom main accused Ajay Kumar was procuring capsules.

5. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the order of the trial court rejecting the bail application of petitioner herein.

6. The specific stand taken in the bail application as also the main argument of learned counsel for petitioner is that neither the weight/quantity of the narcotic content in the capsules nor the weight of capsules allegedly recovered from the possession of accused has been mentioned in the charge sheet, even the report of FSL is silent regarding the percentage of narcotic content in the capsules.

7. Admittedly, the status report filed by the respondents is silent regarding the percentage of narcotic content in the capsules or the weight of capsules allegedly recovered from the possession of accused. The status report came to be filed on 29.11.2021 and even after a lapse of more than two years and eight months, the investigating agency/respondents have failed to disclose the percentage of narcotic content in the capsules. The respondents also have not denied that the Challan as well as the report of FSL did not mention the percentage of narcotic content in the capsules, even the trial Court while rejecting the bail application did not deal with this specific aspect of the matter; meaning thereby one can find force in the argument of learned counsel for petitioner that the embargo contained under Section 37 of the NDPS Act is not applicable in the present case once the investigating agency has itself failed to disclose the percentage of narcotic content in the capsules or the weight of capsules in the Challan. A perusal of the status report reveals that the investigation has not been conducted in a professional manner.

8. Further, in the status report, the respondents have averred that during the course of investigation it was found that the accused, namely, Jaswant Singh was in the business of selling narcotics. It is also the stand of respondents in the status report that the main accused, namely, Ajay Kumar Anand, who was arrested on 25.03.2019, has already been admitted to bail on 05.10.2019. The respondents in their status report have stated that the petitioner, namely, Lovedeep Nath, was the servant and working as a helper in the shop of main accused Ajay Kumar Anand and that Ajay Kumar Anand has already confessed that he had been procuring capsules from one Ramakant from Rajasthan, who has not been arrested as yet despite lapse of about three years. Thus, the respondents have themselves admitted that the main accused Ajay Kumar Anand has already been admitted to bail on 05.10.2019. Further, one cannot lose sight of the fact that the petitioner, who was the servant of main accused, has been in jail for the last about three years and that the main

accused has already been admitted to bail.

9. Further, denial of bail is an exception, to be exercised only when there are circumstances indicating absconding from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the accused who seeks enlargement on bail. The respondents in their objections have not stated that the petitioner is a habitual offender or that if he is enlarged on bail, there is every likelihood of his repeating the offence or intimidating the witnesses.

10. In case of *Rajesh Ranjan @ Pappu Yadav v. Central Bureau of Investigation* (2007), the Supreme Court held that the grant of bail depends upon factual matrix of the case and no straight-jacket formula can be laid down for grant of bail.

11. In *Prasad Shrikant Purohit v. State of Maharashtra* (2018) the Supreme Court has held, "While considering a bail application, detailed appreciation of the evidence is not required, but the court must find out if there is prima facie evidence in support of charges levelled. Court must also examine the nature and severity of the offence and penal consequences. The court must also consider apprehension of tampering with or threat to witnesses of the complainant".

12. Therefore, in view of what has been discussed above and without commenting on the merits of the case, prima facie it seems there are reasonable grounds to admit the petitioner to bail, more particularly when the main accused has already been admitted to bail, however, of course subject to the following conditions:

i. Petitioner is ordered to be released on bail subject to his furnishing bail bonds to the sum of Rs.20,000/- (rupees twenty thousand only) with two sureties of the like amount to the satisfaction of jail authorities.

ii. Petitioner shall appear before the trial Court on each and every date of hearing.

iii. Petitioner shall not threaten, intimidate, induce or allure the prosecution witnesses and shall not tamper with the prosecution evidence.

iv. Petitioner shall not leave the territorial jurisdiction of the UT of J&K without prior permission.

v. It is made clear that the trial Court shall not be influenced by any of the observations, if any made hereinabove, while proceeding further with the trial of the case.

13. Let a copy of this order be sent to the learned trial Court.

Jammu :
28.01.2022
(Anil Sanhotra)

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Whether the order is reportable ?
Whether the order is speaking ?