



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd January, 2025

Pronounced on: 28th January, 2025

+ BAIL APPLN. 3730/2023, CRL.M.A. 34946/2024 & CRL.M.(BAIL) 1940/2024

MOHIT JAISWAL

.....Petitioner

Through: Mr. Aditya Aggarwal, Mr. Naveen Panwar and Mr. Mohd. Yasir, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Mr. Ravi Sharma, SPP with Mr. Swapnil Choudhary, Mr. Ishann Bhardwaj, Mr. Sagar and Ms. Madhulika Rai Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. The present application under Section 439 of the Code of Criminal Procedure, 1973¹, seeks grant of regular bail in FIR No. RC2202023E0016 dated 06th July, 2023, under Section 8 read with Sections 22, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985², registered at P.S. CBI EO-II, New Delhi. At the outset it is noted that even though the Applicant has not been explicitly named in the FIR, he was arrested pursuant to an investigation conducted by CBI under the said FIR.

2. Briefly stated, the case of the prosecution is as follows:

¹ "CrPC"

² "NDPS"



2.1 On 04th July, 2023, the National Crime Bureau, New Delhi³ received a reference from the Interpol Drug Unit concerning three parcels that had arrived in India from Belgium and were suspected to contain prohibited drugs. The details of the recipients of these parcels are as follows: – (i) Arjun Gupta at Mumbai, (ii) Anil Kumar at Baraut Tehsil, Prayagraj and (iii) Rohit Yadav at Gokul Dhaba, Prayagraj. The Interpol reference further informed NCB that 2 out of the 3 parcels were detained by Customs and the third was at a collection point awaiting further action. Upon receiving this intelligence, the NCB contacted the Customs Department to ascertain the status of the parcels. The Customs Department confirmed that two of the parcels were custody.

2.2 Acting on this information, the two suspected parcels detained by Customs were seized by the CBI at the Foreign Post Office, Kotla Road, New Delhi. In the presence of two independent witnesses from the Customs Department, the parcels were opened at the Foreign Post Office. Upon inspection, the parcels were found to contain pills of various colours, which, when tested using an NDPS Detection Kit, tested positive for MDMA. Consequently, on 06th July, 2023, 2 CBI cases bearing RC 2202023E0016 and RC 2202023E0017 were registered in CBI EO-II, New Delhi under Section 8 read with Sections 22, 23, and 29 of the NDPS Act, against the persons named as ‘receivers’ on the parcels, as well as unknown others – i.e., Rohit Yadav and unknown others and Anil Kumar and unknown others.

2.3 The FIR which forms the subject matter of the present application, i.e., RC 2202023E0016, pertains to a parcel containing 1880 grams of MDMA; while FIR bearing No. RC 2202023E0017, relates to a parcel

³ “NCB”



containing 1852 grams of MDMA.

2.4 Subsequently, CBI formulated a plan to apprehend the suspects in the case. In order to secure the original psychotropic substance and to avoid any untoward incident during the controlled delivery process, two dummy parcels were prepared, in lieu of the 2 original parcels seized. The dummy parcels were forwarded through the Foreign Post Office to the designated addresses in order to lead the receiver to believe that they were the original parcels containing psychotropic substances, thereby enabling the arrest and apprehension of the receiver while taking possession of the incriminating parcels. A team comprising CBI officials and independent witnesses from the Customs Department was formed and dispatched to the relevant Post Office in Baraut, Prayagraj. The CBI team also briefed the officials at the Post Office about the operation, including the identification and apprehension process for the suspected receivers.

2.5 During investigation on 11th July, 2023, the Applicant – Mohit Jaiswal, both in-person as well as telephonically enquired about the parcels addressed to ‘Rohit Yadav’ and ‘Anil Kumar’ from a Postman at the Baraut Post Office. Later the same day, the Applicant arrived at the Post Office with his face partially concealed using a white cloth (gamcha). He approached the Postman’s counter to collect the parcels. Upon being identified as Mohit Jaiswal, the Postman handed him the parcel addressed to ‘Rohit Yadav’. When the Applicant attempted to sign on the delivery slip, the Postman discreetly signalled to the waiting CBI team. However, sensing the presence of the CBI team, the Applicant abruptly dropped the parcel on the floor and fled the premises. Thereafter, CBI arrested the Applicant – Mohit Jaiswal on 13th July, 2023, and subsequently secured a transit remand



to produce him before the competent Trial Court in Delhi.

2.6 Furthermore, another suspect, Anil Kumar, in whose name one of the parcels was addressed and who is identified as the driver of the Applicant, also telephonically contacted the Postman on 11th July, 2023, to inquire about the parcel in his name. However, unlike the Applicant, Anil Kumar did not visit the Post Office to take delivery of the parcel and is presently absconding.

2.7 The Postman who witnessed the entire incident has provided a statement under Section 161 of the CrPC. He stated that on the morning of the incident, the Applicant, Mohit Jaiswal, approached him and inquired about the parcels received under the names of 'Rohit Yadev' and 'Anil Kumar'. The Applicant explicitly informed the Postman that both parcels belonged to him and that he would come to collect them. Later, when the person arrived to collect the parcels, the Postman identified him as the Applicant, Mohit Jaiswal. He also confirmed receiving calls from both Mohit Jaiswal and Anil Kumar regarding the collection of the parcels.

2.8 During interrogation, the Applicant disclosed in his statement dated 13th July, 2023, that he acted under the instructions of his brother-in-law, Vinod Jaiswal, who allegedly directed him to collect the parcel containing psychotropic substances. Both Vinod Jaiswal and Anil Kumar are absconding and Non-Bailable Warrants have been issued against them.

2.9 Pertinently, during the investigation, CBI visited the address provided on the parcel listed under the name of 'Rohit Yadev'. Upon inquiry, Rohit Yadev categorically denied any connection with the parcel and stated that he had no knowledge of such a delivery. Further investigation into his involvement revealed no evidence linking him to the parcel containing



psychotropic substances, apart from the use of his name on the shipment.

2.10 As for the parcel booked under the name of Anil Kumar, the CBI found that the address mentioned was incomplete, making it impossible to attempt delivery at the specified location.

2.11 The ongoing investigation into the larger international drug-trafficking cartel is at an advanced stage and remains critical. Chargesheets have been filed against the Applicant in both the present FIR as well as FIR No. RC 2202023E0017. In the latter, the Special Court, NDPS, has already taken cognizance and framed charges against the Applicant under Section 8 read with Sections 22, 23, and 29 of the NDPS Act. Therefore, the Applicant is required to be kept in judicial custody, in order to unearth the larger conspiracy at hand. He has been apprehended in relation to cases where cumulatively the quantity of MDMA is more than 3.6 Kgs, which is much more than the prescribed commercial quantity of 10 grams. In terms of the present FIR, the quantity of the seized drugs was found to be 1880 grams, which is 188 times more than the commercial quantity. Thus, the Applicant must satisfy this Court in terms of the rigours of Section 37 of the NDPS Act. Releasing the Applicant on bail, at this stage, would seriously affect the ongoing investigation as he may attempt to inform other accused/related persons about the investigation, or try to flee to other countries where Indian authorities cannot extradite him.

3. Mr. Aditya Aggarwal, counsel for the Applicant, submits that the Applicant is a law-abiding citizen of India, who has been falsely implicated in the FIR. Mr. Aggarwal points out that the Applicant has neither been named in the present FIR, nor is he the main accused and the facts stated in the FIR are fabricated, concocted and baseless. He submits that during the



initial period of custody, the Applicant was forced to sign sheets of paper that were already written, without his voluntary affirmation or comprehensive understanding and he was also forced to sign a document which was backdated as 13th July, 2023.

4. Counsel further submits that the Applicant was merely assisting his brother-in-law, Vinod Jaiswal, who resides in Mumbai, by collecting the parcels on his behalf. The Applicant had no knowledge of the contents of the parcels and thus lacked the necessary element of *conscious possession* under the NDPS Act. In support of this submission, reliance is placed on the judgement of this Court in ***Sunil Kumar v. DRI***⁴, wherein the Court granted bail to an accused person on the ground that they were unaware of the contraband contained in the parcel and were only assisting another individual in collecting it.

5. Additionally, counsel for the Applicant argues that nothing incriminating has been found to link the Applicant to the alleged drug trafficking network. The Applicant was neither the sender nor recipient of the parcel and his name is not mentioned in any of the documents relating to the couriers in which the parcel was sent. Moreover, there are no CDR calls or Bank transactions either between the consignee of the parcels and the Applicant, or between any customers and the Applicant. The sole piece of evidence against the Applicant is his purported disclosure statement recorded under Section 67 of the NDPS Act. However, such a statement is inadmissible as evidence in light of the Supreme Court in ***Tofan Singh v. State of Tamil Nadu***⁵. Therefore, Counsel for the Applicant urges that since

⁴ Bail application no. 3031 of 2022, decided on 15th July, 2024.

⁵ (2021) 4 SCC 1



a considerable amount of time has lapsed since the Applicant was taken into custody on 13th July, 2023, and a chargesheet against him has also been filed, no useful purpose will be served by keeping him in custody any longer. The Applicant does not have any previous criminal antecedents and has deep roots in society, thus, there is no possibility of him absconding from the process of the law.

6. On the other hand, Mr. Ravi Sharma, SPP for CBI strongly opposes the present application, arguing that the Applicant is involved in an International Drug cartel and the investigation in the present case clearly establishes the Applicant's culpable state of mind. Mr. Sharma points out that the Applicant enquired about the parcels in question and later approached the Post Office covertly, concealing his face with a white cloth. Upon sensing the presence of the CBI team, the Applicant discarded the parcel on the floor and fled from the scene, further strengthening the inference of guilty intent. This, coupled with his disclosure statement wherein he has admitted to his involvement in the possession and trafficking of contraband goods, establishes the guilt of the Applicant.

7. The Court has considered the submissions of the Applicant but remains unpersuaded. It is a settled position of law that while considering an application for grant of bail, the Court must consider, *inter-alia*, whether there are *prima facie* grounds to believe that the accused has committed the offence, the likelihood of the offence being repeated, the nature and gravity of offence, the period of time spent in custody and the danger of the accused absconding or fleeing the course of justice⁶.

8. The Applicant has been charge sheeted for offences under Section 8



read with Sections 22, 23 and 29 of the NDPS Act. The contraband recovered from the parcels, which the Applicant attempted to collect, weighs as 1880 grams of MDMA, far exceeding the commercial quantity threshold of 10 grams under the Act. Consequently, the rigours of Section 37 of the NDPS Act are squarely attracted in the present case. The Applicant must meet the twin conditions under Section 37(1)(b) of the Act for grant of bail, namely: (i) the Court must be satisfied that there are reasonable grounds to believe the accused is not guilty of the alleged offence, and (ii) the accused is not likely to commit any offence while on bail.

9. During the investigation conducted by CBI, based on information received from Interpol, the Applicant was apprehended while attempting to collect parcels containing psychotropic substances. The Applicant's contention that he was not in possession of the parcels and had no knowledge of their contents is, *prima facie*, unsustainable. The Applicant's conduct, as revealed during investigation, establishes *prima facie* evidence of conscious possession. The Applicant went to the Post Office in person, enquired about the parcels and attempted to collect them. Despite not being the consignee, he attempted to claim parcels under names that were not his own — one addressed to Rohit Yadav and the other to his driver, Anil Kumar. Moreover, the Applicant's act of concealing his identity while going to collect the parcels, by covering his face, inquiring about the parcels beforehand, and attempting to flee on sensing the presence of the CBI team, indicates that he was aware of the illicit nature of the parcels. The argument that he was merely acting at the behest of his brother-in-law, who is evidently not a 'consignee', is also not credible at this stage. Even assuming

⁶ *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496



this assertion to be true, the Applicant's active participation in collecting the parcels, coupled with his actions at the Post Office, suggests he was consciously facilitating the receipt of the parcels. This is sufficient to establish *prima facie* conscious possession under the NDPS Act. In this regard, in the case of ***Mohan Lal v. State of Rajasthan***⁷, the Supreme Court has clarified that conscious possession does not require physical custody alone but also an awareness of the presence of the contraband and control over it. In this case, the Applicant's actions and admissions establish a strong *prima facie* case of knowledge and intent, sufficient to satisfy the threshold of conscious possession under the Act.

10. For the foregoing reasons, the Applicant's conduct does not support a *bona fide* explanation and distinguishes this case from that of *Sunil Kumar v. DRI*, where the accused lacked conscious involvement.

11. It must also be noted that both the other co-accused who are closely linked to the present case, i.e., the Applicant's brother-in-law – Vinod Jaiswal and his driver – Anil Kumar are absconding and have not been apprehended by the CBI. As has been urged by the CBI, the investigation into the larger conspiracy of drug trafficking across international boundaries *via* parcel/courier service is currently ongoing. In light of the above, in case the Applicant is released on bail, there is a strong possibility that he may abscond or otherwise interfere in the ongoing investigation.

12. Therefore, on a *prima facie* assessment of the facts and circumstances of the case, in the opinion of this Court, the Applicant has not met the twin conditions under Section 37 of the NDPS Act for grant of bail. The allegations against him are grave and serious in nature and there is *prima*

⁷ (2015) 6 SCC 222



facie credible evidence which links him to a larger conspiracy. Thus, the Court does not deem it fit to grant bail to the Applicant at the present stage.

13. The Court acknowledges that the Applicant has been in judicial custody since 13th July, 2023, and that a chargesheet has been filed against him. However, the investigation into the broader conspiracy of international drug trafficking remains ongoing. While the right to a speedy trial, guaranteed under Article 21 of the Constitution, is unfettered by the stringent requirements of Section 37 of the NDPS Act, however this right does not, in the present circumstances, aid the Applicant. The duration of the Applicant's incarceration is not exceptionally long, and there is no indication that the trial is being unduly delayed due to any lapse on the part of the prosecution. Instead, the ongoing investigation into the larger conspiracy involving organised drug trafficking justifies the need for continued scrutiny. The Court must, therefore, strike a balance between safeguarding the Applicant's individual rights and addressing the larger societal interest of dismantling drug trafficking networks and uncovering the scale of such illicit operations.

14. It is clarified that any observations made in the present order are not be taken as an expression of opinion on the merits of the case. These observations are only for the purpose of deciding the present bail application and should not influence the outcome of the Trial.

15. The present application is dismissed accordingly.

SANJEEV NARULA, J

JANUARY 28, 2025

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