



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.01.2025

+ **BAIL APPLN. 3023/2024**

ABDUL RAB

.....Applicant

versus

NARCOTICS CONTROL BUREAU

.....Respondent

Advocates who appeared in this case:

For the Applicant : Ms. Sushma Sharma, Adv.

For the Respondent : Mr. Arun Khatri, SSC for NCB (through
VC) Ms. Shelly Dixit, Adv.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application is filed seeking regular bail in Case No. VIII/39/DZU/2022 registered at Police Station Narcotics Control Bureau for offences under Sections 8(c), 21(c), 22(c), 23, 25, 27A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('**NDPS Act**').



2. It is alleged that on 27.04.2022, on the basis of a secret information, the NCB team seized 50 kg heroin, 47.06 kg suspected narcotic drugs/ psychotropic substances and ₹30 lakh cash and other articles from the house of the accused – Razi Haider Zaidi at F-86, 3rd Floor Abul Fazal Enclave, Jamia Nagar, New Delhi.

3. During the course of investigation, accused - Razi Haider Zaidi tendered his voluntary statement thereby admitting to his role in the manufacturing of heroin in one of his godown taken on rent at Muzaffarnagar. He further disclosed that he was in contact with one Shahid (stated to be the main conspirator) based in Dubai. He further admitted that he could identify other co-accused persons who are involved in the commission of the crime.

4. On the basis of the disclosure statement of the accused - Razi Haider Zaidi, two Afghan nationals namely Qari Hamidullah and Mohammad Haikim Salimi were apprehended from Bhogal, New Delhi on 28.04.2022. In their disclosure statements co-accused Qari Hamidullah and Mohammad Haikim Salimi admitted that they went to the Muzaffarnagar godown maintained by accused - Razi Haider Zaidi and processed 200 kgs of heroin.

5. During the course of investigations, the statement of the applicant was recorded under Section 67 of the NDPS Act wherein he disclosed that he had come to India in the year 2015 on tourist visa and had not returned and was still staying in India on UNHCR card. He disclosed that he had visited Muzaffarnagar on 07.03.2022 to deliver chemical container to co-accused Razi Haider and Avtar



Singh@Sunny. He disclosed that he had imported two chemical containers in December 2021, and February, 2022.

6. The applicant disclosed that he imported the containers in the name of his friend's company M/s Filos India Enterprises. He disclosed that the container imported by him in December, 2021 at Mumbai was detained by DRI, however, the second container was released from Chennai. The applicant disclosed that he had received a telephone call from one Nadir from Iran who instructed him to take the container to Muzaffarnagar and also provided the number and address of the godown owner. The applicant stated that the godown owner disclosed his name as 'Haider' and also sent his photo and location to the applicant. He stated that the consignment at the godown was received by two persons namely 'Haider' and 'Sunny'. He further stated that he received the payment from Nadir for clearance of container and its expenses and identified the co-accused persons Razi Haider and Avtar Singh@Sunny. The applicant further disclosed the address of one Dinto (owner of the firm Phillos India Enterprises).

7. It is alleged that upon the analysis of CDR of the mobile number of the applicant, it was found to be in contact with the numbers used by the co-accused persons Razi Haider and Avtar Singh@Sunny. Further, the location of the mobile number used by the applicant on 07.03.2022 at the time of delivery was found to be similar to the one used by co-accused Razi Haider Zaidi.

8. During the course of investigation, Dinto disclosed that he was running a company under the name of Phillos India Enterprises and



was indulged in the business of import and export. He disclosed that he imported two containers of chemicals from Iran on the direction of the applicant. He disclosed that out of the two containers one had been detained by DRI Mumbai, and the second was also detained by customs Chennai. The second container was however released by the customs after the payment of the custom duty. He further disclosed that the second container was sent to Muzaffarnagar as per the instructions of the applicant. He further disclosed that the entire expenses of import of the containers were borne by the applicant in cash and some amount was also received through bank transfer.

9. The learned Trial Court *vide* order dated 05.06.2024 dismissed the bail application filed by the applicant.

10. The applicant was arrested in the present case on 19.05.2022.

11. The learned counsel for the applicant submitted that the applicant has been falsely implicated in the present case. She submitted that the applicant has been in incarceration since 19.05.2022, and charges are yet to be framed in the present case.

12. She submitted that the applicant ought to be released on the ground of double jeopardy. She submitted that the applicant was arrested for the sole act of bringing the container to the godown at Muzaffarnagar on 07.03.2022 in two complaint cases filed by the NCB; one being the present case, and the other case being Case No. VIII/38/DZU/2022. She submitted that the applicant could not have been arrested for a single act in two cases.



13. She further submitted that the applicant was arrested in a joint operation of NCB and Gujarat ATS, Police Station Ahmedabad in FIR No. 02/2022, and the applicant was thereafter released from custody in FIR No. 02/2022 under Section 169 of the Code of Criminal Procedure, 1973 on the ground of deficiency of evidence against the applicant. She submitted that the only evidence against the applicant, at this stage, is the statement of the applicant recorded under Section 67 of the NDPS Act, and that of Dinto who had imported the container in question. She submitted that the same also does not contain any incriminating fact against the applicant.

14. *Per contra*, the learned Senior Standing Counsel for the NCB vehemently opposed the grant of any relief to the applicant. He submitted that the applicant is actively involved in the commission of the offence and had hatched a conspiracy with the other accused persons in regard to the commission of the offence. He submitted that the CDR analysis of the mobile number used by the applicant (as seized by Gujarat ATS) revealed that the applicant was in contact with co-accused Razi Haider and Avtar Singh@Sunny.

15. He submitted that the total recovery in the present case is one of commercial quantity, and the complicity of the applicant would be apparent on the consideration of the totality of facts and circumstances. He consequently submitted that the applicant not be enlarged on bail.

16. It is settled law that the Court, while considering the application for grant of bail, has to keep certain factors in mind, such as, whether



there is a *prima facie* case or reasonable ground to believe that the accused has committed the offence; circumstances which are peculiar to the accused; likelihood of the offence being repeated; the nature and gravity of the accusation; severity of the punishment in the event of conviction; the danger of the accused absconding or fleeing if released on bail; reasonable apprehension of the witnesses being threatened; etc.

17. At this stage, the only evidence brought on record by the prosecution is the disclosure statement of the co-accused persons as well as the applicant, and the CDR connectivity between the applicant and the co-accused persons. It is pertinent to note that no recovery of any contraband or cash has been made from the applicant.

18. It is relevant to note that the disclosure statement of the applicant and the other co-accused persons without corroboration is not permissible as evidence [Ref: **Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1**]. Further, the existence of CDR connectivity does not *per se* indicate complicity in the commission of crime.

19. It has been pointed out that the applicant has been made accused and is admittedly in custody under two cases being Case No. VIII/38/DZU/2022 and the present case, for the singular act of allegedly delivering chemical container in the godown at Muzaffarnagar on 07.03.2022.

20. The first case being Case No. VIII/38/DZU/2022 was registered under Sections 8(c), 21(c), 22(c), 23, 25, 27A, 29 of the NDPS Act. In this case, on 26.04.2022, on the basis of a secret information regarding



transportation of narcotic drugs from Muzaffarnagar to Delhi, accused Mohd. Imran was apprehended at Sarai Kale Khan and a recovery of 1kg heroin was made from the car being driven by him. Thereafter, during the course of inquiry, accused Mohd. Imran disclosed about the involvement of co-accused Razi Haider Zaidi in the commission of the offence, and also informed about the possibility of recovery of contraband. Subsequently, a raid was conducted on 26.04.2022 at Muzaffarnagar Godown and a further recovery of 34.250 kg of heroin was made. In this case, the applicant was arrested on 13.05.2022.

21. The subject complaint was registered pursuant to a recovery of 50 Kg heroin, 47.06 Kg suspected Narcotic drugs/ psychotropic substances and ₹30 lakh cash from the house of the co-accused Razi Haider Zaidi at Okhla, New Delhi based on a secret information received on 27.04.2022. In this case, the applicant was arrested on 19.05.2022.

22. The applicant, in both the cases, is sought to be made accused on account of his complicity with the other co-accused persons in the commission of the crime. From a bare perusal of the two complaints, it materialises that the applicant has been made accused in both the cases for the same act. It is apparent while the two cases that were registered pertained to two different recoveries; the applicant was made accused and has been in custody in regard to both the cases for the same act of allegedly delivering a container containing contraband in Muzaffarnagar on 07.03.2022.



23. At this stage, there is no other evidence to show that the applicant is involved in any manner with the co accused persons. Admittedly no recovery has been affected from the applicant and in such circumstances merely because the applicant was allegedly in touch with the co-accused persons, the bar of Section 37 of the NDPS Act is not attracted. The Courts are not expected to accept every allegation made by the prosecution as a gospel truth. Mere contact with other co - accused person who was found in possession of contraband cannot be treated to be corroborative material in absence of substantive material found against the accused.

24. It is further pertinent to mention that the applicant has been in incarceration since 19.05.2022, and charges are yet to be framed in the present case. The object of jail is to secure the appearance of the accused persons during the trial. The object is neither punitive nor preventive and the deprivation of liberty has been considered as a punishment without the guilt being proved. The applicant cannot be made to spend the entire period of trial in custody especially when the trial is likely to take considerable time.

25. In view of the facts and circumstances of the present case, this Court is of the opinion that the applicant has made out a *prima facie* case for grant of bail.

26. The applicant is, therefore, admitted on bail on furnishing a personal bond for a sum of ₹50,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court, on the following conditions:



- a. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or tamper with the evidence of the case, in any manner whatsoever;
 - b. The applicants shall under no circumstance leave the boundaries of Delhi without informing the concerned IO;
 - c. The applicant shall appear before the learned Trial Court on every date;
 - d. The applicant shall, after his release, appear before the concerned Investigating Officer once in every week;
 - e. The applicant shall provide the address where he would be residing after his release to the concerned IO/SHO and shall not change the address without informing the concerned IO/SHO;
 - f. The applicant shall, upon his release, give his mobile number to the concerned IO/SHO and shall keep his mobile phone switched on at all times.
27. It is however made clear that bail is being granted to the applicant in the light of the peculiar circumstances of this case, and the same shall have no bearing on the outcome of any bail application that may be filed by the applicant in other cases.
28. In the event of there being any FIR/DD entry / complaint lodged against the applicant; it would be open to the State to seek redressal by filing an application seeking cancellation of bail.



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

30. The bail application is allowed in the aforementioned terms.

AMIT MAHAJAN, J

JANUARY 20, 2025